



Judiciary Committee

March 14, 2013

9:00 AM

404 HOB

Meeting Packet

Will Weatherford
Speaker

Dennis Baxley
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

(AMENDED 3/12/2013 6:06:31PM)

Amended(1)

Judiciary Committee

Start Date and Time: Thursday, March 14, 2013 09:00 am
End Date and Time: Thursday, March 14, 2013 11:00 am
Location: 404 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

CS/CS/HB 73 Residential Properties by Business & Professional Regulation Subcommittee, Civil Justice Subcommittee, Moraitis
CS/CS/HB 113 Distribution of Materials Harmful to Minors by Justice Appropriations Subcommittee, Criminal Justice Subcommittee, Diaz, M.
CS/HB 119 Searches and Seizures by Criminal Justice Subcommittee, Workman
CS/HB 175 Condominiums by Civil Justice Subcommittee, Fitzenhagen
HB 191 Theft of Utility Services by Raulerson
CS/HB 231 Dissolution of Marriage by Civil Justice Subcommittee, Workman
HB 905 Family Law by Steube
HB 7035 Pretrial Detention by Criminal Justice Subcommittee, Eagle

Workshop on draft language related to reentry proposals

NOTICE FINALIZED on 03/12/2013 18:06 by Jones.Missy

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 73 Residential Properties
SPONSOR(S): Business & Professional Regulation Subcommittee; Civil Justice Subcommittee; Moraitis and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 436

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Cary	Bond
2) Business & Professional Regulation Subcommittee	10 Y, 0 N, As CS	Morton	Luczynski
3) Judiciary Committee		Cary ✓ MLC	Havlicak RIL

SUMMARY ANALYSIS

This bill amends various laws relating to condominiums, cooperatives, and homeowners' associations, including:

- Removing a requirement for elevators to be retrofitted to meet certain building codes by 2015.
- Requiring associations to allow members to copy, without charge, official records using smartphones, tablets, or other technology capable of scanning or taking pictures.
- Requiring election or recall challenges to be filed within 60 days.
- Providing that associations may not suspend delinquent members from using certain common elements.

As to Condominiums, the bill:

- Allows board members to serve two-year board terms, if provided for by the association's bylaws or articles of incorporation.
- Allows boards to install code-compliant hurricane doors and other types of code-compliant hurricane protection, and includes these items as common expenses of the condominium.
- Allows extra time for the completion of planned additional phases to a condominium.
- Provides for the creation of a condominium within a condominium.
- Allows the Condominium Ombudsman and his or her staff to engage in other professions.
- Increases annual revenue thresholds related to financial statement preparation.

As to Homeowners' Associations, the bill:

- Removes the requirement that a homeowners' association member or parcel owner submit a written request to speak at an association meeting.
- Increases annual revenue thresholds related to financial statement preparation.

The bill also conforms provisions relating to Cooperatives and Homeowners' Associations with those relating to Condominiums, including provisions relating to:

- Official records.
- Swimming pools.
- Limitation on mortgagee consent to amendment of documents.
- Board meetings on personnel matters.
- Certification of board members.

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

The bill provides an effective date of July 1, 2013.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME:

DATE:

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums and cooperatives are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) in accordance with ch. 718, F.S., relating to condominiums, and ch. 719, F.S., relating to cooperatives.

Although condominiums and cooperatives are regulated by the division, homeowners' associations are not regulated. Chapter 720, F.S., provide for requirements for the governance of these associations.

Condominiums

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., that is comprised of units which are individually owned, but have an undivided share of access to common facilities.¹ A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.² A declaration is similar to a constitution in that it governs the relationships among condominium unit owners and the condominium association. Specifically, a declaration of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.³ Further, it delineates condominium association bylaws, which govern the administration of the association, including, but not limited to, quorum, voting rights, and election and removal of board members.⁴

All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners which operates or maintains real property in which unit owners have use rights.⁵ The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration."⁶

Cooperatives

A cooperative is a form of ownership of real property created pursuant to ch. 719, F.S., wherein legal title is vested in a corporation or other business entity, and the property's residents own shares of the company, reflecting equity in the real estate.⁷

Like condominiums, cooperatives are created by cooperative documents and include articles of incorporation of the association, bylaws, a ground lease or any other underlying lease, a document evidencing a unit owner's membership or share in the association, and the document recognizing a unit owner's title or right of possession to his or her unit.⁸ Cooperatives are administered in accordance with these bylaws or other cooperative documents, and are run by a board of administration.⁹

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ Section 718.104(5), F.S.

⁴ Section 718.112, F.S.

⁵ Section 718.103(2), F.S.

⁶ Section 718.103(4), F.S.

⁷ Section 719.103(12), F.S.

⁸ Section 719.103(13), F.S.

⁹ Section 719.106(1), F.S.

Homeowners' Associations

A homeowners' association is defined as a Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.¹⁰

Similar to condominiums and cooperatives, homeowners' associations are administered by an elected board of directors.¹¹ The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include the recorded declaration of covenants, bylaws, articles of incorporation, and duly adopted amendments to those documents.¹²

Elevator Safety

Current Situation

Current law provides that elevators in condominiums, cooperatives, and other multi-family residential buildings that were issued certificates of occupancy as of July 1, 2008, are exempt from retroactive application of future updates to the Elevator Safety Code (ASME A17.1 and A17.3) until either July 1, 2015, or until the elevator is replaced or requires major modification, whichever occurs first.¹³ The agency is still in the rulemaking process to define "major modification."¹⁴

Effect of Proposed Changes

The bill amends s. 399.02(9), F.S., to remove the July 1, 2015, end date for the elevator safety code enforcement exemption, creating a permanent exemption to compliance with future updates to the Elevator Safety Code for specified elevators. However, these elevators would have to comply with all updated provisions of the Elevator Safety Code if replaced or requiring major modification.

Official Records

Current Situation

Current law requires condominium associations, cooperatives, and homeowners' associations to maintain the official records of the association within the state. These records are open to inspection by any association member or authorized representative at any time. The right to inspection includes the right to copies at the reasonable expense of the member.¹⁵

Effect of Proposed Changes

The bill amends ss. 718.111(12)(c), 719.104(2)(b), and 720.303(5), F.S., to provide a member the right to use his or her smartphone, tablet, portable scanner, or other technology capable of scanning or taking pictures in lieu of the association providing copies to the member, without charge to the member.

¹⁰ Section 720.301(9), F.S.

¹¹ See ss. 720.303 and 720.307, F.S.

¹² See ss. 720.301 and 720.303, F.S.

¹³ Section 399.02(9), F.S.

¹⁴ Department of Business and Professional Regulation 2012 Legislative Analysis Form, October 25, 2011, on file with Civil Justice Subcommittee staff.

¹⁵ See ss. 718.111(12)(c), 719.104(2)(b), and 720.303(5), F.S.

Elections and Recalls

Current Situation

Current law allows any member of a condominium, cooperative, or homeowners' association board to be recalled and removed from office by a majority of all the voting interests.¹⁶ If a recall is approved by a majority of all voting interests at a meeting or by an agreement in writing, the board must notice and hold a board meeting within five business days; at that meeting, the board must determine whether to certify the recall.¹⁷

If the board fails to notice and/or hold a board meeting within five business days, the recall will automatically be deemed effective.¹⁸ Currently, there is no specified procedure regarding challenging the validity of the recall. Moreover, there are no time limitations regarding challenging an election process.

Current law requires condominium board members to certify in writing to the secretary of the association within 90 days of election that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies. Alternatively, the new board member may complete a department-approved education curriculum.¹⁹

For a condominium, a person who is delinquent in the payment of any fee, fine, or special or regular assessment is not eligible for board membership.²⁰

Effect of Proposed Changes

The bill creates ss. 718.112(2)(j)5., 719.106(1)(f)5., and 720.303(10)(g), F.S., which allow a unit or parcel owner representative to file a petition challenging the board's failure to act on a recall. The petition must be filed within 60 days after the expiration of the applicable five-business-day period. The review of the petition is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.

Similarly, the bill amends ss. 718.112(2), 719.106(1), and 720.303(10), F.S., which allow a board member who has been recalled to file a petition challenging the validity of the recall. The petition must be filed within 60 days after the recall is deemed certified, and must name the condominium, cooperative, or homeowners' association and the unit owner representative as respondents. The bill prohibits the division from accepting a recall petition, regardless of the reason for filing, if there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled, or when 60 or fewer days have elapsed since the election of the board member sought to be recalled.

The bill also creates s. 718.112(2)(d)4.c., F.S., and amends ss. 719.106(1)(d)1. and 720.306(9)(a), F.S., to require that any challenge to the election process must be commenced within 60 days after the election results are announced.

The bill amends s. 719.106(1)(d)1., F.S., to require cooperative board members to certify in writing to the secretary of the association within 90 days of election that he or she has read the association's bylaws, articles of incorporation, proprietary lease, and current written policies. Alternatively, the new board member may complete a department-approved education curriculum. This conforms the law respecting cooperatives to current condominium law in this regard.

¹⁶ See ss. 718.112(2)(j), 719.106(1)(f) and 720.303(10)(b)1., F.S.

¹⁷ See ss. 718.112(2)(j)1., 719.106(1)(f)1., and 720.303(10)(b)5.c.2., F.S.

¹⁸ See ss. 718.112(2)(j)4., 719.106(1)(f)4., and 720.303(10)(c)2.f., F.S.

¹⁹ See s. 718.112(2)(d)4.b., F.S.

²⁰ See ss. 718.112(2)(d)2., F.S.

Limitation on Use of Common Elements

Current Situation

Condominiums, cooperatives, and homeowners' associations own common elements and facilities. Under current law, these entities are able to take action against owners and/or residents that do not comply with the provisions of the declaration bylaws, or reasonable rules. Sanctions may include suspending, for a reasonable time, the right of a unit owner, tenant, or guest to use the common elements, common facilities, or any other association property.²¹

Effect of Proposed Changes

The bill limits which common elements the association may restrict the unit owner, tenant, or guest from using. Specifically, the bill amends ss. 718.303(3)(a), 719.303(3)(a), and 720.305(2)(a), F.S., to prohibit an association from restricting the use of:

- Limited common elements intended to be used only by that unit;
- Common elements needed to access the unit;
- Utility services provided to the unit;
- Parking spaces; and
- Elevators.

The bill does not include the 'elevators' provision with regard to homeowners' associations, but does include a provision prohibiting the homeowners' association from impairing the right of an owner or tenant of a parcel to have vehicular and pedestrian ingress to and from the parcel, including the right to park.

Homeowners' Associations & Condominiums - Financial Reporting

Current Situation

Sections 718.111(13) and 720.303(7), F.S., sets forth the financial reporting responsibilities of condominium associations and homeowners' associations, respectively. Condominium and homeowners' associations have 90 days after the end of the fiscal year to prepare and complete a financial report for the preceding fiscal year. The type of financial statements or information that must be provided is based on the association's total annual revenues.

Annual Revenues	Requirement
Up to \$99,999.99	Prepare report of cash receipts and expenditures
Between \$100,000 and \$199,999.99	Prepare compiled financial statements
Between \$200,000 and \$399,999.99	Prepare reviewed financial statements
\$400,000 or more	Prepare audited financial statements

A homeowners' association with less than 50 parcels, regardless of annual revenues, may prepare a report of cash receipts and expenditures instead of financial statements, unless the governing documents provide otherwise. A condominium association with less than 75 units, regardless of annual revenues, shall prepare a report of cash receipts and expenditures.

²¹ See ss. 718.303(3), 719.303(3), and 720.305(2), F.S.

Effect of Proposed Changes

The bill amends the thresholds for financial reporting requirements as follows:

Annual Revenues	Requirement
Up to \$199,999.99	Prepare report of cash receipts and expenditures
Between \$200,000 and \$299,999.99	Prepare compiled financial statements
Between \$300,000 and \$499,999.99	Prepare reviewed financial statements
\$500,000 or more	Prepare audited financial statements

The bill also provides that a condominium association with less than 50 units regardless of annual revenues, shall prepare a report of cash receipts and expenditures. This is a reduction from the 75 units in current law.

Condominiums - Board Members

Current Situation

Current law requires board members to serve one-year terms, unless the bylaws allow for and a majority of the total voting interests of the condominium vote for board members to serve staggered terms of no more than two years. Current law makes any person who is delinquent in the payment of any fee, fine, or special or regular assessment ineligible to serve as a board member.²²

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)2., F.S., to allow association board members to serve two-year board terms provided for by the bylaws or articles of incorporation, eliminating the requirement that the membership conduct an annual vote to authorize 2-year terms.

The bill also amends s. 718.112(2)(d)2., F.S., to make a person ineligible for condominium board membership when the person owes *any* monetary obligation to the board, and prevents the board from listing that person on the election ballot.

Condominiums - Proxy Voting Exemption

Current Situation

Current law provides that condominium board members must be elected by written ballot or voting machine. Unless otherwise provided in ch. 718, F.S., proxies may not be used in board member elections.²³

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)4., F.S., to provide an exemption to the subparagraph for timeshare condominium boards. Specifically, it allows proxy voting for timeshare condominium board elections.

²² *Id.*

²³ Section 718.112(2)(d)4., F.S.

Condominiums - Windstorm Protection

Current Situation

Under current law, a condominium board must adopt hurricane shutter specifications for its buildings. The board may also approve the installation of hurricane shutters, impact glass, and code-compliant windows.²⁴ Unless otherwise provided in the declaration, the expense of installation, replacement, operation, repair, and maintenance of hurricane shutters or other hurricane protection by the board pursuant to that provision is a common expense.²⁵

Effect of Proposed Changes

This bill allows a condominium board to also approve the installation of code-compliant doors and other types of code-compliant hurricane protection. In addition, the bill includes impact glass, code-compliant windows and doors, and other types of code-compliant hurricane protection as common expenses of the condominium.

Condominiums - Phase Condominiums

Current Situation

Section 718.403, F.S., permits developers to develop condominiums in phases if the anticipated phases are described in detail in the original declaration of condominium or an amendment to the declaration which has been approved by all the unit owners and unit mortgagees. The time for completion of all the phases may not exceed 7 years from the date of the recording of the declaration of condominium.²⁶

Effect of Proposed Changes

The bill amends s. 718.403(1), F.S., to provide that the unit owners may extend the seven-year period to allow for an additional three years for completion, beginning at the end of the original period. The vote to extend must occur within the last three years of the original seven-year period. The amendment to the declaration to extend the seven-year period is not an amendment subject to s. 718.110(4), F.S., which requires approval of all unit owners in the condominium. Rather, it is a general amendment to the declaration, requiring approval by at least two-thirds of the unit owners, pursuant to s. 718.110(1)(a), F.S.

Condominiums - Secondary Condominiums

Current Situation

The Florida Condominium Act does not currently address the concept of primary and secondary condominiums or condominiums within condominium parcels.

Effect of Proposed Changes

The bill creates s. 718.406, F.S., to allow for the development of a secondary condominium within one or more condominium units pursuant to a secondary condominium declaration. Unless the declaration of condominium of the primary condominium provides otherwise, no secondary condominium can be created, and no amendment to the primary condominium declaration may permit secondary condominiums to be created, unless approved by the primary condominium unit owners and lien-

²⁴ Section 718.113(5)(a), F.S.

²⁵ Section 718.115(1)(e), F.S.

²⁶ Section 718.403(1), F.S.

holders.²⁷ Once approved, the primary condominium association, the owner of the subdivided parcel, and the holders of liens upon the subdivided parcel shall have approval rights regarding the creation of the secondary condominium and its declaration.

The secondary condominium is governed by both the primary condominium declaration and the secondary condominium declaration. The primary condominium declaration controls the secondary condominium in the event of a conflict. Moreover, the secondary condominium association represents its unit owners in the primary condominium association, with a designated representative, or if one is not designated, the president of the secondary condominium association casting the secondary association's vote in the primary condominium association.

The primary condominium association may furnish insurance required by s. 718.111(11), F.S., for both the primary and secondary condominium if the primary condominium declaration allows it, and the board of the primary condominium association is permitted to adopt hurricane shutter and other hurricane protection specifications for both the primary and secondary condominium. Further, common expenses due the primary condominium association with respect to a subdivided unit are a common expense of the secondary condominium association, and are collected by the secondary condominium association from its members to be paid to the primary condominium association.

Finally, an owner or mortgagee of a unit in a secondary condominium must register with the primary condominium in order to receive notices of delinquencies of, or foreclosure against, the secondary condominium due to non-payment by the subdivided parcel owner, and of release of the unit in the secondary condominium from any such delinquency or foreclosure.

Condominiums - Ombudsman

Current Situation

In 2004, the Legislature re-created the Office of the Condominium Ombudsman.²⁸ 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.²⁹

The Ombudsman, along with office staff, is restricted from certain acts such as actively engaging in any other business or profession, serving as the representative of any political party, executive committee,

²⁷ See s. 718.110, F.S.

²⁸ Chapter 2004-385, L.O.F.

²⁹ Section 718.5012, F.S.

or other governing body of a political party, serving as an executive, officer or employee of a political party, receiving remuneration for activities on behalf of any candidate for public office, or campaigning for a candidate for political office.³⁰ Essentially, an officer or full-time employee of the Ombudsman's office may not actively engage in any other business or profession.

Effect of Proposed Changes

The bill amends s. 718.5011(2), F.S., to provide that an officer or full-time employee of the Ombudsman's office may engage in another business or profession, so long as it does not directly or indirectly relate to or conflict with his or her work in the Ombudsman's office.

Condominiums - Acquisition of Leases and Leaseholds

Current Situation

Current law allows a condominium board to purchase a land or recreation lease under the standards set forth in the declaration, or if no such provision exists in the declaration, by the same standard that would be required to amend the declaration to permit the acquisition.³¹ The standard to amend the declaration, if the declaration itself does not assert a different standard, is no less than a two-thirds vote of the units.³²

Current law also allows the acquisition of leaseholds, memberships, and other possessory or use interests in lands or recreational facilities, if such lands and facilities are intended to provide enjoyment, recreation or other use or benefit to the unit owners. The acquisition of a leasehold after 12 months following the filing of the declaration must be agreed upon as set forth in the declaration, or if no such provision exists in the declaration, by the approval of a majority of the total voting interests of the condominium.³³

The bill amends s. 718.111(8), F.S., to modify the vote required for the purchase of a lease to match the standard for the acquisition of a leasehold. Essentially, this reduces the vote required for the acquisition of a lease from two-thirds of the unit owners to a majority of the total voting interests.

Condominiums - Insurance

Current Situation

A condominium association must carry property insurance. An association is required to carry property insurance or have sufficient funds to self-insure for damage to areas of the condominium that are not the responsibility of an individual unit owner.³⁴

Unit owners are responsible for all personal property within the unit and the floor, wall, and ceiling coverings. Most unit owners also carry insurance. Unit owners are also responsible for the cost of repairs to any portion of the condominium property not paid by insurance proceeds when the damage is caused by intentional conduct, negligence or failure to comply with association rules by the unit owner or his or her family, tenants or guests.

³⁰ Section 718.5011(2), F.S.

³¹ Section 718.111(8), F.S.

³² Section 718.110(1)(a), F.S.

³³ Section 718.114, F.S.

³⁴ Section 718.111(11), F.S.

Effect of Proposed Changes

The bill amends s. 718.111(11), F.S., to provide that the association is only responsible for damages caused by insurable events. Furthermore, the bill specifies that the association may collect the cost of reconstruction work for damages in the same manner provided for the collection of assessments incurred by a unit owner's intentional conduct, negligence or failure to comply with association rules.

Homeowners' Associations - Members' Right to Speak

Current Situation

In order to speak at a homeowners' association meeting, current law requires that a member and/or parcel owner first provide written notice to the association. The notice must be received prior to the meeting; if this written request is not received, a member may not speak at the meeting.³⁵

Effect of Proposed Changes

The bill amends s. 720.306(6), F.S., to eliminate the requirement that homeowners' association members and/or parcel owners submit a written request to speak at the association meeting, prior to the meeting. Members and parcel owners may speak if present at the meeting.

Conforming Provisions

This bill conforms certain aspects of the Condominium Act, the Cooperative Act, and/or the statutes governing Homeowners' Associations.

Cooperative and Homeowners' Association Records

Current Situation

Pursuant to s. 719.104(2), F.S., the official records of a cooperative association must be open to inspection by any association member or authorized representative; however, certain records are not accessible to unit owners. Exempt information includes:

- Records that were prepared by an association attorney, records that reflect a mental impression, conclusion, litigation strategy or legal theory, or records that were prepared exclusively for imminent litigation or administrative proceedings;
- Information obtained by an association in connection with the approval of the lease, sale, or other transfer of a unit; and
- Medical records of unit owners.³⁶

Effect of Proposed Changes

The bill amends s. 719.104(2)(c), F.S., to ensure that records protected by attorney-client privilege as provided in s. 90.502, F.S., and work-product privilege are exempt from disclosure. Further, the bill includes several other records that may not be accessible to unit owners, including:

- Personnel records of association employees;
- Identifying information of a unit owner, other than the address provided to fulfill the association's notice requirements;
- Electronic security measures that are used by the association to safeguard data, such as passwords; and

³⁵ Section 720.306(6), F.S.

³⁶ Section 719.104(2)(c), F.S.

- The software and operating system used by the association, as the data is part of the official records of the association.

The bill also amends s. 720.303(5)(c)3., F.S., to exempt personnel records of management company employees from disclosure to members, in conformity with current condominium and proposed cooperative law.³⁷ These provisions substantially mirror the Condominium Act.

Amendment of Documents

Current Situation

Current law allows condominiums, cooperatives, and homeowners' associations, through the declaration of condominium, cooperative documents, and bylaws, to establish procedures for amending said documents.³⁸ Specifically, the Condominium Act provides that for any mortgage entered into after October 1, 2007, provisions in the declaration, articles of incorporation, or bylaws that require mortgagee consent in matters that do not affect the rights or interests of the mortgagee are rendered unenforceable.³⁹ The Act specifies which matters still require mortgagee consent and provides procedures for obtaining mortgagee consent for those matters.⁴⁰

Effect of Proposed Changes

The bill creates ss. 719.1055(7), F.S., and 720.306(1)(d), F.S., to provide substantially the same provisions regarding mortgage approval for both cooperatives and homeowners' associations as to mortgages recorded on or after July 1, 2013.

Board Meetings on Personnel Matters

Current Situation

Generally, association meetings are open to unit owners.⁴¹ Pursuant to the Condominium Act, a condominium board may close meetings from the public when the board meets with the association's attorney to seek legal advice or when the board meeting is held for the purpose of discussing personnel matters.⁴² Conversely, cooperatives are only able to close meetings from the public when meeting with the board's attorney.⁴³

Effect of Proposed Changes

The bill amends s. 719.106(1)(c), F.S., to make cooperatives consistent with condominiums regarding meetings held for the purpose of discussing personnel matters.

Certification of Board Members

Current Situation

Within 90 days after a condominium board member is elected or appointed to the board of administration, he or she must certify in writing that he or she has read the association's governing documents and current written policies, he or she will work to uphold the documents and policies, and he or she will maintain fiduciary responsibility to the association's members. In lieu of the written

³⁷ See ss. 718.111(12)(c), F.S.

³⁸ See ss. 718.110, 719.1055, and 720.306, F.S.

³⁹ Section 718.110(11), F.S.

⁴⁰ *Id.*

⁴¹ See ss. 718.112(2)(c), 719.106(1)(c), and 720.306(6), F.S.

⁴² Section 718.112(1)(c)3., F.S.

⁴³ Section 719.106(1)(c), F.S.

certification, the director can obtain certification training from a division-approved educational provider. Currently, the certification must be maintained for five years after the director's election.⁴⁴

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)4.b., F.S., to require that a director's certification be maintained for either five years after the director's election, or for the duration of the director's uninterrupted tenure, whichever is longer. The bill also amends s. 719.501, F.S., to authorize the Department of Business and Professional Regulation to provide the certification training to cooperative board members.

Swimming Pools

Current Situation

A condominium or cooperative that maintains a swimming pool that serves 32 units or less and is not operated as a public lodging establishment is exempt from supervision by the Department of Health. A condominium or cooperative that maintains a swimming pool that serves more than 32 units is provided a limited exemption if the recorded documents prohibit the rental or sublease of the units for periods of less than 60 days.⁴⁵

Effect of Proposed Changes

The bill amends s. 514.0115(2), F.S., to provide the same exemptions to a homeowners' association that are provided to a condominium or cooperative under current law.

B. SECTION DIRECTORY:

Section 1 amends s. 399.02, F.S., relating to the Elevator Safety Code.

Section 2 amends s. 514.0115, F.S., relating to exemptions from supervision or regulation; variances.

Section 3 amends s. 718.111, F.S., relating the association.

Section 4 amends s. 718.112, F.S., relating to bylaws.

Section 5 amends s. 718.113, F.S., relating to maintenance; limitation upon improvement; display of flag; hurricane shutters; display of religious decorations.

Section 6 amends s. 718.115, F.S., relating to common expenses and common surplus.

Section 7 amends s. 718.303, F.S., relating to obligations of owners and occupants; remedies.

Section 8 amends s. 718.403, F.S., relating to phase condominiums.

Section 9 creates s. 718.406, F.S., relating to condominiums created within condominium parcels.

Section 10 amends s. 718.5011, F.S., relating to ombudsman; appointment; administration.

Section 11 amends s. 719.104, F.S., relating to cooperatives; access to units; records; financial reports; assessments; purchase of leases.

Section 12 amends s. 719.1055, F.S., relating to amendment of cooperative documents; alteration and acquisition of property.

⁴⁴ Section 718.112(2)(d)4.b., F.S.

⁴⁵ Section 514.0115(2), F.S.

Section 13 amends s. 719.106, F.S., relating to bylaws; cooperative ownership.

Section 14 amends s. 719.303, F.S., relating to obligations of owners.

Section 15 amends s. 719.501, F.S., relating to powers and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.

Section 16 amends s. 720.303, F.S., relating to association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.

Section 17 amends s. 720.305, F.S., relating to obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.

Section 18 amends s. 720.306, F.S., relating to meetings of members; voting and election procedures; amendments.

Section 19 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Section 1 of this bill, regarding elevator codes, will have a positive fiscal impact on associations and the owners of multi-family structures, and a corresponding negative fiscal impact on companies that provide such services.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 7, 2013, the Civil Justice Subcommittee adopted five amendments and reported the bill favorably as a committee substitute. The amendments:

- Provide the same exemption from state regulation of a swimming pool for a 32-member or smaller homeowners' association that already exists for a 32-member or smaller condominium or cooperative;
- Provide the same standards for purchase of leases by a condominium association as the acquisition of leaseholds by a condominium association;
- Specify repairs to a unit for which the unit owner is responsible, codifying the law as most practitioners presently understand it to be;
- Specify repairs to a unit for which the association is responsible, codifying the law as most practitioners presently understand it to be;
- Provide the Department with the authority to provide the same training to cooperative boards that it provides to condominium boards.

On March 7, 2013, the Business & Professional Regulation Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment provided a condominium association with less than 50 units regardless of annual revenues, shall prepare a report of cash receipts and expenditures. This is a reduction from the 75 units in current law.

This analysis is drafted to the committee substitute as passed by the Business & Professional Regulation Subcommittee.

1 A bill to be entitled
 2 An act relating to residential properties; amending s.
 3 399.02, F.S.; exempting certain elevators from
 4 specific code update requirements; amending s.
 5 514.0115, F.S.; revising specified supervision and
 6 regulation exemptions for homeowners' association
 7 swimming pools; amending s. 718.111, F.S.; revising
 8 requirements for an association's approval of land
 9 purchases and recreational leases; revising
 10 reconstruction costs for which unit owners are
 11 responsible and authorizing the costs to be collected
 12 in a specified manner; requiring an association to
 13 repair or replace as a common expense certain
 14 condominium property damaged by an insurable event;
 15 requiring an association to allow a member or the
 16 member's representative to use certain portable
 17 devices to make electronic copies of association
 18 records; prohibiting the association from charging the
 19 member or representative for using the portable
 20 device; revising requirements for the preparation of
 21 an association's annual financial statement; amending
 22 s. 718.112, F.S.; revising terms of members of an
 23 association's board of administrators and revising
 24 eligibility criteria for candidates; revising
 25 condominium unit owner meeting notice requirements;
 26 providing for nonapplicability to associations
 27 governing timeshare condominiums of certain provisions
 28 relating to elections of board members; revising

29 recordkeeping requirements of a condominium
 30 association board; requiring commencement of
 31 challenges to an election within a specified period;
 32 providing requirements for challenging the failure of
 33 a board to duly notice and hold the required board
 34 meeting or to file the required petition for a recall;
 35 providing requirements for recalled board members to
 36 challenge the recall; prohibiting the Division of
 37 Florida Condominiums, Timeshares, and Mobile Homes of
 38 the Department of Business and Professional Regulation
 39 from accepting recall petitions for filing under
 40 certain circumstances; amending s. 718.113, F.S.;
 41 providing requirements for a condominium association
 42 board relating to the installation of hurricane
 43 shutters, impact glass, code-compliant windows or
 44 doors, and other types of code-compliant hurricane
 45 protection under certain circumstances; amending s.
 46 718.115, F.S.; conforming provisions to changes made
 47 by the act; amending s. 718.303, F.S.; revising
 48 provisions relating to imposing remedies against a
 49 noncompliant or delinquent condominium unit owner or
 50 member; amending s. 718.403, F.S.; providing
 51 requirements for the completion of phase condominiums;
 52 creating s. 718.406, F.S.; providing definitions;
 53 providing requirements for condominiums created within
 54 condominium parcels; providing for the establishment
 55 of primary condominium and secondary condominium
 56 units; providing requirements for association

57 | declarations; authorizing a primary condominium
 58 | association to provide insurance and adopt hurricane
 59 | shutter or hurricane protection specifications under
 60 | certain conditions; providing requirements relating to
 61 | assessments; providing for resolution of conflicts
 62 | between primary condominium declarations and secondary
 63 | condominium declarations; providing requirements
 64 | relating to common expenses due the primary
 65 | condominium association; amending s. 718.5011, F.S.;
 66 | revising the restriction on officers and full-time
 67 | employees of the ombudsman from engaging in other
 68 | businesses or professions; amending s. 719.104, F.S.;
 69 | requiring an association to allow a member or the
 70 | member's representative to use certain portable
 71 | devices to make electronic copies of association
 72 | records; prohibiting the association from charging the
 73 | member or representative for using the portable
 74 | device; specifying additional records that are not
 75 | accessible to unit owners; amending s. 719.1055, F.S.;
 76 | revising provisions relating to the amendment of
 77 | cooperative documents; providing legislative findings
 78 | and a finding of compelling state interest; providing
 79 | criteria for consent or joinder to an amendment;
 80 | requiring notice regarding proposed amendments to
 81 | mortgagees; providing criteria for notification;
 82 | providing for voiding certain amendments; amending s.
 83 | 719.106, F.S.; revising applicability of certain board
 84 | of administration meeting requirements; requiring

85 commencement of challenges to an election within a
 86 specified period; specifying certification or
 87 educational requirements for a newly elected or
 88 appointed cooperative board director; providing
 89 requirements for challenging the failure of a board to
 90 duly notice and hold the required board meeting or to
 91 file the required petition for a recall; providing
 92 requirements for recalled board members to challenge
 93 the recall; prohibiting the division from accepting
 94 recall petitions for filing under certain
 95 circumstances; providing education requirements for
 96 board members; amending s. 719.303, F.S.; revising
 97 provisions relating to imposing remedies against a
 98 noncompliant or delinquent cooperative unit owner or
 99 member; amending s. 719.501, F.S.; authorizing the
 100 division to provide training and educational programs
 101 for cooperative association board members and unit
 102 owners; amending s. 720.303, F.S.; requiring an
 103 association to allow a member or the member's
 104 representative to use certain portable devices to make
 105 electronic copies of association records; prohibiting
 106 the association from charging the member or
 107 representative for using the portable device; revising
 108 requirements for the preparation of an association's
 109 annual financial statement; revising the types of
 110 records that are not accessible to homeowners'
 111 association members and parcel owners; providing
 112 requirements for challenging the failure of a board to

113 | duly notice and hold the required board meeting or to
 114 | file the required petition for a recall; providing
 115 | requirements for recalled board members to challenge
 116 | the recall; prohibiting the division from accepting
 117 | recall petitions for filing under certain
 118 | circumstances; amending s. 720.305, F.S.; revising
 119 | provisions relating to imposing remedies against a
 120 | noncompliant or delinquent homeowners' association
 121 | member and parcel owner; amending s. 720.306, F.S.;
 122 | revising provisions relating to the amendment of
 123 | homeowners' association declarations; providing
 124 | legislative findings and a finding of compelling state
 125 | interest; providing criteria for consent or joinder to
 126 | an amendment; requiring notice to mortgagees regarding
 127 | proposed amendments; providing criteria for
 128 | notification; providing for voiding certain
 129 | amendments; revising provisions relating to right to
 130 | speak at a homeowners' association meeting; requiring
 131 | commencement of challenges to an election within a
 132 | specified period; providing an effective date.

133 |
 134 | Be It Enacted by the Legislature of the State of Florida:
 135 |

136 | Section 1. Subsection (9) of section 399.02, Florida
 137 | Statutes, is amended to read:

138 | 399.02 General requirements.—

139 | (9) Updates to the Safety Code for Existing Elevators and
 140 | Escalators, ASME A17.1 and A17.3, which require Phase II

141 Firefighters' Service on elevators may not be enforced ~~until~~
 142 ~~July 1, 2015, or~~ until the elevator is replaced or requires
 143 major modification, ~~whichever occurs first,~~ on elevators in
 144 condominiums or multifamily residential buildings, including
 145 those that are part of a continuing care facility licensed under
 146 chapter 651, or similar retirement community with apartments,
 147 having a certificate of occupancy by the local building
 148 authority that was issued before July 1, 2008. This exception
 149 does not prevent an elevator owner from requesting a variance
 150 from the applicable codes ~~before or after July 1, 2015.~~ This
 151 subsection does not prohibit the division from granting
 152 variances pursuant to s. 120.542 and subsection (8). The
 153 division shall adopt rules to administer this subsection.

154 Section 2. Subsection (2) of section 514.0115, Florida
 155 Statutes, is amended to read:

156 514.0115 Exemptions from supervision or regulation;
 157 variances.-

158 (2) (a) Pools serving no more than 32 condominium units, ~~or~~
 159 cooperative units, or parcels in a homeowners' association as
 160 defined in s. 720.301, which are not operated as a transient
 161 public lodging establishment, ~~are~~ ~~shall be~~ exempt from
 162 supervision under this chapter, except for water quality.

163 (b) Pools serving more than 32 condominium units, ~~or~~
 164 cooperative units, or parcels in a homeowners' association as
 165 defined in s. 720.301, ~~associations of more than 32 units and~~
 166 whose recorded documents prohibit the rental or sublease of the
 167 units or parcels for periods of less than 60 days are exempt
 168 from supervision under this chapter, except that the

169 condominium, ~~or~~ cooperative, or parcel owner or association must
 170 file applications with the department and obtain construction
 171 plans approval and receive an initial operating permit. The
 172 department shall inspect the swimming pools at such places
 173 annually, at the fee set forth in s. 514.033(3), or upon request
 174 by a unit owner, to determine compliance with department rules
 175 relating to water quality and lifesaving equipment. The
 176 department may not require compliance with rules relating to
 177 swimming pool lifeguard standards.

178 Section 3. Subsection (8), paragraphs (g) and (j) of
 179 subsection (11), paragraph (c) of subsection (12), and
 180 paragraphs (a) and (b) of subsection (13) of section 718.111,
 181 Florida Statutes, are amended to read:

182 718.111 The association.—

183 (8) PURCHASE OF LEASES.—The association has the power to
 184 purchase any land or recreation lease, subject to the same
 185 manner of approval as in s. 718.114 for the acquisition of
 186 leaseholds ~~upon the approval of such voting interest as is~~
 187 ~~required by the declaration. If the declaration makes no~~
 188 ~~provision for acquisition of the land or recreation lease, the~~
 189 ~~vote required shall be that required to amend the declaration to~~
 190 ~~permit the acquisition.~~

191 (11) INSURANCE.—In order to protect the safety, health,
 192 and welfare of the people of the State of Florida and to ensure
 193 consistency in the provision of insurance coverage to
 194 condominiums and their unit owners, this subsection applies to
 195 every residential condominium in the state, regardless of the
 196 date of its declaration of condominium. It is the intent of the

197 Legislature to encourage lower or stable insurance premiums for
 198 associations described in this subsection.

199 (g) A condominium unit owner's policy must conform to the
 200 requirements of s. 627.714.

201 1. All reconstruction work after a property loss must be
 202 undertaken by the association except as otherwise authorized in
 203 this section. A unit owner may undertake reconstruction work on
 204 portions of the unit with the prior written consent of the board
 205 of administration. However, such work may be conditioned upon
 206 the approval of the repair methods, the qualifications of the
 207 proposed contractor, or the contract that is used for that
 208 purpose. A unit owner must obtain all required governmental
 209 permits and approvals before commencing reconstruction.

210 2. Unit owners are responsible for the cost of
 211 reconstruction of any portions of the condominium property for
 212 which the unit owner is required to carry property insurance, or
 213 for which the unit owner is responsible under subsection (j),
 214 and the cost of any such reconstruction work undertaken by the
 215 association is chargeable to the unit owner and enforceable as
 216 an assessment and may be collected in the manner provided for
 217 the collection of assessments pursuant to s. 718.116.

218 3. A multicondominium association may elect, by a majority
 219 vote of the collective members of the condominiums operated by
 220 the association, to operate the condominiums as a single
 221 condominium for purposes of insurance matters, including, but
 222 not limited to, the purchase of the property insurance required
 223 by this section and the apportionment of deductibles and damages
 224 in excess of coverage. The election to aggregate the treatment

225 of insurance premiums, deductibles, and excess damages
 226 constitutes an amendment to the declaration of all condominiums
 227 operated by the association, and the costs of insurance must be
 228 stated in the association budget. The amendments must be
 229 recorded as required by s. 718.110.

230 (j) Any portion of the condominium property that must be
 231 insured by the association against property loss pursuant to
 232 paragraph (f) which is damaged by an insurable event shall be
 233 reconstructed, repaired, or replaced as necessary by the
 234 association as a common expense. All property insurance
 235 deductibles, uninsured losses, and other damages in excess of
 236 property insurance coverage under the property insurance
 237 policies maintained by the association are a common expense of
 238 the condominium, except that:

239 1. A unit owner is responsible for the costs of repair or
 240 replacement of any portion of the condominium property not paid
 241 by insurance proceeds if such damage is caused by intentional
 242 conduct, negligence, or failure to comply with the terms of the
 243 declaration or the rules of the association by a unit owner, the
 244 members of his or her family, unit occupants, tenants, guests,
 245 or invitees, without compromise of the subrogation rights of the
 246 insurer.

247 2. The provisions of subparagraph 1. regarding the
 248 financial responsibility of a unit owner for the costs of
 249 repairing or replacing other portions of the condominium
 250 property also apply to the costs of repair or replacement of
 251 personal property of other unit owners or the association, as
 252 well as other property, whether real or personal, which the unit

253 owners are required to insure.

254 3. To the extent the cost of repair or reconstruction for
255 which the unit owner is responsible under this paragraph is
256 reimbursed to the association by insurance proceeds, and the
257 association has collected the cost of such repair or
258 reconstruction from the unit owner, the association shall
259 reimburse the unit owner without the waiver of any rights of
260 subrogation.

261 4. The association is not obligated to pay for
262 reconstruction or repairs of property losses as a common expense
263 if the property losses were known or should have been known to a
264 unit owner and were not reported to the association until after
265 the insurance claim of the association for that property was
266 settled or resolved with finality, or denied because it was
267 untimely filed.

268 (12) OFFICIAL RECORDS.—

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

281 minimum damages for the association's willful failure to comply.
 282 Minimum damages are \$50 per calendar day for up to 10 days,
 283 beginning on the 11th working day after receipt of the written
 284 request. The failure to permit inspection entitles any person
 285 prevailing in an enforcement action to recover reasonable
 286 attorney ~~attorney's~~ fees from the person in control of the
 287 records who, directly or indirectly, knowingly denied access to
 288 the records. Any person who knowingly or intentionally defaces
 289 or destroys accounting records that are required by this chapter
 290 to be maintained during the period for which such records are
 291 required to be maintained, or who knowingly or intentionally
 292 fails to create or maintain accounting records that are required
 293 to be created or maintained, with the intent of causing harm to
 294 the association or one or more of its members, is personally
 295 subject to a civil penalty pursuant to s. 718.501(1)(d). The
 296 association shall maintain an adequate number of copies of the
 297 declaration, articles of incorporation, bylaws, and rules, and
 298 all amendments to each of the foregoing, as well as the question
 299 and answer sheet as described in s. 718.504 and year-end
 300 financial information required under this section, on the
 301 condominium property to ensure their availability to unit owners
 302 and prospective purchasers, and may charge its actual costs for
 303 preparing and furnishing these documents to those requesting the
 304 documents. An association shall allow a member or his or her
 305 authorized representative to use a portable device, including a
 306 smartphone, tablet, portable scanner, or any other technology
 307 capable of scanning or taking photographs, to make an electronic
 308 copy of the official records in lieu of the association's

309 providing the member or his or her authorized representative
 310 with a copy of such records. The association may not charge a
 311 member or his or her authorized representative for the use of a
 312 portable device. Notwithstanding this paragraph, the following
 313 records are not accessible to unit owners:

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

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

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

334 4. Medical records of unit owners.

335 5. Social security numbers, driver's license numbers,
 336 credit card numbers, e-mail addresses, telephone numbers,

337 facsimile numbers, emergency contact information, addresses of a
338 unit owner other than as provided to fulfill the association's
339 notice requirements, and other personal identifying information
340 of any person, excluding the person's name, unit designation,
341 mailing address, property address, and any address, e-mail
342 address, or facsimile number provided to the association to
343 fulfill the association's notice requirements. However, an owner
344 may consent in writing to the disclosure of protected
345 information described in this subparagraph. The association is
346 not liable for the inadvertent disclosure of information that is
347 protected under this subparagraph if the information is included
348 in an official record of the association and is voluntarily
349 provided by an owner and not requested by the association.

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

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

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

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

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

388 1. An association with total annual revenues of \$200,000
 389 ~~\$100,000~~ or more, but less than \$300,000 ~~\$200,000~~, shall prepare
 390 compiled financial statements.

391 2. An association with total annual revenues of at least
 392 \$300,000 ~~\$200,000~~, but less than \$500,000 ~~\$400,000~~, shall

393 | prepare reviewed financial statements.

394 | 3. An association with total annual revenues of \$500,000
 395 | ~~\$400,000~~ or more shall prepare audited financial statements.

396 | (b)1. An association with total annual revenues of less
 397 | than \$200,000 ~~\$100,000~~ shall prepare a report of cash receipts
 398 | and expenditures.

399 | 2. An association that operates fewer than 50 ~~75~~ units,
 400 | regardless of the association's annual revenues, shall prepare a
 401 | report of cash receipts and expenditures in lieu of financial
 402 | statements required by paragraph (a).

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

415 | Section 4. Paragraphs (d) and (j) of subsection (2) of
 416 | section 718.112, Florida Statutes, are amended to read:

417 | 718.112 Bylaws.—

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

421 (d) Unit owner meetings.—

422 1. An annual meeting of the unit owners shall be held at
 423 the location provided in the association bylaws and, if the
 424 bylaws are silent as to the location, the meeting shall be held
 425 within 45 miles of the condominium property. However, such
 426 distance requirement does not apply to an association governing
 427 a timeshare condominium.

428 2. Unless the bylaws provide otherwise, a vacancy on the
 429 board caused by the expiration of a director's term shall be
 430 filled by electing a new board member, and the election must be
 431 by secret ballot. An election is not required if the number of
 432 vacancies equals or exceeds the number of candidates. For
 433 purposes of this paragraph, the term "candidate" means an
 434 eligible person who has timely submitted the written notice, as
 435 described in sub-subparagraph 4.a., of his or her intention to
 436 become a candidate. Except in a timeshare condominium, or if the
 437 staggered term of a board member does not expire until a later
 438 annual meeting, or if all members' terms would otherwise expire
 439 but there are no candidates, the terms of all board members
 440 expire at the annual meeting, and such members may stand for
 441 reelection unless prohibited by the bylaws. If the bylaws or
 442 articles of incorporation permit ~~staggered~~ terms of no more than
 443 2 years ~~and upon approval of a majority of the total voting~~
 444 ~~interests~~, the association board members may serve 2-year
 445 ~~staggered~~ terms. If the number of board members whose terms
 446 expire at the annual meeting equals or exceeds the number of
 447 candidates, the candidates become members of the board effective
 448 upon the adjournment of the annual meeting. Unless the bylaws

449 provide otherwise, any remaining vacancies shall be filled by
450 the affirmative vote of the majority of the directors making up
451 the newly constituted board even if the directors constitute
452 less than a quorum or there is only one director. In a
453 condominium association of more than 10 units or in a
454 condominium association that does not include timeshare units or
455 timeshare interests, coowners of a unit may not serve as members
456 of the board of directors at the same time unless they own more
457 than one unit or unless there are not enough eligible candidates
458 to fill the vacancies on the board at the time of the vacancy.
459 Any unit owner desiring to be a candidate for board membership
460 must comply with sub-subparagraph 4.a. and must be eligible to
461 be a candidate to serve on the board of directors at the time of
462 the deadline for submitting a notice of intent to run in order
463 to have his or her name listed as a proper candidate on the
464 ballot or to serve on the board. A person who has been suspended
465 or removed by the division under this chapter, or who is
466 delinquent in the payment of any monetary obligation due to the
467 association fee, fine, or special or regular assessment as
468 provided in paragraph (n), is not eligible to be a candidate for
469 board membership and may not be listed on the ballot. A person
470 who has been convicted of any felony in this state or in a
471 United States District or Territorial Court, or who has been
472 convicted of any offense in another jurisdiction which would be
473 considered a felony if committed in this state, is not eligible
474 for board membership unless such felon's civil rights have been
475 restored for at least 5 years as of the date such person seeks
476 election to the board. The validity of an action by the board is

477 | not affected if it is later determined that a board member is
 478 | ineligible for board membership due to having been convicted of
 479 | a felony.

480 | 3. The bylaws must provide the method of calling meetings
 481 | of unit owners, including annual meetings. Written notice must
 482 | include an agenda, must be mailed, hand delivered, or
 483 | electronically transmitted to each unit owner at least 14 days
 484 | before the annual meeting, and must be posted in a conspicuous
 485 | place on the condominium property at least 14 continuous days
 486 | before the annual meeting. Upon notice to the unit owners, the
 487 | board shall, by duly adopted rule, designate a specific location
 488 | on the condominium property or association property where all
 489 | notices of unit owner meetings shall be posted. This requirement
 490 | does not apply if there is no condominium property or
 491 | association property for posting notices. In lieu of, or in
 492 | addition to, the physical posting of meeting notices, the
 493 | association may, by reasonable rule, adopt a procedure for
 494 | conspicuously posting and repeatedly broadcasting the notice and
 495 | the agenda on a closed-circuit cable television system serving
 496 | the condominium association. However, if broadcast notice is
 497 | used in lieu of a notice posted physically on the condominium
 498 | property, the notice and agenda must be broadcast at least four
 499 | times every broadcast hour of each day that a posted notice is
 500 | otherwise required under this section. If broadcast notice is
 501 | provided, the notice and agenda must be broadcast in a manner
 502 | and for a sufficient continuous length of time so as to allow an
 503 | average reader to observe the notice and read and comprehend the
 504 | entire content of the notice and the agenda. Unless a unit owner

505 waives in writing the right to receive notice of the annual
506 meeting, such notice must be hand delivered, mailed, or
507 electronically transmitted to each unit owner. Notice for
508 meetings and notice for all other purposes must be mailed to
509 each unit owner at the address last furnished to the association
510 by the unit owner, or hand delivered to each unit owner.
511 However, if a unit is owned by more than one person, the
512 association must provide notice to the address that the
513 developer identifies for that purpose and thereafter as one or
514 more of the owners of the unit advise the association in
515 writing, or if no address is given or the owners of the unit do
516 not agree, to the address provided on the deed of record. An
517 officer of the association, or the manager or other person
518 providing notice of the association meeting, must provide an
519 affidavit or United States Postal Service certificate of
520 mailing, to be included in the official records of the
521 association affirming that the notice was mailed or hand
522 delivered in accordance with this provision.

523 4. The members of the board shall be elected by written
524 ballot or voting machine. Proxies may not be used in electing
525 the board in general elections or elections to fill vacancies
526 caused by recall, resignation, or otherwise, unless otherwise
527 provided in this chapter. This subparagraph does not apply to an
528 association governing a timeshare condominium.

529 a. At least 60 days before a scheduled election, the
530 association shall mail, deliver, or electronically transmit, by
531 separate association mailing or included in another association
532 mailing, delivery, or transmission, including regularly

533 published newsletters, to each unit owner entitled to a vote, a
534 first notice of the date of the election. Any unit owner or
535 other eligible person desiring to be a candidate for the board
536 must give written notice of his or her intent to be a candidate
537 to the association at least 40 days before a scheduled election.
538 Together with the written notice and agenda as set forth in
539 subparagraph 3., the association shall mail, deliver, or
540 electronically transmit a second notice of the election to all
541 unit owners entitled to vote, together with a ballot that lists
542 all candidates. Upon request of a candidate, an information
543 sheet, no larger than 8 1/2 inches by 11 inches, which must be
544 furnished by the candidate at least 35 days before the election,
545 must be included with the mailing, delivery, or transmission of
546 the ballot, with the costs of mailing, delivery, or electronic
547 transmission and copying to be borne by the association. The
548 association is not liable for the contents of the information
549 sheets prepared by the candidates. In order to reduce costs, the
550 association may print or duplicate the information sheets on
551 both sides of the paper. The division shall by rule establish
552 voting procedures consistent with this sub-subparagraph,
553 including rules establishing procedures for giving notice by
554 electronic transmission and rules providing for the secrecy of
555 ballots. Elections shall be decided by a plurality of ballots
556 cast. There is no quorum requirement; however, at least 20
557 percent of the eligible voters must cast a ballot in order to
558 have a valid election. A unit owner may not permit any other
559 person to vote his or her ballot, and any ballots improperly
560 cast are invalid. A unit owner who violates this provision may

561 be fined by the association in accordance with s. 718.303. A
562 unit owner who needs assistance in casting the ballot for the
563 reasons stated in s. 101.051 may obtain such assistance. The
564 regular election must occur on the date of the annual meeting.
565 Notwithstanding this sub-subparagraph, an election is not
566 required unless more candidates file notices of intent to run or
567 are nominated than board vacancies exist.

568 b. Within 90 days after being elected or appointed to the
569 board, each newly elected or appointed director shall certify in
570 writing to the secretary of the association that he or she has
571 read the association's declaration of condominium, articles of
572 incorporation, bylaws, and current written policies; that he or
573 she will work to uphold such documents and policies to the best
574 of his or her ability; and that he or she will faithfully
575 discharge his or her fiduciary responsibility to the
576 association's members. In lieu of this written certification,
577 within 90 days after being elected or appointed to the board,
578 the newly elected or appointed director may submit a certificate
579 of having satisfactorily completed the educational curriculum
580 administered by a division-approved condominium education
581 provider within 1 year before or 90 days after the date of
582 election or appointment. The written certification or
583 educational certificate is valid and does not have to be
584 resubmitted as long as the director serves on the board without
585 interruption. A director who fails to timely file the written
586 certification or educational certificate is suspended from
587 service on the board until he or she complies with this sub-
588 subparagraph. The board may temporarily fill the vacancy during

589 the period of suspension. The secretary shall cause the
 590 association to retain a director's written certification or
 591 educational certificate for inspection by the members for 5
 592 years after a director's election or the duration of the
 593 director's uninterrupted tenure, whichever is longer. Failure to
 594 have such written certification or educational certificate on
 595 file does not affect the validity of any board action.

596 c. Any challenge to the election process must be commenced
 597 within 60 days after the election results are announced.

598 5. Any approval by unit owners called for by this chapter
 599 or the applicable declaration or bylaws, including, but not
 600 limited to, the approval requirement in s. 718.111(8), must be
 601 made at a duly noticed meeting of unit owners and is subject to
 602 all requirements of this chapter or the applicable condominium
 603 documents relating to unit owner decisionmaking, except that
 604 unit owners may take action by written agreement, without
 605 meetings, on matters for which action by written agreement
 606 without meetings is expressly allowed by the applicable bylaws
 607 or declaration or any law that provides for such action.

608 6. Unit owners may waive notice of specific meetings if
 609 allowed by the applicable bylaws or declaration or any law. If
 610 authorized by the bylaws, notice of meetings of the board of
 611 administration, unit owner meetings, except unit owner meetings
 612 called to recall board members under paragraph (j), and
 613 committee meetings may be given by electronic transmission to
 614 unit owners who consent to receive notice by electronic
 615 transmission.

616 7. Unit owners have the right to participate in meetings

617 of unit owners with reference to all designated agenda items.
 618 However, the association may adopt reasonable rules governing
 619 the frequency, duration, and manner of unit owner participation.

620 8. A unit owner may tape record or videotape a meeting of
 621 the unit owners subject to reasonable rules adopted by the
 622 division.

623 9. Unless otherwise provided in the bylaws, any vacancy
 624 occurring on the board before the expiration of a term may be
 625 filled by the affirmative vote of the majority of the remaining
 626 directors, even if the remaining directors constitute less than
 627 a quorum, or by the sole remaining director. In the alternative,
 628 a board may hold an election to fill the vacancy, in which case
 629 the election procedures must conform to sub-subparagraph 4.a.
 630 unless the association governs 10 units or fewer and has opted
 631 out of the statutory election process, in which case the bylaws
 632 of the association control. Unless otherwise provided in the
 633 bylaws, a board member appointed or elected under this section
 634 shall fill the vacancy for the unexpired term of the seat being
 635 filled. Filling vacancies created by recall is governed by
 636 paragraph (j) and rules adopted by the division.

637 10. This chapter does not limit the use of general or
 638 limited proxies, require the use of general or limited proxies,
 639 or require the use of a written ballot or voting machine for any
 640 agenda item or election at any meeting of a timeshare
 641 condominium association.

642
 643 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
 644 association of 10 or fewer units may, by affirmative vote of a

645 majority of the total voting interests, provide for different
646 voting and election procedures in its bylaws, which may be by a
647 proxy specifically delineating the different voting and election
648 procedures. The different voting and election procedures may
649 provide for elections to be conducted by limited or general
650 proxy.

651 (j) Recall of board members.—Subject to ~~the provisions of~~
652 s. 718.301, any member of the board of administration may be
653 recalled and removed from office with or without cause by the
654 vote or agreement in writing by a majority of all the voting
655 interests. A special meeting of the unit owners to recall a
656 member or members of the board of administration may be called
657 by 10 percent of the voting interests giving notice of the
658 meeting as required for a meeting of unit owners, and the notice
659 shall state the purpose of the meeting. Electronic transmission
660 may not be used as a method of giving notice of a meeting called
661 in whole or in part for this purpose.

662 1. If the recall is approved by a majority of all voting
663 interests by a vote at a meeting, the recall will be effective
664 as provided in this paragraph herein. The board shall duly
665 notice and hold a board meeting within 5 full business days
666 after ~~of~~ the adjournment of the unit owner meeting to recall one
667 or more board members. At the meeting, the board shall either
668 certify the recall, in which case such member or members shall
669 be recalled effective immediately and shall turn over to the
670 board within 5 full business days any and all records and
671 property of the association in their possession, or shall
672 proceed as set forth in subparagraph 3.

673 2. If the proposed recall is by an agreement in writing by
 674 a majority of all voting interests, the agreement in writing or
 675 a copy thereof shall be served on the association by certified
 676 mail or by personal service in the manner authorized by chapter
 677 48 and the Florida Rules of Civil Procedure. The board of
 678 administration shall duly notice and hold a meeting of the board
 679 within 5 full business days after receipt of the agreement in
 680 writing. At the meeting, the board shall either certify the
 681 written agreement to recall a member or members of the board, in
 682 which case such member or members shall be recalled effective
 683 immediately and shall turn over to the board within 5 full
 684 business days any and all records and property of the
 685 association in their possession, or proceed as described in
 686 subparagraph 3.

687 3. If the board determines not to certify the written
 688 agreement to recall a member or members of the board, or does
 689 not certify the recall by a vote at a meeting, the board shall,
 690 within 5 full business days after the meeting, file with the
 691 division a petition for arbitration pursuant to the procedures
 692 in s. 718.1255. For the purposes of this section, the unit
 693 owners who voted at the meeting or who executed the agreement in
 694 writing shall constitute one party under the petition for
 695 arbitration. If the arbitrator certifies the recall as to any
 696 member or members of the board, the recall will be effective
 697 upon mailing of the final order of arbitration to the
 698 association. If the association fails to comply with the order
 699 of the arbitrator, the division may take action pursuant to s.
 700 718.501. Any member or members so recalled shall deliver to the

701 board any and all records of the association in their possession
 702 within 5 full business days after ~~of~~ the effective date of the
 703 recall.

704 4. If the board fails to duly notice and hold a board
 705 meeting within 5 full business days after ~~of~~ service of an
 706 agreement in writing or within 5 full business days after ~~of~~ the
 707 adjournment of the unit owner recall meeting, the recall shall
 708 be deemed effective and the board members so recalled shall
 709 immediately turn over to the board any and all records and
 710 property of the association.

711 5. If the board fails to duly notice and hold the required
 712 meeting or fails to file the required petition, the unit owner
 713 representative may file a petition pursuant to s. 718.1255
 714 challenging the board's failure to act. The petition must be
 715 filed within 60 days after the expiration of the applicable 5-
 716 full-business-day period. The review of a petition under this
 717 subparagraph is limited to the sufficiency of service on the
 718 board and the facial validity of the written agreement or
 719 ballots filed.

720 ~~6.5.~~ If a vacancy occurs on the board as a result of a
 721 recall or removal and less than a majority of the board members
 722 are removed, the vacancy may be filled by the affirmative vote
 723 of a majority of the remaining directors, notwithstanding any
 724 provision to the contrary contained in this subsection. If
 725 vacancies occur on the board as a result of a recall and a
 726 majority or more of the board members are removed, the vacancies
 727 shall be filled in accordance with procedural rules to be
 728 adopted by the division, which rules need not be consistent with

729 | this subsection. The rules must provide procedures governing the
 730 | conduct of the recall election as well as the operation of the
 731 | association during the period after a recall but before ~~prior to~~
 732 | the recall election.

733 | 7. A board member who has been recalled may file a
 734 | petition pursuant to s. 718.1255 challenging the validity of the
 735 | recall. The petition must be filed within 60 days after the
 736 | recall is deemed certified. The association and the unit owner
 737 | representative shall be named as the respondents.

738 | 8. The division may not accept for filing a recall
 739 | petition, whether filed pursuant to subparagraph 1.,
 740 | subparagraph 2., subparagraph 5., or subparagraph 7. and
 741 | regardless of whether the recall was certified, when there are
 742 | 60 or fewer days until the scheduled reelection of the board
 743 | member sought to be recalled or when 60 or fewer days have
 744 | elapsed since the election of the board member sought to be
 745 | recalled.

746 | Section 5. Subsection (5) of section 718.113, Florida
 747 | Statutes, is amended to read:

748 | 718.113 Maintenance; limitation upon improvement; display
 749 | of flag; hurricane shutters and protection; display of religious
 750 | decorations.—

751 | (5) Each board of administration shall adopt hurricane
 752 | shutter specifications for each building within each condominium
 753 | operated by the association which shall include color, style,
 754 | and other factors deemed relevant by the board. All
 755 | specifications adopted by the board must comply with the
 756 | applicable building code.

757 (a) The board may, subject to ~~the provisions of s.~~
 758 718.3026, and the approval of a majority of voting interests of
 759 the condominium, install hurricane shutters, impact glass, ~~or~~
 760 ~~either~~ code-compliant windows or doors, or other types of code-
 761 compliant hurricane protection that comply ~~complies~~ with or
 762 exceed ~~exceeds~~ the applicable building code. However, a vote of
 763 the owners is not required if the maintenance, repair, and
 764 replacement of hurricane shutters, impact glass, ~~or other~~ code-
 765 compliant windows or doors, or other types of code-compliant
 766 hurricane protection are the responsibility of the association
 767 pursuant to the declaration of condominium. If hurricane
 768 protection or laminated glass or window film architecturally
 769 designed to function as hurricane protection that ~~which~~ complies
 770 with or exceeds the current applicable building code has been
 771 previously installed, the board may not install hurricane
 772 shutters, ~~hurricane protection~~, ~~or~~ impact glass, ~~or other~~ code-
 773 compliant windows or doors, or other types of code-compliant
 774 hurricane protection except upon approval by a majority vote of
 775 the voting interests.

776 (b) The association is responsible for the maintenance,
 777 repair, and replacement of the hurricane shutters, impact glass,
 778 code-compliant windows or doors, or other types of code-
 779 compliant hurricane protection authorized by this subsection if
 780 such property ~~hurricane shutters or other hurricane protection~~
 781 is the responsibility of the association pursuant to the
 782 declaration of condominium. If the hurricane shutters, impact
 783 glass, code-compliant windows or doors, or other types of code-
 784 compliant hurricane protection ~~authorized by this subsection~~ are

785 the responsibility of the unit owners pursuant to the
 786 declaration of condominium, the maintenance, repair, and
 787 replacement of such items are the responsibility of the unit
 788 owner.

789 (c) The board may operate shutters, impact glass, code-
 790 compliant windows or doors, or other types of code-compliant
 791 hurricane protection installed pursuant to this subsection
 792 without permission of the unit owners only if such operation is
 793 necessary to preserve and protect the condominium property and
 794 association property. The installation, replacement, operation,
 795 repair, and maintenance of such shutters, impact glass, code-
 796 compliant windows or doors, or other types of code-compliant
 797 hurricane protection in accordance with the procedures set forth
 798 in this paragraph are not a material alteration to the common
 799 elements or association property within the meaning of this
 800 section.

801 (d) Notwithstanding any other provision in the condominium
 802 documents, if approval is required by the documents, a board may
 803 not refuse to approve the installation or replacement of
 804 hurricane shutters, impact glass, code-compliant windows or
 805 doors, or other types of code-compliant hurricane protection by
 806 a unit owner conforming to the specifications adopted by the
 807 board.

808 Section 6. Paragraph (e) of subsection (1) of section
 809 718.115, Florida Statutes, is amended to read:

810 718.115 Common expenses and common surplus.—

811 (1)

812 (e) The expense of installation, replacement, operation,

813 repair, and maintenance of hurricane shutters, impact glass,
 814 code-compliant windows or doors, or other types of code-
 815 compliant hurricane protection by the board pursuant to s.
 816 718.113(5) constitutes ~~shall constitute~~ a common expense as
 817 ~~defined herein~~ and shall be collected as provided in this
 818 section if the association is responsible for the maintenance,
 819 repair, and replacement of the hurricane shutters, impact glass,
 820 code-compliant windows or doors, or other types of code-
 821 compliant hurricane protection pursuant to the declaration of
 822 condominium. However, if the maintenance, repair, and
 823 replacement of the hurricane shutters, impact glass, code-
 824 compliant windows or doors, or other types of code-compliant
 825 hurricane protection are ~~is~~ the responsibility of the unit
 826 owners pursuant to the declaration of condominium, the cost of
 827 the installation of the hurricane shutters, impact glass, code-
 828 compliant windows or doors, or other types of code-compliant
 829 hurricane protection is ~~shall~~ not be a common expense and, ~~but~~
 830 shall be charged individually to the unit owners based on the
 831 cost of installation of the hurricane shutters, impact glass,
 832 code-compliant windows or doors, or other types of code-
 833 compliant hurricane protection appurtenant to the unit.
 834 Notwithstanding ~~the provisions of~~ s. 718.116(9), and regardless
 835 of whether or not the declaration requires the association or
 836 unit owners to maintain, repair, or replace hurricane shutters,
 837 impact glass, code-compliant windows or doors, or other types of
 838 code-compliant hurricane protection, a unit owner who has
 839 previously installed hurricane shutters in accordance with s.
 840 718.113(5) that comply with the current applicable building code

841 shall receive a credit when the shutters are installed; a unit
 842 owner who has previously installed impact glass or code-
 843 compliant windows or doors that comply with the current
 844 applicable building code shall receive a credit when the impact
 845 glass or code-compliant windows or doors are installed; and a
 846 unit owner who has installed, other types of code-compliant
 847 hurricane protection that comply with the current applicable
 848 building code shall receive a credit when the same type of other
 849 code-compliant hurricane protection is installed, and the ~~or~~
 850 ~~laminated glass architecturally designed to function as~~
 851 ~~hurricane protection, which hurricane shutters or other~~
 852 ~~hurricane protection or laminated glass comply with the current~~
 853 ~~applicable building code, shall receive a credit shall be equal~~
 854 to the pro rata portion of the assessed installation cost
 855 assigned to each unit. However, such unit owner remains shall
 856 ~~remain~~ responsible for the pro rata share of expenses for
 857 hurricane shutters, impact glass, code-compliant windows or
 858 doors, or other types of code-compliant hurricane protection
 859 installed on common elements and association property by the
 860 board pursuant to s. 718.113(5), and remains shall remain
 861 responsible for a pro rata share of the expense of the
 862 replacement, operation, repair, and maintenance of such
 863 shutters, impact glass, code-compliant windows or doors, or
 864 other types of code-compliant hurricane protection.

865 Section 7. Paragraph (a) of subsection (3) of section
 866 718.303, Florida Statutes, is amended to read:

867 718.303 Obligations of owners and occupants; remedies.—
 868 (3) The association may levy reasonable fines for the

869 failure of the owner of the unit or its occupant, licensee, or
 870 invitee to comply with any provision of the declaration, the
 871 association bylaws, or reasonable rules of the association. A
 872 fine may not become a lien against a unit. A fine may be levied
 873 on the basis of each day of a continuing violation, with a
 874 single notice and opportunity for hearing. However, the fine may
 875 not exceed \$100 per violation, or \$1,000 in the aggregate.

876 (a) An association may suspend, for a reasonable period of
 877 time, the right of a unit owner, or a unit owner's tenant,
 878 guest, or invitee, to use the common elements, common
 879 facilities, or any other association property for failure to
 880 comply with any provision of the declaration, the association
 881 bylaws, or reasonable rules of the association. This paragraph
 882 does not apply to limited common elements intended to be used
 883 only by that unit, common elements needed to access the unit,
 884 utility services provided to the unit, parking spaces, or
 885 elevators.

886 Section 8. Subsection (1) of section 718.403, Florida
 887 Statutes, is amended to read:

888 718.403 Phase condominiums.—

889 (1) Notwithstanding ~~the provisions of~~ s. 718.110, a
 890 developer may develop a condominium in phases, if the original
 891 declaration of condominium submitting the initial phase to
 892 condominium ownership or an amendment to the declaration which
 893 has been approved by all of the unit owners and unit mortgagees
 894 provides for and describes in detail all anticipated phases; the
 895 impact, if any, which the completion of subsequent phases would
 896 have upon the initial phase; and the time period ~~(which may not~~

897 | ~~exceed 7 years from the date of recording the declaration of~~
 898 | ~~condominium)~~ within which all phases must be added to the
 899 | condominium and comply with the requirements of this section and
 900 | at the end of which the right to add additional phases expires.

901 | (a) All phases must be added to the condominium within 7
 902 | years after the date of recording the original declaration of
 903 | condominium submitting the initial phase to condominium
 904 | ownership unless an amendment extending the 7-year period is
 905 | approved by the unit owners.

906 | (b) An amendment to extend the 7-year period requires the
 907 | approval of the owners necessary to amend the declaration of
 908 | condominium consistent with s. 718.110(1)(a). An extension of
 909 | the 7-year period may be submitted for approval only during the
 910 | last 3 years of the 7-year period.

911 | (c) An amendment must describe the period within which all
 912 | phases must be added to the condominium and such period may not
 913 | exceed 10 years after the date of recording the original
 914 | declaration of condominium submitting the initial phase to
 915 | condominium ownership.

916 | (d) Notwithstanding s. 718.110, an amendment extending the
 917 | 7-year period is not an amendment subject to s. 718.110(4).

918 | Section 9. Section 718.406, Florida Statutes, is created
 919 | to read:

920 | 718.406 Condominiums created within condominium parcels.-

921 | (1) Unless otherwise expressed in the declaration of
 922 | condominium, if a condominium is created within a condominium
 923 | parcel, the term:

924 | (a) "Primary condominium" means any condominium that is

925 not a secondary condominium and contains one or more subdivided
 926 parcels.

927 (b) "Primary condominium association" means any entity
 928 that operates a primary condominium.

929 (c) "Primary condominium declaration" means the instrument
 930 or instruments by which a primary condominium is created, as
 931 they are from time to time amended.

932 (d) "Secondary condominium" means one or more condominium
 933 parcels that have been submitted to condominium ownership
 934 pursuant to a secondary condominium declaration.

935 (e) "Secondary condominium association" means any entity
 936 responsible for the operation of a secondary condominium.

937 (f) "Secondary condominium declaration" means the
 938 instrument or instruments by which a secondary condominium is
 939 created, as they are from time to time amended.

940 (g) "Secondary unit" means a unit that is part of a
 941 secondary condominium.

942 (h) "Subdivided parcel" means a condominium parcel in a
 943 primary condominium that has been submitted to condominium
 944 ownership pursuant to a secondary condominium declaration.

945 (2) Unless otherwise provided in the primary condominium
 946 declaration, if a condominium parcel is a subdivided parcel, the
 947 secondary condominium association responsible for operating the
 948 secondary condominium upon the subdivided parcel shall act on
 949 behalf of all of the unit owners of secondary units in the
 950 secondary condominium and shall exercise all rights of the
 951 secondary unit owners in the primary condominium association,
 952 other than the right of possession of the secondary unit. The

953 secondary condominium association shall designate a
 954 representative who shall cast the vote of the subdivided parcel
 955 in the primary condominium association and, if no person is
 956 designated by the secondary condominium association to cast such
 957 vote, the vote shall be cast by the president of the secondary
 958 condominium association or the designee of the president.

959 (3) Unless otherwise provided in the primary condominium
 960 declaration as originally recorded, no secondary condominium may
 961 be created upon any condominium parcel in the primary
 962 condominium, and no amendment to the primary condominium
 963 declaration may permit secondary condominiums to be created upon
 964 parcels in the primary condominium, unless the record owners of
 965 a majority of the condominium parcels join in the execution of
 966 the amendment.

967 (4) If the primary condominium declaration permits the
 968 creation of a secondary condominium and a condominium parcel in
 969 the primary condominium is being submitted for condominium
 970 ownership to create a secondary condominium upon the primary
 971 condominium parcel, the approval of the board of administration
 972 of the primary condominium association is required in order to
 973 create the secondary condominium on the primary condominium
 974 parcel. Unless otherwise provided in the primary condominium
 975 declaration, the owners of condominium parcels in the primary
 976 condominium that will not be part of the proposed secondary
 977 condominium and the holders of liens upon such primary
 978 condominium parcels shall not have approval rights regarding the
 979 creation of the secondary condominium or the contents of the
 980 secondary condominium declaration being submitted. Only the

981 board of administration of the primary condominium association,
 982 the owner of the subdivided parcel, and the holders of liens
 983 upon the subdivided parcel shall have approval rights regarding
 984 the creation of the secondary condominium and the contents of
 985 the secondary condominium declaration. In order for the
 986 recording of the secondary condominium declaration to be
 987 effective to create the secondary condominium, the board of
 988 administration of the primary condominium association, the owner
 989 of the subdivided parcel, and all holders of liens on the
 990 subdivided parcel must execute the secondary condominium
 991 declaration for the purpose of evidencing their approval.

992 (5) An owner of a secondary unit is subject to both the
 993 primary condominium declaration and the secondary condominium
 994 declaration.

995 (6) The primary condominium association may provide
 996 insurance required by s. 718.111(11) for common elements and
 997 other improvements within the secondary condominium if the
 998 primary condominium declaration permits the primary condominium
 999 association to provide such insurance for the benefit of the
 1000 condominium property included in the subdivided parcel, in lieu
 1001 of such insurance being provided by the secondary condominium
 1002 association.

1003 (7) Unless otherwise provided in the primary condominium
 1004 declaration, the board of administration of the primary
 1005 condominium association may adopt hurricane shutter or hurricane
 1006 protection specifications for each building within which
 1007 subdivided parcels are located and govern any subdivided parcels
 1008 in the primary condominium.

1009 (8) Any unit owner of, or holder of a first mortgage on, a
 1010 secondary unit may register such unit owner's or mortgagee's
 1011 interest in the secondary unit with the primary condominium
 1012 association by delivering written notice to the primary
 1013 condominium association. Once registered, the primary
 1014 condominium association must provide written notice to such
 1015 secondary unit owner and his, her, or its first mortgagee at
 1016 least 30 days before instituting any foreclosure action against
 1017 the subdivided parcel in which the secondary unit owner and his,
 1018 her, or its first mortgagee hold an interest for failure of the
 1019 subdivided parcel owner to pay any assessments or other amounts
 1020 due to the primary condominium association. A foreclosure action
 1021 against a subdivided parcel is not effective without an
 1022 affidavit indicating that written notice of the foreclosure was
 1023 timely sent to the names and addresses of secondary unit owners
 1024 and first mortgagees registered with the primary condominium
 1025 association pursuant to this subsection. The registered
 1026 secondary unit owner or mortgagee has a right to pay the
 1027 proportionate amount of the delinquent assessment attributable
 1028 to the secondary unit in which the registered unit owner or
 1029 mortgagee holds an interest. Upon such payment, the primary
 1030 condominium association is obligated to promptly modify or
 1031 partially release the record of lien on the primary condominium
 1032 association so that the lien no longer encumbers such secondary
 1033 unit. Alternatively, a registered secondary unit owner or
 1034 mortgagee may pay the amount of all delinquent assessments
 1035 attributed to the subdivided parcel and seek reimbursement for
 1036 all such amounts paid and all costs incurred from the secondary

1037 condominium association, including, without limitation, the
 1038 costs of collection other than the share allocable to the
 1039 secondary unit on behalf of which such payment was made.

1040 (9) In the event of a conflict between the primary
 1041 condominium declaration and the secondary condominium
 1042 declaration, the primary condominium declaration controls.

1043 (10) All common expenses due to the primary condominium
 1044 association with respect to a subdivided parcel are a common
 1045 expense of the secondary condominium association and shall be
 1046 collected by the secondary condominium association from its
 1047 members and paid to the primary condominium association.

1048 Section 10. Subsection (2) of section 718.5011, Florida
 1049 Statutes, is amended to read:

1050 718.5011 Ombudsman; appointment; administration.-

1051 (2) The Governor shall appoint the ombudsman. The
 1052 ombudsman must be an attorney admitted to practice before the
 1053 Florida Supreme Court and shall serve at the pleasure of the
 1054 Governor. A vacancy in the office shall be filled in the same
 1055 manner as the original appointment. An officer or full-time
 1056 employee of the ombudsman's office may not actively engage in
 1057 any other business or profession that directly or indirectly
 1058 relates to or conflicts with his or her work in the ombudsman's
 1059 office; serve as the representative of any political party,
 1060 executive committee, or other governing body of a political
 1061 party; serve as an executive, officer, or employee of a
 1062 political party; receive remuneration for activities on behalf
 1063 of any candidate for public office; or engage in soliciting
 1064 votes or other activities on behalf of a candidate for public

1065 office. The ombudsman or any employee of his or her office may
 1066 not become a candidate for election to public office unless he
 1067 or she first resigns from his or her office or employment.

1068 Section 11. Paragraphs (b) and (c) of subsection (2) of
 1069 section 719.104, Florida Statutes, are amended to read:

1070 719.104 Cooperatives; access to units; records; financial
 1071 reports; assessments; purchase of leases.—

1072 (2) OFFICIAL RECORDS.—

1073 (b) The official records of the association shall be
 1074 maintained within the state. The records of the association
 1075 shall be made available to a unit owner within 5 working days
 1076 after receipt of written request by the board or its designee.
 1077 This paragraph may be complied with by having a copy of the
 1078 official records available for inspection or copying on the
 1079 cooperative property. An association shall allow a member or his
 1080 or her authorized representative to use a portable device,
 1081 including a smartphone, tablet, portable scanner, or any other
 1082 technology capable of scanning or taking photographs, to make an
 1083 electronic copy of the official records in lieu of the
 1084 association's providing the member or his or her authorized
 1085 representative with a copy of such records. The association may
 1086 not charge a member or his or her authorized representative for
 1087 the use of a portable device.

1088 (c) The official records of the association shall be open
 1089 to inspection by any association member or the authorized
 1090 representative of such member at all reasonable times. Failure
 1091 to permit inspection of the association records as provided in
 1092 this subsection herein entitles any person prevailing in an

1093 enforcement action to recover reasonable attorney ~~attorney's~~
 1094 fees from the person in control of the records who, directly or
 1095 indirectly, knowingly denies access to the records for
 1096 inspection. The right to inspect the records includes the right
 1097 to make or obtain copies, at the reasonable expense, if any, of
 1098 the association member. The association may adopt reasonable
 1099 rules regarding the frequency, time, location, notice, and
 1100 manner of record inspections and copying. The failure of an
 1101 association to provide the records within 10 working days after
 1102 receipt of a written request creates a rebuttable presumption
 1103 that the association willfully failed to comply with this
 1104 paragraph. A unit owner who is denied access to official records
 1105 is entitled to the actual damages or minimum damages for the
 1106 association's willful failure to comply with this paragraph. The
 1107 minimum damages shall be \$50 per calendar day up to 10 days, the
 1108 calculation to begin on the 11th day after receipt of the
 1109 written request. The association shall maintain an adequate
 1110 number of copies of the declaration, articles of incorporation,
 1111 bylaws, and rules, and all amendments to each of the foregoing,
 1112 as well as the question and answer sheet provided for in s.
 1113 719.504, on the cooperative property to ensure their
 1114 availability to unit owners and prospective purchasers, and may
 1115 charge its actual costs for preparing and furnishing these
 1116 documents to those requesting the same. Notwithstanding ~~the~~
 1117 ~~provisions of~~ this paragraph, the following records shall not be
 1118 accessible to unit owners:

- 1119 1. Any record protected by the lawyer-client privilege as
 1120 provided in s. 90.502; protected by the work-product privilege,

1121 including any record ~~A record that was~~ prepared by an
 1122 association attorney or prepared at the attorney's express
 1123 direction; reflecting ~~that reflects~~ a mental impression,
 1124 conclusion, litigation strategy, or legal theory of the attorney
 1125 or the association; or ~~that was~~ prepared exclusively for civil
 1126 or criminal litigation or for adversarial administrative
 1127 proceedings or in anticipation of imminent civil or criminal
 1128 litigation or imminent adversarial administrative proceedings,
 1129 until the conclusion of the litigation or adversarial
 1130 administrative proceedings.

1131 2. Information obtained by an association in connection
 1132 with the approval of the lease, sale, or other transfer of a
 1133 unit.

1134 3. Medical records of unit owners.

1135 4. Personnel records of association employees, including,
 1136 but not limited to, disciplinary, payroll, health, and insurance
 1137 records. For purposes of this subparagraph, the term "personnel
 1138 records" does not include written employment agreements with an
 1139 association employee or budgetary or financial records that
 1140 indicate the compensation paid to an association employee.

1141 5. Social security numbers, driver license numbers, credit
 1142 card numbers, e-mail addresses, telephone numbers, emergency
 1143 contact information, any addresses of a unit owner other than
 1144 addresses provided to fulfill the association's notice
 1145 requirements, and other personal identifying information of any
 1146 person, excluding the person's name, unit designation, mailing
 1147 address, and property address.

1148 6. Any electronic security measures that are used by the

1149 association to safeguard data, including passwords.

1150 7. The software and operating system used by the
 1151 association which allows manipulation of data, even if the owner
 1152 owns a copy of the same software used by the association. The
 1153 data is part of the official records of the association.

1154 Section 12. Subsection (7) is added to section 719.1055,
 1155 Florida Statutes, to read:

1156 719.1055 Amendment of cooperative documents; alteration
 1157 and acquisition of property.—

1158 (7) The Legislature finds that the procurement of
 1159 mortgagee consent to amendments that do not affect the rights or
 1160 interests of mortgagees is an unreasonable and substantial
 1161 logistical and financial burden on the unit owners and that
 1162 there is a compelling state interest in enabling the members of
 1163 an association to approve amendments to the association's
 1164 cooperative documents through legal means. Accordingly, and
 1165 notwithstanding any provision of this subsection to the
 1166 contrary:

1167 (a) As to any mortgage recorded on or after July 1, 2013,
 1168 any provision in the association's cooperative documents that
 1169 requires the consent or joinder of some or all mortgagees of
 1170 units or any other portion of the association's common areas to
 1171 amend the association's cooperative documents or for any other
 1172 matter is enforceable only as to amendments to the association's
 1173 cooperative documents that adversely affect the priority of the
 1174 mortgagee's lien or the mortgagee's rights to foreclose its lien
 1175 or that otherwise materially affect the rights and interests of
 1176 the mortgagees.

1177 (b) As to mortgages recorded before July 1, 2013, any
 1178 existing provisions in the association's cooperative documents
 1179 requiring mortgagee consent are enforceable.

1180 (c) In securing consent or joinder, the association is
 1181 entitled to rely upon the public records to identify the holders
 1182 of outstanding mortgages. The association may use the address
 1183 provided in the original recorded mortgage document, unless
 1184 there is a different address for the holder of the mortgage in a
 1185 recorded assignment or modification of the mortgage, which
 1186 recorded assignment or modification must reference the official
 1187 records book and page on which the original mortgage was
 1188 recorded. Once the association has identified the recorded
 1189 mortgages of record, the association shall, in writing, request
 1190 of each unit owner whose unit is encumbered by a mortgage of
 1191 record any information that the owner has in his or her
 1192 possession regarding the name and address of the person to whom
 1193 mortgage payments are currently being made. Notice shall be sent
 1194 to such person if the address provided in the original recorded
 1195 mortgage document is different from the name and address of the
 1196 mortgagee or assignee of the mortgage as shown by the public
 1197 record. The association is deemed to have complied with this
 1198 requirement by making the written request of the unit owners
 1199 required under this paragraph. Any notices required to be sent
 1200 to the mortgagees under this paragraph shall be sent to all
 1201 available addresses provided to the association.

1202 (d) Any notice to the mortgagees required under paragraph
 1203 (c) may be sent by a method that establishes proof of delivery,

1204 and any mortgagee who fails to respond within 60 days after the
 1205 date of mailing is deemed to have consented to the amendment.

1206 (e) For those amendments requiring mortgagee consent on or
 1207 after July 1, 2013, in the event mortgagee consent is provided
 1208 other than by properly recorded joinder, such consent shall be
 1209 evidenced by affidavit of the association recorded in the public
 1210 records of the county in which the declaration is recorded.

1211 (f) Any amendment adopted without the required consent of
 1212 a mortgagee is voidable only by a mortgagee who was entitled to
 1213 notice and an opportunity to consent. An action to void an
 1214 amendment is subject to the statute of limitations beginning 5
 1215 years after the date of discovery as to the amendments described
 1216 in paragraph (a) and 5 years after the date of recordation of
 1217 the certificate of amendment for all other amendments. This
 1218 paragraph applies to all mortgages, regardless of the date of
 1219 recordation of the mortgage.

1220 Section 13. Paragraphs (c), (d), and (f) of subsection (1)
 1221 of section 719.106, Florida Statutes, are amended to read:

1222 719.106 Bylaws; cooperative ownership.—

1223 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative
 1224 documents shall provide for the following, and if they do not,
 1225 they shall be deemed to include the following:

1226 (c) Board of administration meetings.—Meetings of the
 1227 board of administration at which a quorum of the members is
 1228 present shall be open to all unit owners. Any unit owner may
 1229 tape record or videotape meetings of the board of
 1230 administration. The right to attend such meetings includes the
 1231 right to speak at such meetings with reference to all designated

1232 agenda items. The division shall adopt reasonable rules
 1233 governing the tape recording and videotaping of the meeting. The
 1234 association may adopt reasonable written rules governing the
 1235 frequency, duration, and manner of unit owner statements.
 1236 Adequate notice of all meetings shall be posted in a conspicuous
 1237 place upon the cooperative property at least 48 continuous hours
 1238 preceding the meeting, except in an emergency. Any item not
 1239 included on the notice may be taken up on an emergency basis by
 1240 at least a majority plus one of the members of the board. Such
 1241 emergency action shall be noticed and ratified at the next
 1242 regular meeting of the board. However, written notice of any
 1243 meeting at which nonemergency special assessments, or at which
 1244 amendment to rules regarding unit use, will be considered shall
 1245 be mailed, delivered, or electronically transmitted to the unit
 1246 owners and posted conspicuously on the cooperative property not
 1247 less than 14 days before ~~prior to~~ the meeting. Evidence of
 1248 compliance with this 14-day notice shall be made by an affidavit
 1249 executed by the person providing the notice and filed among the
 1250 official records of the association. Upon notice to the unit
 1251 owners, the board shall by duly adopted rule designate a
 1252 specific location on the cooperative property upon which all
 1253 notices of board meetings shall be posted. In lieu of or in
 1254 addition to the physical posting of notice of any meeting of the
 1255 board of administration on the cooperative property, the
 1256 association may, by reasonable rule, adopt a procedure for
 1257 conspicuously posting and repeatedly broadcasting the notice and
 1258 the agenda on a closed-circuit cable television system serving
 1259 the cooperative association. However, if broadcast notice is

1260 used in lieu of a notice posted physically on the cooperative
 1261 property, the notice and agenda must be broadcast at least four
 1262 times every broadcast hour of each day that a posted notice is
 1263 otherwise required under this section. When broadcast notice is
 1264 provided, the notice and agenda must be broadcast in a manner
 1265 and for a sufficient continuous length of time so as to allow an
 1266 average reader to observe the notice and read and comprehend the
 1267 entire content of the notice and the agenda. Notice of any
 1268 meeting in which regular assessments against unit owners are to
 1269 be considered for any reason shall specifically contain a
 1270 statement that assessments will be considered and the nature of
 1271 any such assessments. Meetings of a committee to take final
 1272 action on behalf of the board or to make recommendations to the
 1273 board regarding the association budget are subject to the
 1274 provisions of this paragraph. Meetings of a committee that does
 1275 not take final action on behalf of the board or make
 1276 recommendations to the board regarding the association budget
 1277 are subject to the provisions of this section, unless those
 1278 meetings are exempted from this section by the bylaws of the
 1279 association. Notwithstanding any other law to the contrary, the
 1280 requirement that board meetings and committee meetings be open
 1281 to the unit owners does not apply ~~is inapplicable~~ to board or
 1282 committee meetings held for the purpose of discussing personnel
 1283 matters or meetings between the board or a committee and the
 1284 association's attorney, with respect to proposed or pending
 1285 litigation, if ~~when~~ the meeting is held for the purpose of
 1286 seeking or rendering legal advice.

1287 (d) Shareholder meetings.—There shall be an annual meeting

1288 of the shareholders. All members of the board of administration
 1289 shall be elected at the annual meeting unless the bylaws provide
 1290 for staggered election terms or for their election at another
 1291 meeting. Any unit owner desiring to be a candidate for board
 1292 membership must comply with subparagraph 1. The bylaws must
 1293 provide the method for calling meetings, including annual
 1294 meetings. Written notice, which must incorporate an
 1295 identification of agenda items, shall be given to each unit
 1296 owner at least 14 days before the annual meeting and posted in a
 1297 conspicuous place on the cooperative property at least 14
 1298 continuous days preceding the annual meeting. Upon notice to the
 1299 unit owners, the board must by duly adopted rule designate a
 1300 specific location on the cooperative property upon which all
 1301 notice of unit owner meetings are posted. In lieu of or in
 1302 addition to the physical posting of the meeting notice, the
 1303 association may, by reasonable rule, adopt a procedure for
 1304 conspicuously posting and repeatedly broadcasting the notice and
 1305 the agenda on a closed-circuit cable television system serving
 1306 the cooperative association. However, if broadcast notice is
 1307 used in lieu of a posted notice, the notice and agenda must be
 1308 broadcast at least four times every broadcast hour of each day
 1309 that a posted notice is otherwise required under this section.
 1310 If broadcast notice is provided, the notice and agenda must be
 1311 broadcast in a manner and for a sufficient continuous length of
 1312 time to allow an average reader to observe the notice and read
 1313 and comprehend the entire content of the notice and the agenda.
 1314 Unless a unit owner waives in writing the right to receive
 1315 notice of the annual meeting, the notice of the annual meeting

1316 must be sent by mail, hand delivered, or electronically
 1317 transmitted to each unit owner. An officer of the association
 1318 must provide an affidavit or United States Postal Service
 1319 certificate of mailing, to be included in the official records
 1320 of the association, affirming that notices of the association
 1321 meeting were mailed, hand delivered, or electronically
 1322 transmitted, in accordance with this provision, to each unit
 1323 owner at the address last furnished to the association.

1324 1. The board of administration shall be elected by written
 1325 ballot or voting machine. A proxy may not be used in electing
 1326 the board of administration in general elections or elections to
 1327 fill vacancies caused by recall, resignation, or otherwise
 1328 unless otherwise provided in this chapter.

1329 a. At least 60 days before a scheduled election, the
 1330 association shall mail, deliver, or transmit, whether by
 1331 separate association mailing, delivery, or electronic
 1332 transmission or included in another association mailing,
 1333 delivery, or electronic transmission, including regularly
 1334 published newsletters, to each unit owner entitled to vote, a
 1335 first notice of the date of the election. Any unit owner or
 1336 other eligible person desiring to be a candidate for the board
 1337 of administration must give written notice to the association at
 1338 least 40 days before a scheduled election. Together with the
 1339 written notice and agenda as set forth in this section, the
 1340 association shall mail, deliver, or electronically transmit a
 1341 second notice of election to all unit owners entitled to vote,
 1342 together with a ballot that ~~which~~ lists all candidates. Upon
 1343 request of a candidate, the association shall include an

1344 information sheet, no larger than 8 1/2 inches by 11 inches,
 1345 which must be furnished by the candidate at least 35 days before
 1346 the election, to be included with the mailing, delivery, or
 1347 electronic transmission of the ballot, with the costs of
 1348 mailing, delivery, or transmission and copying to be borne by
 1349 the association. The association is not liable for the contents
 1350 of the information sheets provided by the candidates. In order
 1351 to reduce costs, the association may print or duplicate the
 1352 information sheets on both sides of the paper. The division
 1353 shall by rule establish voting procedures consistent with this
 1354 subparagraph, including rules establishing procedures for giving
 1355 notice by electronic transmission and rules providing for the
 1356 secrecy of ballots. Elections shall be decided by a plurality of
 1357 those ballots cast. There is no quorum requirement. However, at
 1358 least 20 percent of the eligible voters must cast a ballot in
 1359 order to have a valid election. A unit owner may not permit any
 1360 other person to vote his or her ballot, and any such ballots
 1361 improperly cast are invalid. A unit owner who needs assistance
 1362 in casting the ballot for the reasons stated in s. 101.051 may
 1363 obtain assistance in casting the ballot. Any unit owner
 1364 violating this provision may be fined by the association in
 1365 accordance with s. 719.303. The regular election must occur on
 1366 the date of the annual meeting. This subparagraph does not apply
 1367 to timeshare cooperatives. Notwithstanding this subparagraph, an
 1368 election and balloting are not required unless more candidates
 1369 file a notice of intent to run or are nominated than vacancies
 1370 exist on the board. Any challenge to the election process must
 1371 be commenced within 60 days after the election results are

1372 | announced.

1373 | b. Within 90 days after being elected or appointed to the

1374 | board, each new director shall certify in writing to the

1375 | secretary of the association that he or she has read the

1376 | association's bylaws, articles of incorporation, proprietary

1377 | lease, and current written policies; that he or she will work to

1378 | uphold such documents and policies to the best of his or her

1379 | ability; and that he or she will faithfully discharge his or her

1380 | fiduciary responsibility to the association's members. Within 90

1381 | days after being elected or appointed to the board, in lieu of

1382 | this written certification, the newly elected or appointed

1383 | director may submit a certificate of having satisfactorily

1384 | completed the educational curriculum administered by an

1385 | education provider as approved by the division pursuant to the

1386 | requirements established in chapter 718 within 1 year before or

1387 | 90 days after the date of election or appointment. The

1388 | educational certificate is valid and does not have to be

1389 | resubmitted as long as the director serves on the board without

1390 | interruption. A director who fails to timely file the written

1391 | certification or educational certificate is suspended from

1392 | service on the board until he or she complies with this sub-

1393 | subparagraph. The board may temporarily fill the vacancy during

1394 | the period of suspension. The secretary of the association shall

1395 | cause the association to retain a director's written

1396 | certification or educational certificate for inspection by the

1397 | members for 5 years after a director's election or the duration

1398 | of the director's uninterrupted tenure, whichever is longer.

1399 | Failure to have such written certification or educational

1400 certificate on file does not affect the validity of any board
 1401 action.

1402 2. Any approval by unit owners called for by this chapter,
 1403 or the applicable cooperative documents, must be made at a duly
 1404 noticed meeting of unit owners and is subject to this chapter or
 1405 the applicable cooperative documents relating to unit owner
 1406 decisionmaking, except that unit owners may take action by
 1407 written agreement, without meetings, on matters for which action
 1408 by written agreement without meetings is expressly allowed by
 1409 the applicable cooperative documents or law which provides for
 1410 the unit owner action.

1411 3. Unit owners may waive notice of specific meetings if
 1412 allowed by the applicable cooperative documents or law. If
 1413 authorized by the bylaws, notice of meetings of the board of
 1414 administration, shareholder meetings, except shareholder
 1415 meetings called to recall board members under paragraph (f), and
 1416 committee meetings may be given by electronic transmission to
 1417 unit owners who consent to receive notice by electronic
 1418 transmission.

1419 4. Unit owners have the right to participate in meetings
 1420 of unit owners with reference to all designated agenda items.
 1421 However, the association may adopt reasonable rules governing
 1422 the frequency, duration, and manner of unit owner participation.

1423 5. Any unit owner may tape record or videotape meetings of
 1424 the unit owners subject to reasonable rules adopted by the
 1425 division.

1426 6. Unless otherwise provided in the bylaws, a vacancy
 1427 occurring on the board before the expiration of a term may be

1428 filled by the affirmative vote of the majority of the remaining
 1429 directors, even if the remaining directors constitute less than
 1430 a quorum, or by the sole remaining director. In the alternative,
 1431 a board may hold an election to fill the vacancy, in which case
 1432 the election procedures must conform to the requirements of
 1433 subparagraph 1. unless the association has opted out of the
 1434 statutory election process, in which case the bylaws of the
 1435 association control. Unless otherwise provided in the bylaws, a
 1436 board member appointed or elected under this subparagraph shall
 1437 fill the vacancy for the unexpired term of the seat being
 1438 filled. Filling vacancies created by recall is governed by
 1439 paragraph (f) and rules adopted by the division.

1440
 1441 Notwithstanding subparagraphs (b)2. and (d)1., an association
 1442 may, by the affirmative vote of a majority of the total voting
 1443 interests, provide for a different voting and election procedure
 1444 in its bylaws, which vote may be by a proxy specifically
 1445 delineating the different voting and election procedures. The
 1446 different voting and election procedures may provide for
 1447 elections to be conducted by limited or general proxy.

1448 (f) Recall of board members.—Subject to ~~the provisions of~~
 1449 s. 719.301, any member of the board of administration may be
 1450 recalled and removed from office with or without cause by the
 1451 vote or agreement in writing by a majority of all the voting
 1452 interests. A special meeting of the voting interests to recall
 1453 any member of the board of administration may be called by 10
 1454 percent of the unit owners giving notice of the meeting as
 1455 required for a meeting of unit owners, and the notice shall

1456 state the purpose of the meeting. Electronic transmission may
 1457 not be used as a method of giving notice of a meeting called in
 1458 whole or in part for this purpose.

1459 1. If the recall is approved by a majority of all voting
 1460 interests by a vote at a meeting, the recall shall be effective
 1461 as provided in this paragraph herein. The board shall duly
 1462 notice and hold a board meeting within 5 full business days
 1463 after ~~of~~ the adjournment of the unit owner meeting to recall one
 1464 or more board members. At the meeting, the board shall either
 1465 certify the recall, in which case such member or members shall
 1466 be recalled effective immediately and shall turn over to the
 1467 board within 5 full business days any and all records and
 1468 property of the association in their possession, or shall
 1469 proceed as set forth in subparagraph 3.

1470 2. If the proposed recall is by an agreement in writing by
 1471 a majority of all voting interests, the agreement in writing or
 1472 a copy thereof shall be served on the association by certified
 1473 mail or by personal service in the manner authorized by chapter
 1474 48 and the Florida Rules of Civil Procedure. The board of
 1475 administration shall duly notice and hold a meeting of the board
 1476 within 5 full business days after receipt of the agreement in
 1477 writing. At the meeting, the board shall either certify the
 1478 written agreement to recall members of the board, in which case
 1479 such members shall be recalled effective immediately and shall
 1480 turn over to the board, within 5 full business days, any and all
 1481 records and property of the association in their possession, or
 1482 proceed as described in subparagraph 3.

1483 3. If the board determines not to certify the written

1484 agreement to recall members of the board, or does not certify
 1485 the recall by a vote at a meeting, the board shall, within 5
 1486 full business days after the board meeting, file with the
 1487 division a petition for binding arbitration pursuant to the
 1488 procedures of s. 719.1255. For purposes of this paragraph, the
 1489 unit owners who voted at the meeting or who executed the
 1490 agreement in writing shall constitute one party under the
 1491 petition for arbitration. If the arbitrator certifies the recall
 1492 as to any member of the board, the recall shall be effective
 1493 upon mailing of the final order of arbitration to the
 1494 association. If the association fails to comply with the order
 1495 of the arbitrator, the division may take action pursuant to s.
 1496 719.501. Any member so recalled shall deliver to the board any
 1497 and all records and property of the association in the member's
 1498 possession within 5 full business days after ~~of~~ the effective
 1499 date of the recall.

1500 4. If the board fails to duly notice and hold a board
 1501 meeting within 5 full business days after ~~of~~ service of an
 1502 agreement in writing or within 5 full business days after ~~of~~ the
 1503 adjournment of the unit owner recall meeting, the recall shall
 1504 be deemed effective and the board members so recalled shall
 1505 immediately turn over to the board any and all records and
 1506 property of the association.

1507 5. If the board fails to duly notice and hold the required
 1508 meeting or fails to file the required petition, the unit owner
 1509 representative may file a petition pursuant to s. 719.1255
 1510 challenging the board's failure to act. The petition must be
 1511 filed within 60 days after the expiration of the applicable 5-

1512 full-business-day period. The review of a petition under this
 1513 subparagraph is limited to the sufficiency of service on the
 1514 board and the facial validity of the written agreement or
 1515 ballots filed.

1516 6.5. If a vacancy occurs on the board as a result of a
 1517 recall and less than a majority of the board members are
 1518 removed, the vacancy may be filled by the affirmative vote of a
 1519 majority of the remaining directors, notwithstanding any
 1520 provision to the contrary contained in this chapter. If
 1521 vacancies occur on the board as a result of a recall and a
 1522 majority or more of the board members are removed, the vacancies
 1523 shall be filled in accordance with procedural rules to be
 1524 adopted by the division, which rules need not be consistent with
 1525 this chapter. The rules must provide procedures governing the
 1526 conduct of the recall election as well as the operation of the
 1527 association during the period after a recall but before ~~prior to~~
 1528 the recall election.

1529 7. A board member who has been recalled may file a
 1530 petition pursuant to s. 719.1255 challenging the validity of the
 1531 recall. The petition must be filed within 60 days after the
 1532 recall is deemed certified. The association and the unit owner
 1533 representative shall be named as the respondents.

1534 8. The division may not accept for filing a recall
 1535 petition, whether filed pursuant to subparagraph 1.,
 1536 subparagraph 2., subparagraph 5., or subparagraph 7. and
 1537 regardless of whether the recall was certified, when there are
 1538 60 or fewer days until the scheduled reelection of the board
 1539 member sought to be recalled or when 60 or fewer days have not

1540 elapsed since the election of the board member sought to be
 1541 recalled.

1542 Section 14. Paragraph (a) of subsection (3) of section
 1543 719.303, Florida Statutes, is amended to read:

1544 719.303 Obligations of owners.—

1545 (3) The association may levy reasonable fines for failure
 1546 of the unit owner or the unit's occupant, licensee, or invitee
 1547 to comply with any provision of the cooperative documents or
 1548 reasonable rules of the association. A fine may not become a
 1549 lien against a unit. A fine may be levied on the basis of each
 1550 day of a continuing violation, with a single notice and
 1551 opportunity for hearing. However, the fine may not exceed \$100
 1552 per violation, or \$1,000 in the aggregate.

1553 (a) An association may suspend, for a reasonable period of
 1554 time, the right of a unit owner, or a unit owner's tenant,
 1555 guest, or invitee, to use the common elements, common
 1556 facilities, or any other association property for failure to
 1557 comply with any provision of the cooperative documents or
 1558 reasonable rules of the association. This paragraph does not
 1559 apply to limited common elements intended to be used only by
 1560 that unit, common elements needed to access the unit, utility
 1561 services provided to the unit, parking spaces, or elevators.

1562 Section 15. Paragraph (k) of subsection (1) of section
 1563 719.501, Florida Statutes, is amended to read:

1564 719.501 Powers and duties of Division of Florida
 1565 Condominiums, Timeshares, and Mobile Homes.—

1566 (1) The Division of Florida Condominiums, Timeshares, and
 1567 Mobile Homes of the Department of Business and Professional

1568 Regulation, referred to as the "division" in this part, in
 1569 addition to other powers and duties prescribed by chapter 718,
 1570 has the power to enforce and ensure compliance with this chapter
 1571 and adopted rules relating to the development, construction,
 1572 sale, lease, ownership, operation, and management of residential
 1573 cooperative units. In performing its duties, the division shall
 1574 have the following powers and duties:

1575 (k) The division shall provide training and educational
 1576 programs for cooperative association board members and unit
 1577 owners. The training may, in the division's discretion, include
 1578 web-based electronic media, and live training and seminars in
 1579 various locations throughout the state. The division may review
 1580 and approve education and training programs for board members
 1581 and unit owners offered by providers and shall maintain a
 1582 current list of approved programs and providers and make such
 1583 list available to board members and unit owners in a reasonable
 1584 and cost-effective manner.

1585 Section 16. Subsection (5), paragraphs (a) and (b) of
 1586 subsection (7), and subsection (10) of section 720.303, Florida
 1587 Statutes, are amended to read:

1588 720.303 Association powers and duties; meetings of board;
 1589 official records; budgets; financial reporting; association
 1590 funds; recalls.—

1591 (5) INSPECTION AND COPYING OF RECORDS.—The official
 1592 records shall be maintained within the state and must be open to
 1593 inspection and available for photocopying by members or their
 1594 authorized agents at reasonable times and places within 10
 1595 business days after receipt of a written request for access.

1596 This subsection may be complied with by having a copy of the
 1597 official records available for inspection or copying in the
 1598 community. If the association has a photocopy machine available
 1599 where the records are maintained, it must provide parcel owners
 1600 with copies on request during the inspection if the entire
 1601 request is limited to no more than 25 pages. An association
 1602 shall allow a member or his or her authorized representative to
 1603 use a portable device, including a smartphone, tablet, portable
 1604 scanner, or any other technology capable of scanning or taking
 1605 photographs, to make an electronic copy of the official records
 1606 in lieu of the association's providing the member or his or her
 1607 authorized representative with a copy of such records. The
 1608 association may not charge a member or his or her authorized
 1609 representative for the use of a portable device.

1610 (a) The failure of an association to provide access to the
 1611 records within 10 business days after receipt of a written
 1612 request submitted by certified mail, return receipt requested,
 1613 creates a rebuttable presumption that the association willfully
 1614 failed to comply with this subsection.

1615 (b) A member who is denied access to official records is
 1616 entitled to the actual damages or minimum damages for the
 1617 association's willful failure to comply with this subsection.
 1618 The minimum damages are to be \$50 per calendar day up to 10
 1619 days, the calculation to begin on the 11th business day after
 1620 receipt of the written request.

1621 (c) The association may adopt reasonable written rules
 1622 governing the frequency, time, location, notice, records to be
 1623 inspected, and manner of inspections, but may not require a

1624 parcel owner to demonstrate any proper purpose for the
 1625 inspection, state any reason for the inspection, or limit a
 1626 parcel owner's right to inspect records to less than one 8-hour
 1627 business day per month. The association may impose fees to cover
 1628 the costs of providing copies of the official records,
 1629 including, without limitation, the costs of copying. The
 1630 association may charge up to 50 cents per page for copies made
 1631 on the association's photocopier. If the association does not
 1632 have a photocopy machine available where the records are kept,
 1633 or if the records requested to be copied exceed 25 pages in
 1634 length, the association may have copies made by an outside
 1635 vendor or association management company personnel and may
 1636 charge the actual cost of copying, including any reasonable
 1637 costs involving personnel fees and charges at an hourly rate for
 1638 vendor or employee time to cover administrative costs to the
 1639 vendor or association. The association shall maintain an
 1640 adequate number of copies of the recorded governing documents,
 1641 to ensure their availability to members and prospective members.
 1642 Notwithstanding this paragraph, the following records are not
 1643 accessible to members or parcel owners:

- 1644 1. Any record protected by the lawyer-client privilege as
 1645 described in s. 90.502 and any record protected by the work-
 1646 product privilege, including, but not limited to, a record
 1647 prepared by an association attorney or prepared at the
 1648 attorney's express direction which reflects a mental impression,
 1649 conclusion, litigation strategy, or legal theory of the attorney
 1650 or the association and which was prepared exclusively for civil
 1651 or criminal litigation or for adversarial administrative

1652 | proceedings or which was prepared in anticipation of such
 1653 | litigation or proceedings until the conclusion of the litigation
 1654 | or proceedings.

1655 | 2. Information obtained by an association in connection
 1656 | with the approval of the lease, sale, or other transfer of a
 1657 | parcel.

1658 | 3. Personnel records of association or management company
 1659 | ~~the association's~~ employees, including, but not limited to,
 1660 | disciplinary, payroll, health, and insurance records. For
 1661 | purposes of this subparagraph, the term "personnel records" does
 1662 | not include written employment agreements with an association or
 1663 | management company employee or budgetary or financial records
 1664 | that indicate the compensation paid to an association or
 1665 | management company employee.

1666 | 4. Medical records of parcel owners or community
 1667 | residents.

1668 | 5. Social security numbers, driver ~~driver's~~ license
 1669 | numbers, credit card numbers, electronic mailing addresses,
 1670 | telephone numbers, facsimile numbers, emergency contact
 1671 | information, any addresses for a parcel owner other than as
 1672 | provided for association notice requirements, and other personal
 1673 | identifying information of any person, excluding the person's
 1674 | name, parcel designation, mailing address, and property address.
 1675 | However, an owner may consent in writing to the disclosure of
 1676 | protected information described in this subparagraph. The
 1677 | association is not liable for the disclosure of information that
 1678 | is protected under this subparagraph if the information is
 1679 | included in an official record of the association and is

1680 voluntarily provided by an owner and not requested by the
 1681 association.

1682 6. Any electronic security measure that is used by the
 1683 association to safeguard data, including passwords.

1684 7. The software and operating system used by the
 1685 association which allows the manipulation of data, even if the
 1686 owner owns a copy of the same software used by the association.
 1687 The data is part of the official records of the association.

1688 (d) The association or its authorized agent is not
 1689 required to provide a prospective purchaser or lienholder with
 1690 information about the residential subdivision or the association
 1691 other than information or documents required by this chapter to
 1692 be made available or disclosed. The association or its
 1693 authorized agent may charge a reasonable fee to the prospective
 1694 purchaser or lienholder or the current parcel owner or member
 1695 for providing good faith responses to requests for information
 1696 by or on behalf of a prospective purchaser or lienholder, other
 1697 than that required by law, if the fee does not exceed \$150 plus
 1698 the reasonable cost of photocopying and any attorney ~~attorney's~~
 1699 fees incurred by the association in connection with the
 1700 response.

1701 (7) FINANCIAL REPORTING.—Within 90 days after the end of
 1702 the fiscal year, or annually on the date provided in the bylaws,
 1703 the association shall prepare and complete, or contract with a
 1704 third party for the preparation and completion of, a financial
 1705 report for the preceding fiscal year. Within 21 days after the
 1706 final financial report is completed by the association or
 1707 received from the third party, but not later than 120 days after

1708 the end of the fiscal year or other date as provided in the
 1709 bylaws, the association shall, within the time limits set forth
 1710 in subsection (5), provide each member with a copy of the annual
 1711 financial report or a written notice that a copy of the
 1712 financial report is available upon request at no charge to the
 1713 member. Financial reports shall be prepared as follows:

1714 (a) An association that meets the criteria of this
 1715 paragraph shall prepare or cause to be prepared a complete set
 1716 of financial statements in accordance with generally accepted
 1717 accounting principles as adopted by the Board of Accountancy.
 1718 The financial statements shall be based upon the association's
 1719 total annual revenues, as follows:

1720 1. An association with total annual revenues of \$200,000
 1721 ~~\$100,000~~ or more, but less than \$300,000 ~~\$200,000~~, shall prepare
 1722 compiled financial statements.

1723 2. An association with total annual revenues of at least
 1724 \$300,000 ~~\$200,000~~, but less than \$500,000 ~~\$400,000~~, shall
 1725 prepare reviewed financial statements.

1726 3. An association with total annual revenues of \$500,000
 1727 ~~\$400,000~~ or more shall prepare audited financial statements.

1728 (b)1. An association with total annual revenues of less
 1729 than \$200,000 ~~\$100,000~~ shall prepare a report of cash receipts
 1730 and expenditures.

1731 2. An association in a community of fewer than 50 parcels,
 1732 regardless of the association's annual revenues, may prepare a
 1733 report of cash receipts and expenditures in lieu of financial
 1734 statements required by paragraph (a) unless the governing
 1735 documents provide otherwise.

1736 3. A report of cash receipts and disbursement must
 1737 disclose the amount of receipts by accounts and receipt
 1738 classifications and the amount of expenses by accounts and
 1739 expense classifications, including, but not limited to, the
 1740 following, as applicable: costs for security, professional, and
 1741 management fees and expenses; taxes; costs for recreation
 1742 facilities; expenses for refuse collection and utility services;
 1743 expenses for lawn care; costs for building maintenance and
 1744 repair; insurance costs; administration and salary expenses; and
 1745 reserves if maintained by the association.

1746 (10) RECALL OF DIRECTORS.—

1747 (a)1. Regardless of any provision to the contrary
 1748 contained in the governing documents, subject to the provisions
 1749 of s. 720.307 regarding transition of association control, any
 1750 member of the board of directors may be recalled and removed
 1751 from office with or without cause by a majority of the total
 1752 voting interests.

1753 2. When the governing documents, including the
 1754 declaration, articles of incorporation, or bylaws, provide that
 1755 only a specific class of members is entitled to elect a board
 1756 director or directors, only that class of members may vote to
 1757 recall those board directors so elected.

1758 (b)1. Board directors may be recalled by an agreement in
 1759 writing or by written ballot without a membership meeting. The
 1760 agreement in writing or the written ballots, or a copy thereof,
 1761 shall be served on the association by certified mail or by
 1762 personal service in the manner authorized by chapter 48 and the
 1763 Florida Rules of Civil Procedure.

1764 2. The board shall duly notice and hold a meeting of the
 1765 board within 5 full business days after receipt of the agreement
 1766 in writing or written ballots. At the meeting, the board shall
 1767 either certify the written ballots or written agreement to
 1768 recall a director or directors of the board, in which case such
 1769 director or directors shall be recalled effective immediately
 1770 and shall turn over to the board within 5 full business days any
 1771 and all records and property of the association in their
 1772 possession, or proceed as described in paragraph (d).

1773 3. When it is determined by the department pursuant to
 1774 binding arbitration proceedings that an initial recall effort
 1775 was defective, written recall agreements or written ballots used
 1776 in the first recall effort and not found to be defective may be
 1777 reused in one subsequent recall effort. However, in no event is
 1778 a written agreement or written ballot valid for more than 120
 1779 days after it has been signed by the member.

1780 4. Any rescission or revocation of a member's written
 1781 recall ballot or agreement must be in writing and, in order to
 1782 be effective, must be delivered to the association before the
 1783 association is served with the written recall agreements or
 1784 ballots.

1785 5. The agreement in writing or ballot shall list at least
 1786 as many possible replacement directors as there are directors
 1787 subject to the recall, when at least a majority of the board is
 1788 sought to be recalled; the person executing the recall
 1789 instrument may vote for as many replacement candidates as there
 1790 are directors subject to the recall.

1791 (c)1. If the declaration, articles of incorporation, or

1792 | bylaws specifically provide, the members may also recall and
 1793 | remove a board director or directors by a vote taken at a
 1794 | meeting. If so provided in the governing documents, a special
 1795 | meeting of the members to recall a director or directors of the
 1796 | board of administration may be called by 10 percent of the
 1797 | voting interests giving notice of the meeting as required for a
 1798 | meeting of members, and the notice shall state the purpose of
 1799 | the meeting. Electronic transmission may not be used as a method
 1800 | of giving notice of a meeting called in whole or in part for
 1801 | this purpose.

1802 | 2. The board shall duly notice and hold a board meeting
 1803 | within 5 full business days after the adjournment of the member
 1804 | meeting to recall one or more directors. At the meeting, the
 1805 | board shall certify the recall, in which case such member or
 1806 | members shall be recalled effective immediately and shall turn
 1807 | over to the board within 5 full business days any and all
 1808 | records and property of the association in their possession, or
 1809 | shall proceed as set forth in subparagraph (d).

1810 | (d) If the board determines not to certify the written
 1811 | agreement or written ballots to recall a director or directors
 1812 | of the board or does not certify the recall by a vote at a
 1813 | meeting, the board shall, within 5 full business days after the
 1814 | meeting, file with the department a petition for binding
 1815 | arbitration pursuant to the applicable procedures in ss.
 1816 | 718.112(2)(j) and 718.1255 and the rules adopted thereunder. For
 1817 | the purposes of this section, the members who voted at the
 1818 | meeting or who executed the agreement in writing shall
 1819 | constitute one party under the petition for arbitration. If the

1820 arbitrator certifies the recall as to any director or directors
 1821 of the board, the recall will be effective upon mailing of the
 1822 final order of arbitration to the association. The director or
 1823 directors so recalled shall deliver to the board any and all
 1824 records of the association in their possession within 5 full
 1825 business days after the effective date of the recall.

1826 (e) If a vacancy occurs on the board as a result of a
 1827 recall and less than a majority of the board directors are
 1828 removed, the vacancy may be filled by the affirmative vote of a
 1829 majority of the remaining directors, notwithstanding any
 1830 provision to the contrary contained in this subsection or in the
 1831 association documents. If vacancies occur on the board as a
 1832 result of a recall and a majority or more of the board directors
 1833 are removed, the vacancies shall be filled by members voting in
 1834 favor of the recall; if removal is at a meeting, any vacancies
 1835 shall be filled by the members at the meeting. If the recall
 1836 occurred by agreement in writing or by written ballot, members
 1837 may vote for replacement directors in the same instrument in
 1838 accordance with procedural rules adopted by the division, which
 1839 rules need not be consistent with this subsection.

1840 (f) If the board fails to duly notice and hold a board
 1841 meeting within 5 full business days after service of an
 1842 agreement in writing or within 5 full business days after the
 1843 adjournment of the member recall meeting, the recall shall be
 1844 deemed effective and the board directors so recalled shall
 1845 immediately turn over to the board all records and property of
 1846 the association.

1847 (g) If the board fails to duly notice and hold the

1848 required meeting or fails to file the required petition, the
 1849 unit owner representative may file a petition pursuant to s.
 1850 718.1255 challenging the board's failure to act. The petition
 1851 must be filed within 60 days after the expiration of the
 1852 applicable 5-full-business-day period. The review of a petition
 1853 under this paragraph is limited to the sufficiency of service on
 1854 the board and the facial validity of the written agreement or
 1855 ballots filed.

1856 (h)~~(g)~~ If a director who is removed fails to relinquish
 1857 his or her office or turn over records as required under this
 1858 section, the circuit court in the county where the association
 1859 maintains its principal office may, upon the petition of the
 1860 association, summarily order the director to relinquish his or
 1861 her office and turn over all association records upon
 1862 application of the association.

1863 (i)~~(h)~~ The minutes of the board meeting at which the board
 1864 decides whether to certify the recall are an official
 1865 association record. The minutes must record the date and time of
 1866 the meeting, the decision of the board, and the vote count taken
 1867 on each board member subject to the recall. In addition, when
 1868 the board decides not to certify the recall, as to each vote
 1869 rejected, the minutes must identify the parcel number and the
 1870 specific reason for each such rejection.

1871 (j)~~(i)~~ When the recall of more than one board director is
 1872 sought, the written agreement, ballot, or vote at a meeting
 1873 shall provide for a separate vote for each board director sought
 1874 to be recalled.

1875 (k) A board member who has been recalled may file a

1876 petition pursuant to ss. 718.112(2)(j) and 718.1255 and the
 1877 rules adopted challenging the validity of the recall. The
 1878 petition must be filed within 60 days after the recall is deemed
 1879 certified. The association and the unit owner representative
 1880 shall be named as respondents.

1881 (1) The division may not accept for filing a recall
 1882 petition, whether filed pursuant to paragraph (b), paragraph
 1883 (c), paragraph (g), or paragraph (k) and regardless of whether
 1884 the recall was certified, when there are 60 or fewer days until
 1885 the scheduled reelection of the board member sought to be
 1886 recalled or when 60 or fewer days have not elapsed since the
 1887 election of the board member sought to be recalled.

1888 Section 17. Subsection (2) of section 720.305, Florida
 1889 Statutes, is amended to read:

1890 720.305 Obligations of members; remedies at law or in
 1891 equity; levy of fines and suspension of use rights.—

1892 (2) The association may levy reasonable fines of up to
 1893 \$100 per violation against any member or any member's tenant,
 1894 guest, or invitee for the failure of the owner of the parcel or
 1895 its occupant, licensee, or invitee to comply with any provision
 1896 of the declaration, the association bylaws, or reasonable rules
 1897 of the association. A fine may be levied for each day of a
 1898 continuing violation, with a single notice and opportunity for
 1899 hearing, except that the fine may not exceed \$1,000 in the
 1900 aggregate unless otherwise provided in the governing documents.
 1901 A fine of less than \$1,000 may not become a lien against a
 1902 parcel. In any action to recover a fine, the prevailing party is
 1903 entitled to reasonable attorney ~~attorney's~~ fees and costs from

1904 the nonprevailing party as determined by the court.

1905 (a) An association may suspend, for a reasonable period of
 1906 time, the right of a member, or a member's tenant, guest, or
 1907 invitee, to use common areas and facilities for the failure of
 1908 the owner of the parcel or its occupant, licensee, or invitee to
 1909 comply with any provision of the declaration, the association
 1910 bylaws, or reasonable rules of the association. This paragraph
 1911 does not apply to that portion of common areas used to provide
 1912 access or utility services to the parcel. A suspension may not
 1913 impair the right of an owner or tenant of a parcel to have
 1914 vehicular and pedestrian ingress to and egress from the parcel,
 1915 including, but not limited to, the right to park.

1916 (b) A fine or suspension may not be imposed without at
 1917 least 14 days' notice to the person sought to be fined or
 1918 suspended and an opportunity for a hearing before a committee of
 1919 at least three members appointed by the board who are not
 1920 officers, directors, or employees of the association, or the
 1921 spouse, parent, child, brother, or sister of an officer,
 1922 director, or employee. If the committee, by majority vote, does
 1923 not approve a proposed fine or suspension, it may not be
 1924 imposed. If the association imposes a fine or suspension, the
 1925 association must provide written notice of such fine or
 1926 suspension by mail or hand delivery to the parcel owner and, if
 1927 applicable, to any tenant, licensee, or invitee of the parcel
 1928 owner.

1929 Section 18. Paragraph (d) is added to subsection (1) of
 1930 section 720.306, Florida Statutes, and subsection (6) and

1931 paragraph (a) of subsection (9) of that section are amended, to
 1932 read:

1933 720.306 Meetings of members; voting and election
 1934 procedures; amendments.—

1935 (1) QUORUM; AMENDMENTS.—

1936 (d) The Legislature finds that the procurement of
 1937 mortgagee consent to amendments that do not affect the rights or
 1938 interests of mortgagees is an unreasonable and substantial
 1939 logistical and financial burden on the parcel owners and that
 1940 there is a compelling state interest in enabling the members of
 1941 an association to approve amendments to the association's
 1942 governing documents through legal means. Accordingly, and
 1943 notwithstanding any provision of this paragraph to the contrary:

1944 1. As to any mortgage recorded on or after July 1, 2013,
 1945 any provision in the association's governing documents that
 1946 requires the consent or joinder of some or all mortgagees of
 1947 parcels or any other portion of the association's common areas
 1948 to amend the association's governing documents or for any other
 1949 matter is enforceable only as to amendments to the association's
 1950 governing documents that adversely affect the priority of the
 1951 mortgagee's lien or the mortgagee's rights to foreclose its lien
 1952 or that otherwise materially affect the rights and interests of
 1953 the mortgagees.

1954 2. As to mortgages recorded before July 1, 2013, any
 1955 existing provisions in the association's governing documents
 1956 requiring mortgagee consent are enforceable.

1957 3. In securing consent or joinder, the association is
 1958 entitled to rely upon the public records to identify the holders

1959 of outstanding mortgages. The association may use the address
 1960 provided in the original recorded mortgage document, unless
 1961 there is a different address for the holder of the mortgage in a
 1962 recorded assignment or modification of the mortgage, which
 1963 recorded assignment or modification must reference the official
 1964 records book and page on which the original mortgage was
 1965 recorded. Once the association has identified the recorded
 1966 mortgages of record, the association shall, in writing, request
 1967 of each parcel owner whose parcel is encumbered by a mortgage of
 1968 record any information that the owner has in his or her
 1969 possession regarding the name and address of the person to whom
 1970 mortgage payments are currently being made. Notice shall be sent
 1971 to such person if the address provided in the original recorded
 1972 mortgage document is different from the name and address of the
 1973 mortgagee or assignee of the mortgage as shown by the public
 1974 record. The association is deemed to have complied with this
 1975 requirement by making the written request of the parcel owners
 1976 required under this subparagraph. Any notices required to be
 1977 sent to the mortgagees under this subparagraph shall be sent to
 1978 all available addresses provided to the association.

1979 4. Any notice to the mortgagees required under
 1980 subparagraph 3. may be sent by a method that establishes proof
 1981 of delivery, and any mortgagee who fails to respond within 60
 1982 days after the date of mailing is deemed to have consented to
 1983 the amendment.

1984 5. For those amendments requiring mortgagee consent on or
 1985 after July 1, 2013, in the event mortgagee consent is provided
 1986 other than by properly recorded joinder, such consent shall be

1987 evidenced by affidavit of the association recorded in the public
 1988 records of the county in which the declaration is recorded.

1989 6. Any amendment adopted without the required consent of a
 1990 mortgagee is voidable only by a mortgagee who was entitled to
 1991 notice and an opportunity to consent. An action to void an
 1992 amendment is subject to the statute of limitations beginning 5
 1993 years after the date of discovery as to the amendments described
 1994 in subparagraph 1. and 5 years after the date of recordation of
 1995 the certificate of amendment for all other amendments. This
 1996 subparagraph applies to all mortgages, regardless of the date of
 1997 recordation of the mortgage.

1998 (6) RIGHT TO SPEAK.—Members and parcel owners have the
 1999 right to attend all membership meetings and to speak at any
 2000 meeting with reference to all items opened for discussion or
 2001 included on the agenda. Notwithstanding any provision to the
 2002 contrary in the governing documents or any rules adopted by the
 2003 board or by the membership, a member and a parcel owner have the
 2004 right to speak for at least 3 minutes on any item, ~~provided that~~
 2005 ~~the member or parcel owner submits a written request to speak~~
 2006 ~~prior to the meeting.~~ The association may adopt written
 2007 reasonable rules governing the frequency, duration, and other
 2008 manner of member and parcel owner statements, which rules must
 2009 be consistent with this subsection.

2010 (9) ~~(a)~~ ELECTIONS AND BOARD VACANCIES.—

2011 (a) Elections of directors must be conducted in accordance
 2012 with the procedures set forth in the governing documents of the
 2013 association. All members of the association are eligible to
 2014 serve on the board of directors, and a member may nominate

CS/CS/HB 73

2013

2015 | himself or herself as a candidate for the board at a meeting
 2016 | where the election is to be held or, if the election process
 2017 | allows voting by absentee ballot, in advance of the balloting.
 2018 | Except as otherwise provided in the governing documents, boards
 2019 | of directors must be elected by a plurality of the votes cast by
 2020 | eligible voters. Any challenge to the election process must be
 2021 | commenced within 60 days after the election results are
 2022 | announced.

2023 | Section 19. This act shall take effect July 1, 2013.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Moraitis offered the following:

3
4 **Amendment**

5 Remove lines 388-397 and insert:

6 1. An association with total annual revenues of \$150,000
7 ~~\$100,000~~ or more, but less than \$300,000 ~~\$200,000~~, shall prepare
8 compiled financial statements.

9 2. An association with total annual revenues of at least
10 \$300,000 ~~\$200,000~~, but less than \$500,000 ~~\$400,000~~, shall
11 prepare reviewed financial statements.

12 3. An association with total annual revenues of \$500,000
13 ~~\$400,000~~ or more shall prepare audited financial statements.

14 (b)1. An association with total annual revenues of less
15 than \$150,000 ~~\$100,000~~ shall prepare a report of cash receipts
16

17 Remove lines 1720-1729 and insert:

18 1. An association with total annual revenues of \$150,000
19 ~~\$100,000~~ or more, but less than \$300,000 ~~\$200,000~~, shall prepare
20 compiled financial statements.



Amendment No. 1

21 2. An association with total annual revenues of at least
22 \$300,000 ~~\$200,000~~, but less than \$500,000 ~~\$400,000~~, shall
23 prepare reviewed financial statements.

24 3. An association with total annual revenues of \$500,000
25 ~~\$400,000~~ or more shall prepare audited financial statements.

26 (b)1. An association with total annual revenues of less
27 than \$150,000 ~~\$100,000~~ shall prepare a report of cash receipts
28

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 113 Distribution of Materials Harmful to Minors

SPONSOR(S): Justice Appropriations Subcommittee; Criminal Justice Subcommittee; Diaz, M. and others

TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 86

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	11 Y, 0 N, As CS	Jones	Cunningham
2) Justice Appropriations Subcommittee	11 Y, 0 N, As CS	McAuliffe	Jones Darity
3) Judiciary Committee		Jones <i>LTS</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Section 847.011, F.S., defines "harmful to minors" as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity, sexual conduct, or sexual excitement when it:

- Predominantly appeals to a prurient, shameful, or morbid interest;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.

Florida has multiple statutes that prohibit persons from transmitting, selling, or displaying to minors material that is harmful to minors. However, there are currently no statutes prohibiting an adult from displaying or giving minors (without monetary consideration) material that is harmful to minors.

The bill amends s. 847.012, F.S., to create a new offense making it a third degree felony for an adult to knowingly distribute to a minor on school property or post on school property any of the following material:

- Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or
- Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter defined in s. 847.001, F.S., explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and which is harmful to minors.

The bill provides an exception for the distribution or posting of instructional materials by specified school personnel.

"School property" is defined as the grounds or facility of any kindergarten, elementary school, middle school, junior high school, or secondary school, whether public or nonpublic.

The Criminal Justice Impact Conference met February 27, 2013, and determined the bill may have an insignificant negative impact on state prison beds.

The bill is effective on October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES

Regulation of Obscene Materials

The First Amendment to the United States Constitution and Article I, Section 4, of the Florida Constitution protect the rights of individuals to express themselves in a variety of ways. The constitutions protect not only speech and the written word, but also conduct intended to communicate. However, the Supreme Court of the United States has found that obscene materials are not protected by the First Amendment.¹

Section 847.001(10), F.S., defines "obscene" as the status of material that:

- The average person, applying contemporary community standards, would find, taken as a whole, appeals to the prurient interest;
- Depicts or describes, in a patently offensive way, sexual conduct;² and
- Taken as a whole, lacks serious literary, artistic, political, or scientific value.

Florida has multiple statutes prohibiting the possession, exhibition, and dissemination of obscene materials to adults and children.³ One specific to children is s. 847.0133, F.S., which makes it a third degree felony⁴ to knowingly sell, rent, loan, give away, distribute, transmit, or show any obscene material to a minor.

Regulation of Materials Harmful to Minors

The definition of materials that are "harmful to minors" is similar to but more inclusive than that of "obscene" materials. Section 847.001(6), F.S., defines "harmful to minors" as any reproduction, imitation, characterization, description, exhibition, presentation, or representation, of whatever kind or form, depicting nudity,⁵ sexual conduct,⁶ or sexual excitement⁷ when it:

- Predominantly appeals to a prurient, shameful, or morbid interest;
- Is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material or conduct for minors; and
- Taken as a whole, is without serious literary, artistic, political, or scientific value for minors.⁸

Florida has multiple statutes that prohibit persons from transmitting, selling, or displaying to minors material that is harmful to minors. A description of these statutes is below.

Transmission of Materials Harmful to Minors

Section 847.0138, F.S., makes it a third degree felony for a person to know or believe they are transmitting an image, information, or data that is "harmful to minors" to a specific individual known by the defendant to be a minor.⁹

¹ *Miller v. California*, 413 U.S. 15 (1973).

² Section 847.001, F.S., defines "sexual conduct" as actual or simulated sexual intercourse, deviate sexual intercourse, sexual bestiality, masturbation, or sadomasochistic abuse; actual lewd exhibition of the genitals; actual physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or if such person is a female, breast with the intent to arouse, or gratify the sexual desire of either party; or any act or conduct which constituted sexual battery or simulates the sexual battery is being or will be committed. A mother's breastfeeding of her baby does not under any circumstance constitute "sexual conduct."

³ See, e.g., s. 847.011, F.S.

⁴ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

⁵ Section 847.001(9), F.S., defines "nudity" as the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering; or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple; or the depiction of covered male genitals in a discernibly turgid state.

⁶ *Supra* note 2.

⁷ Section 847.001(17), F.S., defines "sexual excitement" as the condition of the human male or female genitals when in a state of sexual stimulation or arousal.

⁸ Section 847.001, F.S.

STORAGE NAME:

DATE:

Selling, Renting, or Loaning Materials Harmful to Minors

Section 847.012(3)(a) and (b), F.S., makes it a third degree felony for a person to knowingly¹⁰ sell, rent, or loan for monetary consideration to a minor:

- Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or
- Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter defined in s. 847.001, F.S., explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and which is harmful to minors.¹¹

Exposing Minors to Harmful Motion Pictures, Shows, Etc.

Section 847.013(3), F.S., makes it a first degree misdemeanor¹² for a person to knowingly¹³ exhibit for monetary consideration to a minor; knowingly sell or rent a videotape of a motion picture to a minor; knowingly sell to a minor an admission ticket or pass; or knowingly admit a minor for a monetary consideration to premises whereon there is exhibited a motion picture, exhibition, show, representation, or other presentation which, in whole or in part, depicts nudity, sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors.

Retail Display of Materials Harmful to Minors

Section 847.0125(2)(a), F.S., makes it a first degree misdemeanor for a person who offers for sale in a retail establishment that is open to the general public any book, magazine, or other printed material, *the cover of which depicts material which is harmful to minors*, to knowingly exhibit such book, magazine, or material in such a way that it is on open display to, or within the convenient reach of, minors. The statute requires such items to be displayed, either individually or collectively, behind an opaque covering which conceals the book, magazine, or other printed material.¹⁴

The statute also makes it a first degree misdemeanor for a person who offers for sale in a retail establishment that is open to the general public any book, magazine, or other printed material, *the content of which exploits, is devoted to, or is principally made up of descriptions or depictions of material which is harmful to minors*, to knowingly exhibit such book, magazine, or material in such establishment in such a way that it is within the convenient reach of minors.¹⁵

There are currently no statutes prohibiting an adult from displaying or giving minors (without monetary consideration) material that is harmful to minors.¹⁶

⁹ "Known by the defendant to be a minor" means that the defendant had actual knowledge or believed that the recipient of the communication was a minor. Section 847.0138(1)(a), F.S.

¹⁰ "Knowingly" means having general knowledge of, reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both: (1) the character and content of any motion picture described herein which is reasonably susceptible of examination by the defendant, or the character of any exhibition, presentation, representation, or show described herein, other than a motion picture show, which is reasonably susceptible of being ascertained by the defendant; and (2) the age of the minor. Section 847.013(1), F.S.

¹¹ A person's ignorance of a minor's age, a minor's misrepresentation of his or her age, a bona fide belief of a minor's age, or a minor's consent may not be raised as a defense in a prosecution for a violation of s. 847.012, F.S.

¹² A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

¹³ *Supra* note 10.

¹⁴ Section 847.0125(2)(a), F.S.

¹⁵ Section 847.0125(2)(b), F.S.

¹⁶ There may be circumstances under which such activity could be charged as a violation of s. 827.04(1), F.S., contributing to the delinquency of a child, which is a first degree misdemeanor.

Effect of the Bill

The bill amends s. 847.012, F.S., to add a new subsection (5), that makes it a third degree felony for an adult to knowingly distribute to a minor on school property or post on school property any of the following material:

- Any picture, photograph, drawing, sculpture, motion picture film, videocassette, or similar visual representation or image of a person or portion of the human body which depicts nudity or sexual conduct, sexual excitement, sexual battery, bestiality, or sadomasochistic abuse and which is harmful to minors; or
- Any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter defined in s. 847.001, F.S., explicit and detailed verbal descriptions or narrative accounts of sexual excitement, or sexual conduct and which is harmful to minors.

The bill provides an exception for the distribution or posting of school approved instructional materials that by design serve as a major tool for assisting in the instruction of a subject or course by school officers, instructional personnel, administrative personnel, school volunteers, educational support employees, or managers, as defined in s. 1012.01, F.S.

“School property” is defined as the grounds or facility of any kindergarten, elementary school, middle school, junior high school, or secondary school, whether public or nonpublic.

B. SECTION DIRECTORY:

Section 1. Amends s. 847.012, F.S., relating to harmful materials; sale or distribution to minors or using minors in production prohibited; penalty.

Section 2. Provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference met February 27, 2013 and determined the bill may have an insignificant negative impact on state prison beds.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

The First Amendment to the United States Constitution and Article I, Section 4, of the Florida Constitution protect the rights of individuals to express themselves in a variety of ways. The constitutions protect not only speech and the written word, but also conduct intended to communicate. When lawmakers attempt to restrict or burden fundamental and basic rights such as these, the laws must not only be directed toward a legitimate public purpose, but they must be drawn as narrowly as possible. As the United States Supreme Court has noted, "[b]ecause First Amendment freedoms need breathing space to survive, government may regulate in the area only with narrow specificity."¹⁷ Put another way, statutes cannot be so broad that they prohibit constitutionally protected conduct as well as unprotected conduct.¹⁸

The overbreadth doctrine permits an individual whose own speech or conduct may be prohibited to challenge an enactment facially "because it also threatens others not before the court – those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have the law declared partially invalid."¹⁹ The doctrine contemplates the pragmatic judicial assumption that an overbroad statute will have a chilling effect on protected speech.²⁰

In *Miller v. California*, the Supreme Court of the United States found that obscene materials are not protected by the First Amendment.²¹ However, because materials that are harmful to minors are not considered to be obscene, they receive First Amendment protections. The Supreme Court of Florida, when reviewing the constitutionality of s. 847.0138, F.S., (prohibiting the transmission of harmful materials to minors) noted the importance of the narrow construction of s. 847.0138, F.S., specifically prohibiting harmful materials given to a person *known or believed to be* minor.²² If statutes are not narrowly constructed they may be challenged as being overbroad.

The bill makes it a crime to post certain material that is harmful to minors on school property, regardless of whether a minor actually sees the material (e.g. if such material were posted in a teacher's lounge or other "teacher only" areas). To the extent that the bill regulates materials arguably suitable for adults that are protected by the First Amendment, it could be challenged as being overbroad.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

¹⁷ *NAACP v. Button*, 371 U.S. 415, 433 (1963).

¹⁸ *Sult v. State*, 906 So.2d 1013 (Fla. 2005).

¹⁹ *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491 (1985).

²⁰ *Sult v. State*, 906 So.2d 1013 (Fla. 2005).

²¹ *Miller v. California*, 413 U.S. 15 (1973).

²² *Simmons v. State*, 944 So.2d. 317 (Fla. 2005).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 19, 2013, the Criminal Justice Subcommittee adopted one amendment and reported the bill favorable as a committee substitute. The amendment added an exception for the distribution of instructional materials by specified school personnel.

On March 6, 2013, the Justice Appropriations Subcommittee adopted one amendment and reported the bill as a committee substitute. The amendment clarified that certain instructional materials must be school approved.

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

1 A bill to be entitled
 2 An act relating to the distribution of materials
 3 harmful to minors; amending s. 847.012, F.S.;
 4 prohibiting an adult from knowingly distributing to a
 5 minor or posting on school property certain materials
 6 harmful to minors; providing that it is a third degree
 7 felony for any person to knowingly distribute to a
 8 minor or post on school property certain materials
 9 harmful to minors; defining the term "school
 10 property"; providing an exception; providing an
 11 effective date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Subsections (5) through (9) of section 847.012,
 16 Florida Statutes, are renumbered as subsections (6) through
 17 (10), respectively, and a new subsection (5) is added to that
 18 section to read:

19 847.012 Harmful materials; sale or distribution to minors
 20 or using minors in production prohibited; penalty.—

21 (5) An adult may not knowingly distribute to a minor on
 22 school property, or post on school property, any material
 23 described in subsection (3). As used in this subsection, the
 24 term "school property" means the grounds or facility of any
 25 kindergarten, elementary school, middle school, junior high
 26 school, or secondary school, whether public or nonpublic. This
 27 subsection does not apply to the distribution or posting of
 28 school-approved instructional materials that by design serve as

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29 a major tool for assisting in the instruction of a subject or
30 course by school officers, instructional personnel,
31 administrative personnel, school volunteers, educational support
32 employees, or managers as those terms are defined in s. 1012.01.

33 Section 2. This act shall take effect October 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 119 Searches and Seizures
SPONSOR(S): Criminal Justice Subcommittee; Workman and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/CS/SB 92

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	13 Y, 0 N, As CS	Jones	Cunningham
2) Local & Federal Affairs Committee	17 Y, 0 N	Nelson	Rojas
3) Judiciary Committee		Jones <i>LTS</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

The CS for HB 119 creates the "Freedom from Unwarranted Surveillance Act" (Act), which prohibits a law enforcement agency from using a drone to collect evidence or other information. Evidence gathered in violation of the Act is inadmissible in a criminal prosecution in any state court.

The bill provides three exceptions that allow a law enforcement agency to use a drone:

- to counter a high risk of a terrorist attack by a specific individual or organization if the United States Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk;
- if a law enforcement agency obtains a search warrant to use the drone; or
- if a law enforcement agency has reasonable suspicion that under particular circumstances, swift action is necessary to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or the destruction of evidence.

The bill allows for a civil action by an aggrieved party to be brought against a law enforcement agency that violates the Act, and therefore may have a negative fiscal impact on state and local agencies that violate the Act and are subject to civil penalties.

The bill becomes effective July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Drones

Drones, also known as Unmanned Aircraft Systems (UAS), are unmanned aircraft that can be flown by remote control or on a predetermined flight path.¹ The size of a drone varies—it can be as small as an insect or as large as a jet.² Drones can be equipped with various devices such as infrared cameras,³ license plate readers,⁴ and “ladar” (laser radar).⁵ It is reported that the U.S. Army contracted with two corporations in 2011 to develop facial recognition and behavioral recognition technologies for drone use.⁶

There are three major markets for drones: military, civil government and commercial.⁷ The majority of drones are operated by the military and have an insignificant impact on U.S. airspace.⁸ However, drone use in this country is increasing because of technological advances.⁹ In 2010, the Federal Aviation Administration (FAA) estimated that there will be 30,000 drones in U.S. airspace within the next 20 years.¹⁰

Non-Military Drone Use

The FAA, which first allowed drones in U.S. airspace in 1990, is in charge of overseeing the integration of drones into U.S. airspace.¹¹ In doing so, it must balance the integration of drones with the safety of the nation’s airspace.¹² To safeguard the U.S. airspace, the FAA limits drone use to public interest missions such as fighting fires, search and rescue, scientific research, and environmental monitoring by the National Aeronautics and Space Administration (NASA) and National Oceanic and Atmospheric Administration (NOAA).¹³ The FAA also has limited the type of airspace where drones may operate. Currently, drones are not allowed to operate in Class B airspace, which is over the major urban areas and where the greatest numbers of manned aircraft are flown.¹⁴

¹ *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, www.fas.org/sgp/crs/natsec/R42701.pdf (last visited on January 28, 2013).

² *See*, CRS Report R42136. *U.S. Unmanned Aerial Systems*, Jeremiah Gertler.

³ *US Army unveils 1.8 gigapixel camera helicopter drone*, BBC NEWS, December 29, 2011, <http://www.bbc.com/news/technology-16358851> (last visited on January 28, 2013).

⁴ *See*, *Draganflyer X6, Thermal Infrared Camera*, <http://www.draganfly.com/uav-helicopter/draganflyer-x6/features/flir-camera.php> (last visited on January 28, 2013).

⁵ *Unmanned Aerial Vehicles Support Border Security*, Customs and Border Protection Today, July 2004, www.cbp.gov/xp/CustomsToday/2004/Aug/other/aerial_vehicles.xml (last visited on January 28, 2013).

⁶ *Army Developing Drones That Can Recognize Your Face From a Distance And even recognize you intentions*, Clay Dillow, Popular Science, September 28, 2011, <http://www.popsci.com/technology/article/2011-09/army-wants-drones-can-recognize-your-face-and-read-your-mind> (last visited on January 28, 2013).

⁷ Federal Aviation Administration, *FAA Aerospace Forecast: Fiscal Years 2010-2030* at 48 (2010).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; FAA Fact Sheet, *Unmanned Aircraft Systems*, December 14, 2012, http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153 (last visited on January 28, 2013).

¹² FAA Fact Sheet, *Unmanned Aircraft Systems*, December 14, 2012, http://www.faa.gov/news/fact_sheets/news_story.cfm?newsId=14153 (last visited on January 28, 2013).

¹³ *Id.*

¹⁴ *Supra* note 7.

In 2004, the U.S. Customs and Border Patrol (Border Patrol) began utilizing drones to monitor the borders.¹⁵ In 2010, the Border Patrol expanded its use of drones to monitor Florida's shorelines.¹⁶

FAA approval is necessary to operate a drone for non-military purposes. There are two ways to obtain this approval:¹⁷ through acquisition of a private sector experimental airworthiness certificate that allows for research, development, training and flight demonstrations,¹⁸ or a Certificate of Waiver of Authorization (COA), which allows public entities, including governmental agencies, to fly drones in civil airspace.¹⁹ An agency seeking a COA must apply online and detail the proposed operation for the drone.²⁰ If the FAA issues a COA, it contains a stated time period (usually two years) a certain block of airspace for the drone, and other special provisions unique to the specific operation.²¹ As of November 2012, there were 345 active COAs.²²

FAA Modernization Reform Act of 2012

In February 2012, Congress passed the FAA Modernization Reform Act (Reform Act), which requires the FAA to safely integrate drones into U.S. airspace by September 2015.²³ The Reform Act authorizes the FAA to allow government public safety agencies to operate drones under certain restrictions and makes the process for approving authorization requests more efficient.²⁴ Drones must be flown within the line of sight of the operator, less than 400 feet above the ground, during daylight conditions, inside Class G (uncontrolled) airspace, and more than five miles from any airport or other location with aviation activities.²⁵ The Reform Act also instructs the FAA to develop operation standards and certification criteria for drones and conduct studies concerning the safe use of drones.²⁶

Implementation of the Reform Act has caused privacy²⁷ issues to be raised. The FAA recently delayed the selection of six drone safety testing sites, mandated by the Reform Act, because of privacy concerns with integrating drones into U.S. airspace.²⁸ In a letter to Congressional Unmanned Systems Caucus, FAA Acting Chief Michael Huerta addressed the delay and said "...[i]ncreasing the use of UAS [drones] in our airspace also raises privacy issues, and these issues will need to be addressed as unmanned aircraft are safely integrated."²⁹ The Reform Act does not address privacy concerns and it is not clear if the FAA will attempt to address this issue through drone operational standards or studies required by Reform Act.³⁰

¹⁵ *Supra* note 5.

¹⁶ *Space Florida Probing Drone's Future Potential*, Howard Altman, Tampa Bay Online, August 5, 2012.

<http://www2.tbo.com/news/breaking-news/2012/aug/05/space-florida-probing-drones-future-potential-ar-453511/> (last visited on January 18, 2013).

¹⁷ *Supra* note 12.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; *Drones in Domestic Surveillance Operations*, Congressional Research Service, September 6, 2012, www.fas.org/sgp/crs/natsec/R42701.pdf (last visited on January 28, 2013).

²⁴ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; *FAA Makes Progress with UAS Integration*, Federal Aviation Administration, May 14, 2012, www.faa.gov/news/updates/?newsId=68004 (last visited on January 28, 2013).

²⁵ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012.

²⁶ *Id.*

²⁷ *See*, the **III. COMMENTS, A. CONSTITUTIONAL ISSUES: 2. Other**, section of the analysis for a discussion of this issue.

²⁸ Public Law 112-95, February 14, 2012, The FAA Modernization and Reform Act of 2012; *FAA Going Slow on Drones as Privacy Concerns Studied*, Alan Levine, Bloomberg, November 26, 2012, <http://go.bloomberg.com/political-capital/2012-11-26/faa-going-slow/> (last visited on January 22, 2013).

²⁹ *Id.*

³⁰ *Id.*

In response to the Reform Act, U.S. Senator Rand Paul filed legislation entitled "Preserving Freedom from Unwarranted Surveillance Act of 2012."³¹ Senator Paul's legislation, which is essentially identical to this bill, did not become law.³²

Drone Use by Law Enforcement Agencies in Florida

The Miami-Dade Police Department, Orange County Sheriff's Office, and Polk County Sheriff's Office are law enforcement agencies in Florida that have obtained a COA from the FAA and purchased drones:³³

- The Miami-Dade Police Department's COA became effective on July 1, 2011. Its drones have not been flown in an actual operation.³⁴
- The Polk County Sheriff's Office determined that the expense of training pilots to operate the drone was too high and have discontinued use of the drone.³⁵
- The Orange County Sheriff's Office is currently experimenting with its drones.³⁶ The Sheriff's Office needs permission from the Orange County Commission before the drones can be put to use, and hopes to launch the drones by the summer of 2013.³⁷

Several police chiefs who do not have COAs and who have not started drone testing have indicated that drone use would benefit their agencies by reducing the risk to officers and citizens in high risk situations involving hostages, active shooters, or armed and barricaded suspects.³⁸

Effect of Proposed Changes

The CS for HB 119 creates the "Freedom from Unwarranted Surveillance Act," which prohibits a law enforcement agency from using drones to collect evidence or other information. Evidence obtained in violation of the Act is inadmissible in a criminal prosecution in any state court.

The bill provides the following three exceptions that allow a law enforcement agency to use a drone:

- to counter a high risk of a terrorist attack by a specific individual or organization if the U.S. Secretary of Homeland Security determines that credible intelligence indicates that there is such a risk;
- if a law enforcement agency obtains a search warrant to use the drone; or
- if a law enforcement agency has reasonable suspicion that under particular circumstances, swift action is necessary to prevent imminent danger to life or serious damage to property, or to forestall the imminent escape of a suspect or the destruction of evidence.

³¹ *Preserving Freedom from Unwarranted Surveillance Act of 2012*, S.3287, H.R. 5925.

³² Govtrack.us <http://www.govtrack.us/congress/bills/112/s3287> (last visited on January 24, 2013).

³³ FAA Drones COA, <https://www.eff.org/file/34697#page/1/mode/1up> (last visited on January 23, 2013).

³⁴ Miami-Dade Police Department Fact Sheet, Special Patrol Bureau/Aviation Unit, Micro Air Vehicle "MAV" Program, provided to Senate Committee Staff, January 8, 2013 (on file with the Criminal Justice Subcommittee).

³⁵ *Central Florida Sheriff Wants to Fly Drones by the Summer*, Aero News Network, January 16, 2013, <http://www.aero-news.net/getmorefromann.cfm?do=main.textpost&id=2ee04d46-6fe7-4f65-bae5-c843dce80ab5> (last visited on January 24, 2013).

³⁶ *Orange sheriff: Drones won't be used for spying*, Dan Tracy, Orlando Sentinel, January 18, 2013, <http://www.orlandosentinel.com/news/local/breakingnews/os-orange-sheriff-drone-flies-20130118.0.6760531.story> (last visited on January 24, 2013).

³⁷ *Id.*

³⁸ Memo provided to Senate Committee Staff on December 12, 2012, by the Florida Police Chiefs Association (on file with the Criminal Justice Subcommittee).

The last exception appears to require a reasonable, articulable suspicion, based on objective facts, that a person has engaged in, is engaging in, or is about to engage in, criminal activity. See, Terry v. Ohio, 392 U.S. 1 (1968). The bill's standard takes the particular circumstances into account, and a precise analysis of each situation will need to be made on a case-by-case basis.

The bill authorizes an aggrieved party to initiate a civil action against a law enforcement agency that violates the Act to obtain all appropriate relief that will prevent or remedy the violation. This language appears to provide for injunctive relief as well as actions for damages against a law enforcement agency.

The bill defines "drone" as a powered, aerial vehicle that:

- does not carry a human operator;
- uses aerodynamic forces to provide vehicle lift;
- can fly autonomously or be piloted remotely;
- can be expendable or recoverable; and
- can carry a lethal or nonlethal payload.

"Law enforcement agency" is defined by the bill as a lawfully established state or local public agency that is responsible for the prevention and detention of crime, local government code enforcement, and the enforcement of penal, traffic, regulatory, game, or controlled substance laws.

The CS for HB 119 becomes effective on July 1, 2013.

B. SECTION DIRECTORY:

Section 1: Creates an unnumbered section of law relating to searches and seizure using a drone.

Section 2: Provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The bill authorizes an aggrieved party to initiate a civil action against a state law enforcement agency that violates the Act to obtain all appropriate relief that will prevent or remedy the violation. The remedy could result in monetary damages, which would have a negative fiscal impact on state government.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill authorizes an aggrieved party to initiate a civil action against a local law enforcement agency who violates the Act to obtain all appropriate relief that will prevent or remedy the violation.

The remedy could result in monetary damages, which would have a negative fiscal impact on a local government.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill does not apply to the use of drones for any purposes other than state and local law enforcement. It does not restrict the use of drones for private research and information gathering, and should have no impact on these activities.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require the counties or cities to spend funds or take an action requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

Currently, law enforcement can use drones, but must first obtain a COA and use the drone as specified in the COA. The drone must be used within the confines of the Fourth Amendment of the United States Constitution.

The Fourth Amendment guarantees the people of this country security in their houses, persons, papers and possessions from unreasonable searches and seizures by government actors.³⁹ Section 12, Art. 1 of the State Constitution contains the same guarantees; however, the State Constitution provides more protections by specifically extending the Fourth Amendment to protect private communications.

The U.S. Supreme Court has yet to hear a case that addresses the Fourth Amendment as it relates to a search conducted by a drone. However, some guidance is found in the Court's rulings in cases involving aerial searches by law enforcement officers in manned aircraft.

In *California v. Ciraolo* and *Florida v. Riley*, police received anonymous tips that marijuana was growing in the defendants' backyards.⁴⁰ Police were unable to see into the backyards, so used planes to fly at altitudes of 400 and 1,000 feet over the property and detected marijuana plants.⁴¹ The Court held that the naked eye aerial observation of the backyards did not constitute a search and did not violate the Fourth Amendment.⁴² Similarly, in *Dow Chemical v. United States*, the Court addressed the issue of whether "industrial curtilage" would prevent the government from conducting aerial surveillance over one of Dow's plants.⁴³ The Court again found that such aerial inspection of the plant was not a search under the Fourth Amendment.⁴⁴

³⁹ The text of the Fourth Amendment provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

⁴⁰ *California v. Ciraolo*, 476 U.S. 207 (1986); *Florida v. Riley*, 488 U.S. 445 (1989).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *Dow Chemical Company v. United States*, 476 U.S. 227 (1986).

⁴⁴ *Id.*

If the use of a drone were challenged as being in violation of the Fourth Amendment, the Court's analysis would likely be similar to that of manned aircraft. If a drone was used in a manner that has been held constitutional as applied to manned aircraft, such use would likely not be considered a search and, therefore, not require a warrant.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 7, 2013, the Criminal Justice Subcommittee adopted two amendments and reported the bill favorably as a Committee Substitute. The amendments added additional exceptions to the prohibition on using drones, and amended the definition of "law enforcement agency" to include local government code enforcement.

This analysis is drafted to the Committee Substitute.

1 A bill to be entitled
 2 An act relating to searches and seizures; creating the
 3 "Freedom from Unwarranted Surveillance Act"; defining
 4 the terms "drone" and "law enforcement agency";
 5 prohibiting a law enforcement agency from using a
 6 drone to gather evidence or other information;
 7 providing exceptions; authorizing an aggrieved party
 8 to initiate a civil action in order to prevent or
 9 remedy a violation of the act; prohibiting a law
 10 enforcement agency from using in any court of law in
 11 this state evidence obtained or collected in violation
 12 of the act; providing an effective date.

13
 14 Be It Enacted by the Legislature of the State of Florida:

15
 16 Section 1. Searches and seizure using a drone.-
 17 (1) SHORT TITLE.-This act may be cited as the "Freedom
 18 from Unwarranted Surveillance Act."

19 (2) DEFINITIONS.-As used in this act, the term:
 20 (a) "Drone" means a powered, aerial vehicle that:
 21 1. Does not carry a human operator;
 22 2. Uses aerodynamic forces to provide vehicle lift;
 23 3. Can fly autonomously or be piloted remotely;
 24 4. Can be expendable or recoverable; and
 25 5. Can carry a lethal or nonlethal payload.

26 (b) "Law enforcement agency" means a lawfully established
 27 state or local public agency that is responsible for the
 28 prevention and detection of crime, local government code

29 enforcement, and the enforcement of penal, traffic, regulatory,
 30 game, or controlled substance laws.

31 (3) PROHIBITED USE OF DRONES.—A law enforcement agency may
 32 not use a drone to gather evidence or other information.

33 (4) EXCEPTIONS.—This act does not prohibit the use of a
 34 drone:

35 (a) To counter a high risk of a terrorist attack by a
 36 specific individual or organization if the United States
 37 Secretary of Homeland Security determines that credible
 38 intelligence indicates that there is such a risk.

39 (b) If the law enforcement agency first obtains a search
 40 warrant signed by a judge authorizing the use of a drone.

41 (c) If the law enforcement agency possesses reasonable
 42 suspicion that under particular circumstances, swift action is
 43 needed to prevent imminent danger to life or serious damage to
 44 property or to forestall the imminent escape of a suspect or the
 45 destruction of evidence.

46 (5) REMEDIES FOR VIOLATION.—An aggrieved party may
 47 initiate a civil action against a law enforcement agency to
 48 obtain all appropriate relief in order to prevent or remedy a
 49 violation of this act.

50 (6) PROHIBITION ON USE OF EVIDENCE.—Evidence obtained or
 51 collected in violation of this act is not admissible as evidence
 52 in a criminal prosecution in any court of law in this state.

53 Section 2. This act shall take effect July 1, 2013.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Workman offered the following:

Amendment

Remove lines 41-45 and insert:

6 (c) If the law enforcement agency possesses reasonable
 7 suspicion that, under particular circumstances, swift action is
 8 needed to prevent imminent danger to life or serious damage to
 9 property, to forestall the imminent escape of a suspect or the
 10 destruction of evidence, or to achieve purposes including, but
 11 not limited to, facilitating the search for a missing person.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 175 Condominiums
SPONSOR(S): Civil Justice Subcommittee; Fitzenhagen
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 120

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Cary	Bond
2) Business & Professional Regulation Subcommittee	10 Y, 0 N	Morton	Luczynski
3) Judiciary Committee		Cary <i>JML</i>	Havlicak <i>RN</i>

SUMMARY ANALYSIS

A condominium is created by the filing of a declaration of condominium in the county property records. Industry practice has been to wait to record the declaration until construction was completed, or just before the first closing. This allows flexibility for changes during construction. A recent federal case has caused concern that the declaration must be filed and disclosed to preconstruction purchasers in order to comply with the federal Interstate Land Sales Full Disclosure Act, which allows purchasers to rescind contracts within 2 years that do not contain certain disclosures.

The bill amends the condominium law to facilitate recording the declaration of condominium before construction by amending the start times of the various statutory deadlines to commence on the recording of a certificate of a surveyor and mapper certifying the final as-built dimensions of the units or the first closing, rather than upon the recording of the declaration of condominium.

The bill also clarifies that a condominium unit comes into existence upon the recording of the declaration, regardless of any provisions in the declaration to the contrary.

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

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Formation of Condominiums

Current Situation

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which are individually owned, but have an undivided share of access to common facilities.¹ A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.² A declaration is similar to a constitution in that it governs the relationships among condominium unit owners and the condominium association. Specifically, a declaration of condominium may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property.³ Further, it delineates condominium association bylaws, which governs the administration of the association, including, but not limited to, quorum, voting rights, and election and removal of board members.⁴

All persons who have record title to the interest in the land being submitted to condominium ownership must join in the execution of the declaration. Upon recordation, the developer must file the recording information with the Division of Florida Condominiums, Timeshares and Mobile Homes in the Department of Business and Professional Regulation within 120 days.⁵

The declaration of condominium must contain a certificate of a surveyor and mapper and a graphic description of the improvements in which units are located and a plot plan thereof. Together with the declaration, this information must be in sufficient detail to identify the common elements and each unit and their relative locations and approximate dimensions.⁶

Interstate Land Sales Full Disclosure Act

The federal Interstate Land Sales Full Disclosure Act (ILSFDA)⁷ provides consumer protections to individuals who purchase or lease real property in large, uncompleted housing developments, including condominiums. The act applies to both the conveying of a unit or lot and to all related marketing and sales promotional efforts.

ILSFDA requires developers to register the subdivision with the federal Bureau of Consumer Financial Protection.⁸ The developer must file a "statement of record" that contains the information required by ILSFDA and its regulations and pay a registration fee of no more than \$1,000.⁹ The Act provides several exceptions. For example, ILSFDA does not apply to the sale or lease of lots in a subdivision that contains 25 or fewer lots.¹⁰

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ Section 718.104(5), F.S.

⁴ Section 718.112, F.S.

⁵ Section 718.104(2), F.S.

⁶ Section 718.104(4)(e), F.S.

⁷ 15 U.S.C. ss. 1701-20.

⁸ The Dodd-Frank Wall Street Reform and Consumer Protection Act transferred to the federal Bureau of Consumer Financial Protection all of the consumer protection functions of the Department of Housing and Urban Development (HUD) relating to the ILSFDA.

⁹ See 15 U.S.C. s. 1704 for the registration requirement and 15 U.S.C. s. 1705 for the listing of the information that must be provided in the statement of record.

¹⁰ The exemptions are provided in 15 U.S.C. s. 1702. For a discussion of the various exemptions in the act, see Jennifer L. Dolce and William P. Sklar, *The Interstate Land Sales Full Disclosure Act's Two-Year Completion Exemption From the Condominium D*, The

The Act specifies the information that the developers must provide to prospective purchasers or lessees. If the developer fails to provide this information, the purchaser or lessee has the right to revoke the purchase contract or lease agreement for two years from the date of the signing of the contract or agreement.¹¹ The developer must provide prospective purchasers or lessees with a description of the property which makes such lot clearly identifiable and which is *in a form acceptable for recording* by the appropriate public official responsible for maintaining land records in the jurisdiction in which the lot is located.¹²

Of concern to condominium developers, according to the Real Property, Probate, and Trust Law Section of The Florida Bar, is the application of ILSFDA to the sale, or offering for sale, of pre-construction condominium units.

State and federal court decisions have addressed the issue of what is an acceptable description of the property under ILSFDA:

In *Bacolitsas v. 86th & 3rd Owner, LLC*, the United States Court of Appeals for the Second Circuit (New York) held that the description requirement in ILSFDA was satisfied where the purchaser was provided a plan with a detailed description of the unit that identified the dimensions and locations of all rooms and windows, the floor plan, the location of the unit within the building, and the direction the unit faced. The purchaser was also provided a draft declaration that included a metes and bounds description of the condominium and indicated the specific tax lots on which the building was to be erected. The court held that the description itself and not the agreement had to be in a form acceptable for record.¹³

In *Boynton Waterways Investment Associates, LLC v. Bezkorovainus*, the Fourth District Court of Appeals held that the developer had complied with ILSFDA by providing the buyer a copy of the proposed declaration of condominium, which was included in the prospectus, the unit number, address, development name, site map, and floor plans. The court found that this information, which was incorporated into the contract, made the property purchased “clearly identifiable” and “in a form acceptable for recording.”¹⁴

In *Taplett v. TRG Oasis (Tower Two), Ltd, L.P.*, the United States District Court for the Middle District of Florida also found that ILSFDA disclosure requirement was not violated when the developer provided a purchase contract that designated the condominium unit and the name of the development. The court held that ILSFDA requirement that the description must be in “recordable form” does not mean that the developer must provide “recording data identifying [the] declaration” as is required by s. 718.109, F.S., i.e., the developer is not required to give the purchaser the identifying reference number when the declaration is recorded.¹⁵

However, in a recent case, *Berkovich v. Vue-North Carolina, LLC*, the United States District Court for the Western District of North Carolina concluded that the purchasers had the right to revoke the contract because it did not contain a

Florida Bar Journal, February 1999, Volume LXXIII, No. 2. A copy of this article is available at: <http://www.floridabar.org/DIVCOM/JN/JNJournal01.nsf/76d28aa8f2ee03e185256aa9005d8d9a/6b94f229434c8f3885256adb005d6240?OpenDocument> (Last visited February 4, 2013).

¹¹ See 15 U.S.C. s. 1703(d).

¹² 15 U.S.C. s. 1703(d)(1).

¹³ *Bacolitsas v. 86th & 3rd Owner, LLC*, 702 F.3d 673 (C.A.2 (N.Y.) 2012).

¹⁴ *Boynton Waterways Investment Associates, LLC v. Bezkorovainus*, 82 So. 3d 924 (Fla. 4th DCA 2011).

¹⁵ *Taplett v. TRG Oasis (Tower Two), Ltd, L.P.*, 755 F.Supp.2d 1197 (M.D. Fla. 2009).

recordable legal description that included the "recording data." Consistent with North Carolina law, the developer had provided the purchaser with a contract that included a legal description of the unit in which the unit was identified by number and the name of the condominium building as described in the declaration of condominium. The description did not include recording data from the filing of the declaration because North Carolina law did not allow the declaration to be filed until the construction of the condominium was substantially completed. (Florida law does not prohibit the filing of a declaration before the condominium construction is completed.) Although North Carolina law made it impractical or impossible to provide a description for the unit that included "recording data" the court held that the purchasers were entitled to the "prophylactic measure Congress granted purchasers deprived of a recordable legal description."¹⁶

Of concern to developers and legal practitioners is difficulty of satisfying the requirement of a recordable legal description, i.e., the description provided in the declaration of condominium, before the actual construction and completion of the condominium. They advise that practical necessity prevents the recording of declarations until construction is nearly complete because accurate dimensions of the building and the units cannot be determined until that point. They also advise that the historical practice has been to clearly identify in the contract the property that is being sold by use of a unit identification linked to an accompanied sketch in the sales contract and offering prospectus.

Proposed Changes

This bill conforms Florida condominium law to federal law with respect to the pre-sale period of a condominium development by facilitating recording the declaration before construction. Essentially, the bill allows the declaration to be filed early without triggering statutory timeframes for completion and turnover. The bill accomplishes this by shifting these statutory timeframes to begin upon the first of two events:

- The recording of a certificate of a surveyor and mapper, pursuant to s. 718.104(4)(e), F.S., or
- The recording of 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.

In each of the following circumstances, the time is currently measured by the recording of the declaration; the bill changes the law to measure the time by the earlier of the recording of the surveyor's certificate or the first closing, as discussed above.

Challenging the Creation of Condominium

If an action to determine whether the condominium documents comply with mandatory requirements for formation is not brought within 3 years of the recording of the surveyor's certificate or the first closing, whichever occurs first, the documents are deemed effective to create the condominium, regardless of whether they comply with the requirements.¹⁷

Financial Reporting

In developer controlled condominiums, all unit owners, including the developer, may vote on issues relating to the preparation of the association's financial reports for the first two fiscal years after the fiscal year in which the surveyor's certificate was recorded or the first closing occurred, whichever occurred first.¹⁸

¹⁶ *Berkovich v. Vue-North Carolina, LLC*, 2011 WL 5037124 (W.D.N.C. 2011).

¹⁷ Section 718.110(10), F.S.

¹⁸ Section 718.111(13), F.S.

Reserves

In developer controlled condominiums, the developer may vote to waive reserves or reduce funding of reserves for the first two fiscal years after the fiscal year in which the surveyor's certificate was recorded or the first closing occurred, whichever occurred first.¹⁹

Association Property Acquisitions

The association may acquire leaseholds, memberships and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities. Any such acquisitions after the first 12 months of the recording of the surveyor's certificate or the first closing, whichever occurs first, require a vote, or written consent, of a majority of the total voting interests of the association.²⁰

Transfer of Association Control

Control of associations must be turned over to the nondeveloper unit owners upon the earliest of the following events:

- Three years after 50 percent of the units that will ultimately be operated by the association have been conveyed.
- Three months after 90 percent of the units that will ultimately be operated by the association have been conveyed.
- When all the units that will ultimately be operated by the association have been completed, some of them have been conveyed, and none of the others are being offered for sale by the developer.
- When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business.
- When the developer files a petition seeking bankruptcy protection.
- When a receiver for the developer is appointed by the circuit court and the receivership is not dismissed within 30 days of the appointment.
- Seven years after the date of the recording of the surveyor's certificate or the first closing, whichever occurs first; or, in the case of an association that may ultimately operate more than one condominium, seven years after the date of the recording of the surveyor's certificate or the first closing, whichever occurs first, for the first condominium it operates; or for a phase condominium, 7 years after the recording of the surveyor's certificate or the first closing, whichever occurs first, for the initial phase.²¹

Phase Condominiums

All phases of a phase condominium must be added to the condominium within 7 years of the recording of the surveyor's certificate or the first closing, whichever occurs first.

The bill also adds copies of the recording of a certificate of a surveyor and mapper, pursuant to s. 718.104(4)(e), F.S., or the recording of 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, whichever comes first, to the list of documents the developer is required to provide to the association when control is transferred to the unit owners.

Phase Condominiums

Current Situation

Condominiums may be developed in phases, if the original declaration of condominium provides for and describes in detail all anticipated phases, the impact of future phases on the initial phase and the

¹⁹ Section 718.112(2)(f), F.S.

²⁰ Section 718.114, F.S.

²¹ Section 718.301(1), F.S.

time period within which all phases must be added. All phases must be added within 7 years of the creation of the condominium.

Proposed Changes

The bill allows unit owners to vote to approve an amendment extending the 7-year period for adding phases to a phase condominium during the final 3 years of the 7-year period. The total time to add all phases may not exceed 10 years from the creation of the condominium, measured by the recording of the surveyor's certificate or the recording of 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, whichever occurs first.

Creation of Condominium Units

Current Situation

There is a split in the circuits of the Florida District Courts of Appeal (DCA) regarding the point in time when a condominium unit comes into existence.

- The 2nd DCA held that the owner of an unimproved lot in an unconstructed condominium was a unit owner and thus liable for unpaid assessments on the property because the declaration of condominium had been recorded and thus the condominium unit had been created.²²
- The 4th DCA followed the 2nd DCA's reasoning in the 1995 case, *Winkelman v. Toll*,²³ however two years later, the 4th DCA held that the definitions the developer used in its declaration of condominium could control whether an undeveloped parcel was a "unit within the meaning of the condominium statute."²⁴

Proposed Changes

The bill amends s. 718.104(2), F.S., to resolve the circuit split in the District Courts in favor of the 2nd DCA interpretation and provides that a unit comes into existence upon recording the declaration, regardless of any provision in the declaration to the contrary.

Recording the Declaration

Current Situation

The declaration of condominium must contain a survey of the land and a graphic description of the improvements. If construction is not substantially completed, a statement is included to that effect, and upon completion, the declaration is amended to include a certificate of a surveyor and mapper that the construction is substantially complete so as to provide an accurate representation of the condominium property.²⁵

If the declaration doesn't have the graphic description, survey or certificate, the developer must deliver a deposit to the clerk of court in the amount of an estimate of the cost of the final survey or graphic description.²⁶ The clerk is to hold the money until an amendment to the declaration is recorded that complies with the certificate requirements, at which time the sum of money that was held is returned to

²² *Hyde Park Condominium Assoc. v. Estero Island Real Estate, Inc.*, 486 So.2d 1 (Fla. 2d DCA 1986). See also *Estancia Condominium Ass'n, Inc. v. Sunfield Homes, Inc.*, 619 So.2d 1008 (Fla. 2d DCA 1993).

²³ *Winkelman v. Toll*, 661 So.2d 102 (Fla. 4th DCA 1995).

²⁴ *RIS Inv. Group, Inc. v. Department of Business and Professional Regulation Division of Florida Land Sales Condominiums and Mobile Homes*, 695 So.2d 357 (Fla. 4th DCA 1997).

²⁵ Section 718.104(4)(e), F.S.

²⁶ Section 718.105(4)(a), F.S.

the person presenting the amendment.²⁷ If the money is not paid within 3 years after the date the declaration was originally recorded, the clerk may notify the registered agent of the association that the sum is still available and the reason it was originally deposited.²⁸

Proposed Changes

This bill amends s. 718.105(4)(c), F.S., to extend the current 3-year time frame for the clerk to hold the money after the date the declaration was recorded to 5 years.

B. SECTION DIRECTORY:

Section 1 amends s. 718.104, F.S., relating to creation of condominiums.

Section 2 amends s. 718.105, F.S., relating to recording of declaration.

Section 3 amends s. 718.110, F.S., relating to amendment of declaration.

Section 4 amends s. 718.111, F.S., relating to the association.

Section 5 amends s. 718.112, F.S., relating to bylaws.

Section 6 amends s. 718.114, F.S., relating to association powers.

Section 7 amends s. 718.301, F.S., relating to transfer of association control.

Section 8 amends s. 718.403, F.S., relating to phase condominiums.

Section 9 provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

²⁷ Section 718.105(4)(b), F.S.

²⁸ Section 718.105(4)(c), F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill conflicts with FACR 61B-23.003(9) and will require rulemaking to conform the rule to the bill. Section 718.501(1)(f), F.S., contains the provision authorizing the Department to promulgate rules to administer and enforce the provisions of ch. 718, F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 7, 2013, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment eliminates a technical change that was in the bill and restores current law. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

1 A bill to be entitled
 2 An act relating to condominiums; amending s. 718.104,
 3 F.S.; allowing condominium units to come into
 4 existence regardless of requirements or restrictions
 5 in a declaration; amending s. 718.105, F.S.; extending
 6 the amount of time that a clerk may hold a sum of
 7 money before notifying the registered agent of an
 8 association that the sum is still available and the
 9 purpose for which it was deposited; amending s.
 10 718.110, F.S.; changing the requirements relating to
 11 the circumstances under which a declaration of
 12 condominium or other documents are effective to create
 13 a condominium; making technical changes; amending s.
 14 718.111, F.S.; revising the conditions under which
 15 unit owners may vote on issues related to the
 16 preparation of financial reports; making technical
 17 changes; amending s. 718.112, F.S.; revising the
 18 conditions under which a developer may vote to waive
 19 or reduce the funding of reserves; making technical
 20 changes; amending s. 718.114, F.S.; revising the
 21 conditions under which a developer may acquire
 22 leaseholds, memberships, or other possessory or use
 23 interests; making technical changes; amending s.
 24 718.301, F.S.; revising the conditions under which
 25 unit owners other than the developer are entitled to
 26 elect at least a majority of the members of a board of
 27 administration; revising requirements related to the
 28 documents that the developer must deliver to the

29 association; making technical changes; amending s.
 30 718.403, F.S.; revising the conditions under which a
 31 developer may amend a declaration of condominium
 32 governing a phase condominium; providing for an
 33 extension of the 7-year period for the completion of a
 34 phase; providing requirements for the adoption of an
 35 amendment; providing that an amendment adopted
 36 pursuant to this section is exempt from other
 37 requirements of law; providing an effective date.

38

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

40

41 Section 1. Subsection (2) of section 718.104, Florida
 42 Statutes, is amended to read:

43 718.104 Creation of condominiums; contents of
 44 declaration.—Every condominium created in this state shall be
 45 created pursuant to this chapter.

46 (2) A condominium is created by recording a declaration in
 47 the public records of the county where the land is located,
 48 executed and acknowledged with the requirements for a deed. All
 49 persons who have record title to the interest in the land being
 50 submitted to condominium ownership, or their lawfully authorized
 51 agents, must join in the execution of the declaration. Upon the
 52 recording of the declaration, or an amendment adding a phase to
 53 the condominium under s. 718.403(6), all units described in the
 54 declaration or phase amendment as being located in or on the
 55 land then being submitted to condominium ownership shall come
 56 into existence, regardless of the state of completion of planned

57 | improvements in which the units may be located or any other
 58 | requirement or description that a declaration may provide. Upon
 59 | recording the declaration of condominium pursuant to this
 60 | section, the developer shall file the recording information with
 61 | the division within 120 calendar days on a form prescribed by
 62 | the division.

63 | Section 2. Paragraph (c) of subsection (4) of section
 64 | 718.105, Florida Statutes, is amended to read:

65 | 718.105 Recording of declaration.—

66 | (4)

67 | (c) If the sum of money held by the clerk has not been
 68 | paid to the developer or association as provided in paragraph
 69 | (b) within 5 ~~3~~ years after the date the declaration was
 70 | originally recorded, the clerk may notify, in writing, the
 71 | registered agent of the association that the sum is still
 72 | available and the purpose for which it was deposited. If the
 73 | association does not record the certificate within 90 days after
 74 | the clerk has given the notice, the clerk may disburse the money
 75 | to the developer. If the developer cannot be located, the clerk
 76 | shall disburse the money to the Division of Florida
 77 | Condominiums, Timeshares, and Mobile Homes for deposit in the
 78 | Division of Florida Condominiums, Timeshares, and Mobile Homes
 79 | Trust Fund.

80 | Section 3. Subsection (10) of section 718.110, Florida
 81 | Statutes, is amended to read:

82 | 718.110 Amendment of declaration; correction of error or
 83 | omission in declaration by circuit court.—

84 | (10) If there is an omission or error in a declaration of

85 condominium, or any other document required to establish the
 86 condominium, and the ~~which~~ omission or error would affect the
 87 valid existence of the condominium, the circuit court may ~~has~~
 88 ~~jurisdiction to~~ entertain a petition of one or more of the unit
 89 owners in the condominium, or of the association, to correct the
 90 error or omission, and the action may be a class action. The
 91 court may require that one or more methods of correcting the
 92 error or omission be submitted to the unit owners to determine
 93 the most acceptable correction. All unit owners, the
 94 association, and the mortgagees of a first mortgage of record
 95 must be joined as parties to the action. Service of process on
 96 unit owners may be by publication, but the plaintiff must
 97 furnish every unit owner not personally served with process with
 98 a copy of the petition and final decree of the court by
 99 certified mail, return receipt requested, at the unit owner's
 100 last known residence address. If an action to determine whether
 101 the declaration or another condominium document complies with
 102 the mandatory requirements for the formation of a condominium is
 103 not brought within 3 years of the recording of the certificate
 104 of a surveyor and mapper pursuant to s. 718.104(4)(e) or the
 105 recording of an instrument that transfers title to a unit in the
 106 condominium which is not accompanied by a recorded assignment of
 107 developer rights in favor of the grantee of such unit, whichever
 108 occurs first, ~~recording of the declaration,~~ the declaration and
 109 other documents will effectively ~~shall be effective under this~~
 110 ~~chapter to~~ create a condominium, as of the date the declaration
 111 was recorded, regardless of whether ~~or not~~ the documents
 112 substantially comply with the mandatory requirements of law.

113 However, both before and after the expiration of this 3-year
 114 period, the circuit court has jurisdiction to entertain a
 115 petition permitted under this subsection for the correction of
 116 the documentation, and other methods of amendment may be
 117 utilized to correct the errors or omissions at any time.

118 Section 4. Paragraph (d) of subsection (13) of section
 119 718.111, Florida Statutes, is amended to read:

120 718.111 The association.—

121 (13) FINANCIAL REPORTING.—Within 90 days after the end of
 122 the fiscal year, or annually on a date provided in the bylaws,
 123 the association shall prepare and complete, or contract for the
 124 preparation and completion of, a financial report for the
 125 preceding fiscal year. Within 21 days after the final financial
 126 report is completed by the association or received from the
 127 third party, but not later than 120 days after the end of the
 128 fiscal year or other date as provided in the bylaws, the
 129 association shall mail to each unit owner at the address last
 130 furnished to the association by the unit owner, or hand deliver
 131 to each unit owner, a copy of the financial report or a notice
 132 that a copy of the financial report will be mailed or hand
 133 delivered to the unit owner, without charge, upon receipt of a
 134 written request from the unit owner. The division shall adopt
 135 rules setting forth uniform accounting principles and standards
 136 to be used by all associations and addressing the financial
 137 reporting requirements for multicondominium associations. The
 138 rules must include, but not be limited to, standards for
 139 presenting a summary of association reserves, including a good
 140 faith estimate disclosing the annual amount of reserve funds

141 that would be necessary for the association to fully fund
 142 reserves for each reserve item based on the straight-line
 143 accounting method. This disclosure is not applicable to reserves
 144 funded via the pooling method. In adopting such rules, the
 145 division shall consider the number of members and annual
 146 revenues of an association. Financial reports shall be prepared
 147 as follows:

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

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

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

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

159
 160 Such meeting and approval must occur before the end of the
 161 fiscal year and is effective only for the fiscal year in which
 162 the vote is taken, except that the approval may also be
 163 effective for the following fiscal year. If ~~With respect to an~~
 164 ~~association to which~~ the developer has not turned over control
 165 of the association, all unit owners, including the developer,
 166 may vote on issues related to the preparation of the
 167 association's financial reports ~~for the first 2 fiscal years of~~
 168 ~~the association's operation,~~ from beginning with the date of

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

183 Section 5. Paragraph (f) of subsection (2) of section
 184 718.112, Florida Statutes, is amended to read:

185 718.112 Bylaws.—

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

189 (f) Annual budget.—

190 1. The proposed annual budget of estimated revenues and
 191 expenses must ~~shall~~ be detailed and must ~~shall~~ show the amounts
 192 budgeted by accounts and expense classifications, including, if
 193 applicable, but not limited to, those expenses listed in s.
 194 718.504(21). A multicondominium association shall adopt a
 195 separate budget of common expenses for each condominium the
 196 association operates and shall adopt a separate budget of common

197 expenses for the association. In addition, if the association
 198 maintains limited common elements with the cost to be shared
 199 only by those entitled to use the limited common elements as
 200 provided for in s. 718.113(1), the budget or a schedule attached
 201 to it must ~~a schedule attached thereto shall~~ show the amount
 202 budgeted for this maintenance ~~amounts budgeted therefor~~. If,
 203 after turnover of control of the association to the unit owners,
 204 any of the expenses listed in s. 718.504(21) are not applicable,
 205 they need not be listed.

206 2. In addition to annual operating expenses, the budget
 207 must ~~shall~~ include reserve accounts for capital expenditures and
 208 deferred maintenance. These accounts must ~~shall~~ include, but are
 209 not limited to, roof replacement, building painting, and
 210 pavement resurfacing, regardless of the amount of deferred
 211 maintenance expense or replacement cost, and for any other item
 212 that has a ~~for which the~~ deferred maintenance expense or
 213 replacement cost that exceeds \$10,000. The amount to be reserved
 214 must ~~shall~~ be computed using ~~by means of~~ a formula ~~which is~~
 215 based upon estimated remaining useful life and estimated
 216 replacement cost or deferred maintenance expense of each reserve
 217 item. The association may adjust replacement reserve assessments
 218 annually to take into account any changes in estimates or
 219 extension of the useful life of a reserve item caused by
 220 deferred maintenance. This subsection does not apply to an
 221 adopted budget in which the members of an association have
 222 determined, by a majority vote at a duly called meeting of the
 223 association, to provide no reserves or less reserves than
 224 required by this subsection. However, prior to turnover of

225 control of an association by a developer to unit owners other
 226 than a developer pursuant to s. 718.301, the developer may vote
 227 to waive the reserves or reduce the funding of reserves through
 228 the period expiring at the end of the second fiscal year after
 229 the fiscal year in which the certificate of a surveyor and
 230 mapper is recorded pursuant to s. 718.104(4)(e) or an instrument
 231 that transfers title to a unit in the condominium which is not
 232 accompanied by a recorded assignment of developer rights in
 233 favor of the grantee of such unit is recorded, whichever occurs
 234 first, ~~for the first 2 fiscal years of the association's~~
 235 ~~operation, beginning with the fiscal year in which the initial~~
 236 ~~declaration is recorded,~~ after which time reserves may be waived
 237 or reduced only upon the vote of a majority of all nondeveloper
 238 voting interests voting in person or by limited proxy at a duly
 239 called meeting of the association. If a meeting of the unit
 240 owners has been called to determine whether to waive or reduce
 241 the funding of reserves, and no such result is achieved or a
 242 quorum is not attained, the reserves ~~as~~ included in the budget
 243 shall go into effect. After the turnover, the developer may vote
 244 its voting interest to waive or reduce the funding of reserves.

245 3. Reserve funds and any interest accruing thereon shall
 246 remain in the reserve account or accounts, and may ~~shall~~ be used
 247 only for authorized reserve expenditures unless their use for
 248 other purposes is approved in advance by a majority vote at a
 249 duly called meeting of the association. Prior to turnover of
 250 control of an association by a developer to unit owners other
 251 than the developer pursuant to s. 718.301, the developer-
 252 controlled association shall not vote to use reserves for

253 purposes other than that for which they were intended without
 254 the approval of a majority of all nondeveloper voting interests,
 255 voting in person or by limited proxy at a duly called meeting of
 256 the association.

257 4. The only voting interests that ~~which~~ are eligible to
 258 vote on questions that involve waiving or reducing the funding
 259 of reserves, or using existing reserve funds for purposes other
 260 than purposes for which the reserves were intended, are the
 261 voting interests of the units subject to assessment to fund the
 262 reserves in question. Proxy questions relating to waiving or
 263 reducing the funding of reserves or using existing reserve funds
 264 for purposes other than purposes for which the reserves were
 265 intended shall contain the following statement in capitalized,
 266 bold letters in a font size larger than any other used on the
 267 face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN
 268 PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY
 269 RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED
 270 SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

271 Section 6. Section 718.114, Florida Statutes, is amended
 272 to read:

273 718.114 Association powers.—An association may enter into
 274 agreements to acquire leaseholds, memberships, and other
 275 possessory or use interests in lands or facilities such as
 276 country clubs, golf courses, marinas, and other recreational
 277 facilities, regardless of whether ~~or not~~ the lands or facilities
 278 are contiguous to the lands of the condominium, if such lands
 279 and facilities are intended to provide enjoyment, recreation, or
 280 other use or benefit to the unit owners. All of these

281 leaseholds, memberships, and other possessory or use interests
 282 existing or created at the time of recording the declaration
 283 must be stated and fully described in the declaration.
 284 Subsequent to the recording of the declaration, agreements
 285 acquiring these leaseholds, memberships, or other possessory or
 286 use interests which are not entered into within 12 months of the
 287 date of the recording of the certificate of a surveyor and
 288 mapper pursuant to s. 718.104(4)(e) or the recording of an
 289 instrument that transfers title to a unit in the condominium
 290 which is not accompanied by a recorded assignment of developer
 291 rights in favor of the grantee of such unit, whichever occurs
 292 first, are following the recording of the declaration are a
 293 material alteration or substantial addition to the real property
 294 that is association property, and the association may not
 295 acquire or enter into such agreements except upon a vote of, or
 296 written consent by, a majority of the total voting interests or
 297 as authorized by the declaration as provided in s. 718.113. The
 298 declaration may provide that the rental, membership fees,
 299 operations, replacements, and other expenses are common expenses
 300 and may impose covenants and restrictions concerning their use
 301 and may contain other provisions not inconsistent with this
 302 chapter. A condominium association may conduct bingo games as
 303 provided in s. 849.0931.

304 Section 7. Subsections (1) and (4) of section 718.301,
 305 Florida Statutes, are amended to read:

306 718.301 Transfer of association control; claims of defect
 307 by association.—

308 (1) If unit owners other than the developer own 15 percent

309 or more of the units in a condominium that will be operated
 310 ultimately by an association, the unit owners other than the
 311 developer are entitled to elect at least one-third of the
 312 members of the board of administration of the association. Unit
 313 owners other than the developer are entitled to elect at least a
 314 majority of the members of the board of administration of an
 315 association, upon the first to occur of any of the following
 316 events:

317 (a) Three years after 50 percent of the units that will be
 318 operated ultimately by the association have been conveyed to
 319 purchasers;

320 (b) Three months after 90 percent of the units that will
 321 be operated ultimately by the association have been conveyed to
 322 purchasers;

323 (c) When all the units that will be operated ultimately by
 324 the association have been completed, some of them have been
 325 conveyed to purchasers, and none of the others are being offered
 326 for sale by the developer in the ordinary course of business;

327 (d) When some of the units have been conveyed to
 328 purchasers and none of the others are being constructed or
 329 offered for sale by the developer in the ordinary course of
 330 business;

331 (e) When the developer files a petition seeking protection
 332 in bankruptcy;

333 (f) When a receiver for the developer is appointed by a
 334 circuit court and is not discharged within 30 days after such
 335 appointment, unless the court determines within 30 days after
 336 appointment of the receiver that transfer of control would be

337 detrimental to the association or its members; or
 338 (g) Seven years after the date of the recording of the
 339 certificate of a surveyor and mapper pursuant to s.
 340 718.104(4)(e) or the recording of an instrument that transfers
 341 title to a unit in the condominium which is not accompanied by a
 342 recorded assignment of developer rights in favor of the grantee
 343 of such unit, whichever occurs first; ~~recording of the~~
 344 ~~declaration of condominium;~~ or, in the case of an association
 345 that may ultimately operate more than one condominium, 7 years
 346 after the date of the recording of the certificate of a surveyor
 347 and mapper pursuant to s. 718.104(4)(e) or the recording of an
 348 instrument that transfers title to a unit which is not
 349 accompanied by a recorded assignment of developer rights in
 350 favor of the grantee of such unit, whichever occurs first,
 351 ~~recording of the declaration~~ for the first condominium it
 352 operates; or, in the case of an association operating a phase
 353 condominium created pursuant to s. 718.403, 7 years after the
 354 date of the recording of the certificate of a surveyor and
 355 mapper pursuant to s. 718.104(4)(e) or the recording of an
 356 instrument that transfers title to a unit which is not
 357 accompanied by a recorded assignment of developer rights in
 358 favor of the grantee of such unit, whichever occurs first
 359 ~~recording of the declaration creating the initial phase,~~
 360 ~~whichever occurs first.~~ The developer is entitled to elect at
 361 least one member of the board of administration of an
 362 association as long as the developer holds for sale in the
 363 ordinary course of business at least 5 percent, in condominiums
 364 with fewer than 500 units, and 2 percent, in condominiums with

365 more than 500 units, of the units in a condominium operated by
 366 the association. After the developer relinquishes control of the
 367 association, the developer may exercise the right to vote any
 368 developer-owned units in the same manner as any other unit owner
 369 except for purposes of reacquiring control of the association or
 370 selecting the majority members of the board of administration.

371 (4) At the time that unit owners other than the developer
 372 elect a majority of the members of the board of administration
 373 of an association, the developer shall relinquish control of the
 374 association, and the unit owners shall accept control.
 375 Simultaneously, or for the purposes of paragraph (c) not more
 376 than 90 days thereafter, the developer shall deliver to the
 377 association, at the developer's expense, all property of the
 378 unit owners and of the association which is held or controlled
 379 by the developer, including, but not limited to, the following
 380 items, if applicable, as to each condominium operated by the
 381 association:

382 (a)1. The original or a photocopy of the recorded
 383 declaration of condominium and all amendments thereto. If a
 384 photocopy is provided, it must ~~shall~~ be certified by affidavit
 385 of the developer or an officer or agent of the developer as
 386 being a complete copy of the actual recorded declaration.

387 2. A certified copy of the articles of incorporation of
 388 the association or, if the association was created prior to the
 389 effective date of this act and it is not incorporated, copies of
 390 the documents creating the association.

391 3. A copy of the bylaws.

392 4. The minute books, including all minutes, and other

393 books and records of the association, if any.

394 5. Any house rules and regulations that ~~which~~ have been
 395 promulgated.

396 (b) Resignations of officers and members of the board of
 397 administration who are required to resign because the developer
 398 is required to relinquish control of the association.

399 (c) The financial records, including financial statements
 400 of the association, and source documents from the incorporation
 401 of the association through the date of turnover. The records
 402 must ~~shall~~ be audited for the period from the incorporation of
 403 the association or from the period covered by the last audit, if
 404 an audit has been performed for each fiscal year since
 405 incorporation, by an independent certified public accountant.
 406 All financial statements must ~~shall~~ be prepared in accordance
 407 with generally accepted accounting principles and must ~~shall~~ be
 408 audited in accordance with generally accepted auditing
 409 standards, as prescribed by the Florida Board of Accountancy,
 410 pursuant to chapter 473. The accountant performing the audit
 411 shall examine to the extent necessary supporting documents and
 412 records, including the cash disbursements and related paid
 413 invoices to determine if expenditures were for association
 414 purposes and the billings, cash receipts, and related records to
 415 determine that the developer was charged and paid the proper
 416 amounts of assessments.

417 (d) Association funds or control thereof.

418 (e) All tangible personal property that is property of the
 419 association, which is represented by the developer to be part of
 420 the common elements or which is ostensibly part of the common

421 elements, and an inventory of that property.

422 (f) A copy of the plans and specifications utilized in the
 423 construction or remodeling of improvements and the supplying of
 424 equipment to the condominium and in the construction and
 425 installation of all mechanical components serving the
 426 improvements and the site with a certificate in affidavit form
 427 of the developer or the developer's agent or an architect or
 428 engineer authorized to practice in this state that such plans
 429 and specifications represent, to the best of his or her
 430 knowledge and belief, the actual plans and specifications
 431 utilized in the construction and improvement of the condominium
 432 property and for the construction and installation of the
 433 mechanical components serving the improvements. If the
 434 condominium property has been declared a condominium more than 3
 435 years after the completion of construction or remodeling of the
 436 improvements, the requirements of this paragraph do not apply.

437 (g) A list of the names and addresses, ~~of which the~~
 438 ~~developer had knowledge at any time in the development of the~~
 439 ~~condominium,~~ of all contractors, subcontractors, and suppliers
 440 utilized in the construction or remodeling of the improvements
 441 and in the landscaping of the condominium or association
 442 property which the developer had knowledge of at any time in the
 443 development of the condominium.

444 (h) Insurance policies.

445 (i) Copies of any certificates of occupancy that ~~which~~ may
 446 have been issued for the condominium property.

447 (j) Any other permits applicable to the condominium
 448 property which have been issued by governmental bodies and are

449 in force or were issued within 1 year prior to the date the unit
 450 owners other than the developer took ~~take~~ control of the
 451 association.

452 (k) All written warranties of the contractor,
 453 subcontractors, suppliers, and manufacturers, if any, that are
 454 still effective.

455 (l) A roster of unit owners and their addresses and
 456 telephone numbers, if known, as shown on the developer's
 457 records.

458 (m) Leases of the common elements and other leases to
 459 which the association is a party.

460 (n) Employment contracts or service contracts in which the
 461 association is one of the contracting parties or service
 462 contracts in which the association or the unit owners have an
 463 obligation or responsibility, directly or indirectly, to pay
 464 some or all of the fee or charge of the person or persons
 465 performing the service.

466 (o) All other contracts to which the association is a
 467 party.

468 (p) A report included in the official records, under seal
 469 of an architect or engineer authorized to practice in this
 470 state, attesting to required maintenance, useful life, and
 471 replacement costs of the following applicable common elements
 472 comprising a turnover inspection report:

- 473 1. Roof.
- 474 2. Structure.
- 475 3. Fireproofing and fire protection systems.
- 476 4. Elevators.

- 477 5. Heating and cooling systems.
- 478 6. Plumbing.
- 479 7. Electrical systems.
- 480 8. Swimming pool or spa and equipment.
- 481 9. Seawalls.
- 482 10. Pavement and parking areas.
- 483 11. Drainage systems.
- 484 12. Painting.
- 485 13. Irrigation systems.

486 (g) A copy of the certificate of a surveyor and mapper
 487 recorded pursuant to s. 718.104(4)(e) or the recorded instrument
 488 that transfers title to a unit in the condominium which is not
 489 accompanied by a recorded assignment of developer rights in
 490 favor of the grantee of such unit, whichever occurs first.

491 Section 8. Subsection (1) of section 718.403, Florida
 492 Statutes, is amended to read:

493 718.403 Phase condominiums.—

494 (1) Notwithstanding the provisions of s. 718.110, a
 495 developer may develop a condominium in phases, if the original
 496 declaration of condominium submitting the initial phase to
 497 condominium ownership or an amendment to the declaration which
 498 has been approved by all of the unit owners and unit mortgagees
 499 provides for and describes in detail all anticipated phases; the
 500 impact, if any, which the completion of subsequent phases would
 501 have upon the initial phase; and the time period ~~(which may not~~
 502 ~~exceed 7 years from the date of recording the declaration of~~
 503 ~~condominium)~~ within which all phases must be added to the
 504 condominium and comply with the requirements of this section and

505 at the end of which the right to add additional phases expires.

506 (a) All phases must be added to the condominium within 7
 507 years after the date of the recording of the certificate of a
 508 surveyor and mapper pursuant to s. 718.104(4) (e) or the
 509 recording of an instrument that transfers title to a unit in the
 510 condominium which is not accompanied by a recorded assignment of
 511 developer rights in favor of the grantee of such unit, whichever
 512 occurs first, unless the unit owners vote to approve an
 513 amendment extending the 7-year period pursuant to paragraph (b).

514 (b) An amendment to extend the 7-year period shall require
 515 the approval of the owners necessary to amend the declaration of
 516 condominium pursuant to s. 718.110(1) (a). An extension of the 7-
 517 year period may be submitted for approval only during the last 3
 518 years of the 7-year period.

519 (c) An amendment must describe the period within which all
 520 phases must be added to the condominium and such period may not
 521 exceed 10 years from the date of the recording of the
 522 certificate of a surveyor and mapper pursuant to s.
 523 718.104(4) (e) or the recording of an instrument that transfers
 524 title to a unit in the condominium which is not accompanied by a
 525 recorded assignment of developer rights in favor of the grantee
 526 of such unit, whichever occurs first.

527 (d) An amendment that extends the 7-year period pursuant
 528 to this section is not subject to the requirements of s.
 529 718.110(4).

530 Section 9. This act shall take effect upon becoming a law.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee

2 Representative Fitzenhagen offered the following:

3

4 **Amendment**

5 Remove line 490 and insert:

6 favor of the grantee of such unit, whichever occurred first.

7

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 191 Theft of Utility Services
SPONSOR(S): Raulerson and others
TIED BILLS: None **IDEN./SIM. BILLS:** SB 338

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Criminal Justice Subcommittee	12 Y, 1 N	Jones	Cunningham
2) Justice Appropriations Subcommittee	11 Y, 0 N	McAuliffe	Jones Darity
3) Judiciary Committee		Jones LIS	Havlicak RH

SUMMARY ANALYSIS

Section 812.14, F.S., establishes a variety of crimes involving the theft of utilities. A violation of any of the provisions in s. 812.14, F.S., is currently a first degree misdemeanor.

In a civil action, if a person is found in violation of s. 812.14, F.S., they are liable to the utility entity involved for an amount equal to 3 times the amount of services unlawfully obtained or \$1,000, whichever is greater.

The bill applies the criminal penalties in the general theft statute (s. 812.014, F.S.), to the utility theft offenses in s. 812.14, F.S. The general theft statute penalties are primarily based upon the dollar value of the stolen property. However, there are some circumstances where the penalties are determined by the type of property stolen or whether certain situations are present during the theft. The bill also increases the threshold amount available in a civil action from \$1,000 to \$3,000.

The Criminal Justice Impact Conference met on February 27, 2013, and determined this bill may have an insignificant negative impact on the Department of Corrections, and a positive jail bed impact on local governments.

The bill is effective on October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Theft of Utility Services

Section 812.14, F.S., establishes a variety of crimes involving the theft of utilities.¹ For example, subsections (2) and (4) make it a first degree misdemeanor² for a person to:

- Willfully alter, tamper with, injure, or knowingly suffer to be injured any meter, meter seal, pipe, conduit, wire, line, cable, transformer, amplifier, or other apparatus or device belonging to a utility line service in such a manner as to cause loss or damage or to prevent any meter installed for registering electricity, gas, or water from registering the quantity which otherwise would pass through the same; to alter the index or break the seal of any such meter; in any way to hinder or interfere with the proper action or just registration of any such meter or device; or knowingly to use, waste, or suffer the waste, by any means, of electricity or gas or water passing through any such meter, wire, pipe, or fitting, or other appliance or appurtenance connected with or belonging to any such utility, after such meter, wire, pipe or fitting, or other appliance or appurtenance has been tampered with, injured, or altered;
- Make or cause to be made any connection with any wire, main, service pipe or other pipes, appliance, or appurtenance in such manner as to use, without the consent of the utility, any service or any electricity, gas, or water, or to cause to be supplied any service or electricity, gas, or water from a utility to any person, firm, or corporation or any lamp, burner, orifice, faucet, or other outlet whatsoever, without such service being reported for payment or such electricity, gas, or water passing through a meter provided by the utility and used for measuring and registering the quantity of electricity, gas, or water passing through the same; or
- Use or receive the direct benefit from the use of a utility knowing, or under such circumstances as would induce a reasonable person to believe, that such direct benefits have resulted from any tampering with, altering of, or injury to any connection, wire, conductor, meter, pipe, conduit, line, cable, transformer, amplifier, or other apparatus or device owned, operated, or controlled by such utility, for the purpose of avoiding payment.³

Subsections (5) and (7) make it a first degree misdemeanor for a person or entity that owns, leases, or subleases a property to permit a tenant or occupant to use utility services knowing, or under such circumstances as would induce a reasonable person to believe, that such utility services have been connected in violation any of the above stated provisions.⁴

Subsection (8) makes theft of utility services for the purpose of facilitating the manufacture of a controlled substance⁵ a first degree misdemeanor.⁶

In a civil action, if a person is found in violation of s. 812.14, F.S., they are liable to the utility entity involved for an amount equal to 3 times the amount of services unlawfully obtained or \$1,000, whichever is greater.

¹ "Utility" is defined in s. 812.14, F.S., as any person, firm, corporation, association, or political subdivision, whether private, municipal, county, or cooperative, which engaged in the sale, generation, provision, or delivery of gas, electricity, heat, water, oil, sewer service, telephone service, telegraph service, radio service, or telecommunication service.

² A first degree misdemeanor is punishable by up to one year in county jail and a \$1,000 fine. Sections 775.082 and 775.083, F.S.

³ Section 812.14(2)(a)-(c) and (4), F.S.

⁴ Section 812.14(5) and (7), F.S.

⁵ Section 893.02(4), F.S., defines "controlled substance" as any substance named or described in Schedules I-V of s. 893.03, F.S.

⁶ Section 812.14(8), F.S.

Theft

The criminal penalties under the general theft statute (s. 812.014, F.S.) are primarily based upon the dollar value of the stolen property.⁷ Section 812.014, F.S., provides:

- If the stolen property is valued at \$100,000 or more, the offense is a first degree felony.⁸
- If the stolen property is valued between \$20,000 and \$100,000, the offense is a second degree felony.⁹
- If the stolen property is valued between \$300 and \$20,000, the offense is a third degree felony.¹⁰
- If the stolen property is valued between \$100 and \$300, the offense is a first degree misdemeanor.
- If the stolen property is under \$100, the offense is a second degree misdemeanor.¹¹

In certain instances the theft statute imposes criminal penalties that are not solely based on value. For example, stealing a fire extinguisher is a third degree felony no matter the value of the fire extinguisher.¹² Stealing law enforcement equipment valued at \$300 or more from an emergency vehicle within a county subject to a state of emergency and where the theft is facilitated by the emergency is a first degree felony.¹³

Effect of the Bill

The bill applies the criminal penalties in the general theft statute (s. 812.014, F.S.) to the utility theft offenses in s. 812.14, F.S.

The bill also increases the threshold amount available in a civil action from \$1,000 to \$3,000.

B. SECTION DIRECTORY:

Section 1. Amends s. 812.14, F.S., relating to trespass and larceny with relation to utility fixtures; theft of utility services.

Section 2. Provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

The Criminal Justice Impact Conference met on February 27, 2013, and determined this bill may have an insignificant negative impact on the Department of Corrections.

⁷ See generally, s. 812.014, F.S.

⁸ A first degree felony is punishable by up to 30 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

⁹ A second degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. Sections 775.082 and 775.083, F.S.

¹⁰ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. Sections 775.082 and 775.083, F.S.

¹¹ A second degree misdemeanor is punishable by up to 60 days in county jail and a \$500 fine. Sections 775.082 and 775.083, F.S.

¹² See s. 812.014(2)(c)8., F.S.

¹³ See s. 812.014(2)(b)4., F.S.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill may have a positive jail bed impact on local governments because the bill could make what is currently a first degree misdemeanor either a second degree misdemeanor or a felony (for example, a felony conviction may require the offender to serve their sentence in a state prison instead of a local jail).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Private utility companies may benefit because the bill increases the threshold amount available in civil actions from \$1,000 to \$3,000.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to theft of utility services; amending
 3 s. 812.14, F.S.; providing additional criminal
 4 penalties for utility services wrongfully taken;
 5 providing that the person who unlawfully took utility
 6 services is liable to the utility for an increased
 7 civil penalty subject to the amount of the utility
 8 services unlawfully obtained; providing an effective
 9 date.

10
 11 Be It Enacted by the Legislature of the State of Florida:

12
 13 Section 1. Subsections (4), (7), (8), and (10) of section
 14 812.14, Florida Statutes, are amended to read:

15 812.14 Trespass and larceny with relation to utility
 16 fixtures; theft of utility services.—

17 (4) A ~~Any~~ person who willfully violates paragraph (2)(a),
 18 paragraph (2)(b), or paragraph (2)(c) commits theft a
 19 ~~misdemeanor of the first degree~~, punishable as provided in s.
 20 812.014 s. 775.082 or s. 775.083.

21 (7) A person who willfully violates subsection (5) commits
 22 a misdemeanor of the first degree, punishable as provided in s.
 23 775.082 or s. 775.083. Prosecution for a violation of subsection
 24 (5) does not preclude prosecution for theft pursuant to ~~under~~
 25 subsection (8) or s. 812.014.

26 (8) Theft of utility services for the purpose of
 27 facilitating the manufacture of a controlled substance is theft
 28 ~~a misdemeanor of the first degree~~, punishable as provided in s.

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29 | 812.014 ~~s. 775.082 or s. 775.083.~~

30 | (10) Whoever is found in a civil action to have violated
31 | ~~the provisions of~~ this section is liable to the utility involved
32 | in an amount equal to 3 times the amount of services unlawfully
33 | obtained or \$3,000 ~~\$1,000~~, whichever is greater.

34 | Section 2. This act shall take effect October 1, 2013.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 231 Dissolution of Marriage
SPONSOR(S): Civil Justice Subcommittee; Workman and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 718

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	10 Y, 2 N, As CS	Ward <i>JW</i>	Bond
2) Judiciary Committee		Ward	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Alimony provides financial support to a financially dependent former spouse. The primary elements to determine entitlement are need and the ability to pay, but the statutes and case law impose many more criteria. There are four different types of alimony: bridge-the-gap alimony, rehabilitative alimony, durational alimony, and permanent alimony. An award of alimony may be modified or terminated early in certain circumstances.

The bill makes a number of changes to current law on alimony and dissolution of marriage. The bill:

- Eliminates permanent alimony.
- Eliminates consideration of the standard of living established during the marriage as a factor in determining alimony.
- Creates presumptions for earning ability imputed to an obligee.
- Requires written findings justifying factors regarding an alimony award or modification.
- Creates evidentiary thresholds for certain awards of alimony or modification.
- Creates a presumption that the parties will have a lower standard of living after divorce.
- Limits alimony based on formulas that take into account relative incomes and the length of the marriage.
- Provides that alimony terminates upon the obligee reaching retirement age.
- Shifts the burden of proof regarding the need for alimony to the obligee in certain circumstances.
- Prohibits modification of alimony based solely on a reduction in child support.
- Allows bifurcation of a dissolution case if pending more than 180 days, and requires bifurcation if pending over 365 days.
- Allows modification or termination of existing alimony awards.
- Provides a schedule for review of existing awards of alimony.

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

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

In general, alimony provides support to a financially dependent former spouse.¹ Alimony may be awarded to either party in a dissolution of marriage case,² and may be awarded in certain other cases. The judgment awarding alimony may be based upon the court's findings of fact, or by an underlying agreement of the parties that is approved by the court.³ Alimony is determined by considering both the need of the recipient and the ability to pay of the other party.⁴ Alimony is not appropriate when the requesting spouse has no need for support or when the other spouse does not have the ability to pay.⁵

While there is some statutory guidance regarding alimony, much of the law on alimony is common law (that is, established through case precedent). The leading case on alimony is *Canakaris v. Canakaris*,⁶ a 1980 case that set forth many general concepts of alimony but also confirmed that ultimately the setting of alimony is a matter within the broad discretion of a trial court. Writing in favor of broad discretion, the Supreme Court said:

Dissolution proceedings present a trial judge with the difficult problem of apportioning assets acquired by the parties and providing necessary support. The judge possesses broad discretionary authority to do equity between the parties and has available various remedies to accomplish this purpose, including lump sum alimony, permanent periodic alimony, rehabilitative alimony, child support, a vested special equity in property, and an award of exclusive possession of property. As considered by the trial court, these remedies are interrelated; to the extent of their eventual use, the remedies are part of one overall scheme.⁷

However, the court noted the problem with such broad discretion:

The discretionary power that is exercised by a trial judge is not, however, without limitation, and both appellate and trial judges should recognize the concern which arises from substantial disparities in domestic judgments resulting from basically similar factual circumstances. The appellate courts have not been helpful in this regard. Our decisions and those of the district courts are difficult, if not impossible, to reconcile. The trial court's discretionary power is subject only to the test of reasonableness, but that test requires a determination of whether there is logic and justification for the result. The trial courts' discretionary power was never intended to be exercised in accordance with whim or caprice of the judge nor in an inconsistent manner. Judges dealing with cases essentially alike should reach the same result. Different results reached from substantially the same facts comport with neither logic nor reasonableness.⁸

¹ Victoria Ho & Jennifer Johnson, *Overview of Florida Alimony Law*, 78 Fla.B.J. 71, 71 (Oct. 2004).

² Section 61.08(2), F.S.

³ Section 61.14(1)(a), F.S.

⁴ See s. 61.08(2), F.S.; *Payne v. Payne*, 88 So.3d 1016 (Fla. 2d DCA 2012).

⁵ Section 61.08(2), F.S.

⁶ *Canakaris v. Canakaris*, 382 So.2d 1197 (Fla. 1980).

⁷ *Id.* at 1202.

⁸ *Id.* at 1203.

In the 33 years since *Canakaris*, little has changed in alimony law. While some statutory guidance has been added and case law has somewhat narrowed judicial discretion, a trial court still has broad discretion in setting the amount and term of alimony. Expressing his frustration with the concept of broad discretion, one appellate judge wrote in 2002:

I write, however, to express my view that broad discretion in the award of alimony is no longer justifiable and should be discarded in favor of guidelines, if not an outright rule.⁹

Changes to Definitions Regarding Alimony

Definitions Regarding the Duration of the Marriage

The types of alimony available depend on duration of the marriage. Current law provides a rebuttable presumption that:

- A "long-term marriage" has a duration of 17 years or more.
- A "moderate-term marriage" is between 7 and 17 years.
- A "short-term marriage" is less than 7 years.¹⁰

These presumptions related to the length of a marriage were first enacted in statute in 2010,¹¹ and were based on definitions described by prior case law. This bill changes the presumptions to a formula, changes terminology, and changes marriage durations as follows:

- A "long-term marriage" means a marriage of more than 20 years.
- A "mid-term marriage" means a marriage of between 10 and 20 years.
- A "short-term marriage" means a marriage of less than 10 years.¹²

Other Definitions Created By This Bill

The terms alimony and net income are not defined by current law. The bill adds:

- "Alimony" is defined as a court ordered payment of support.
- "Net income" means the amount considered by the court for child support purposes.¹³

The definition of alimony reflects existing law and thus makes no change. The definition of net income limits the term and requires a court to use the same income for consideration of alimony as the court uses in determining child support.

Establishment of Alimony - Changes by Type of Alimony

Current statutory law provides for four types of alimony post-dissolution: bridge-the-gap alimony,¹⁴ rehabilitative alimony,¹⁵ durational alimony,¹⁶ and permanent alimony.¹⁷

⁹ *Bacon v. Bacon*, 819 So.2d 950, 954 (Fla. 4th DCA 2002)(Farmer, J., concurring).

¹⁰ Section 61.08(4), F.S.

¹¹ Section 1 of ch. 2010-199, L.O.F.

¹² This change to 10 years conforms statutory law to some case law prior to the adoption of the 7 year standard for short term marriage. See *Jaffy v. Jaffy*, 965 So.2d 825, 828 (Fla. 4th DCA 2007); *Iribar v. Iribar*, 510 So.2d 1023, 1024 (Fla. 3rd DCA 1987). But see *Yitzhari v. Yitzhari*, 906 So.2d 1250, 1256 (Fla. 3d DCA 2005)("A nine-year marriage has been held to fall into the 'gray area' in which '[t]here is no presumption for or against permanent alimony.'" [emphasis supplied, citations omitted]); *Adinolfi v. Adinolfi*, 718 So.2d 369, 370 (Fla. 4th DCA 1998)(nine year marriage "may very well be in the 'gray area' ").

¹³ See Section 61.30, F.S.

¹⁴ Section 61.08(5), F.S.

- Bridge-the-gap alimony may be awarded to assist a party by providing support to allow the party to make a transition from being married to being single.¹⁸
- Rehabilitative alimony may be awarded to assist a party in establishing the capacity for self-support through either the redevelopment of previous skills or the acquisition of employment skills.¹⁹
- Durational alimony may be awarded to provide a party with economic assistance for a set period of time following a marriage of short or moderate duration.
- Permanent alimony may be awarded to provide for the necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet them following dissolution of marriage.

Permanent Alimony

Current law allows for an award of permanent alimony.²⁰ Permanent alimony "may be awarded to provide for the needs and necessities of life as they were established during the marriage of the parties for a party who lacks the financial ability to meet his or her needs and necessities of life following a dissolution of marriage."²¹ Permanent alimony continues until death of the obligor or obligee, remarriage of the obligee, or termination by a court (on a petition for modification).²² In order to award permanent alimony the court must include a finding that no other form of alimony is fair and reasonable under the circumstances of the parties.²³ Permanent alimony may be awarded following a marriage of:

- Long duration if the award is appropriate upon consideration of the factors in s. 61.08(2), F.S.;
- Moderate duration if the award is based upon clear and convincing evidence after consideration of the factors in s. 61.08(2), F.S.; or
- Short duration if there are written findings of exceptional circumstances.

The bill ends permanent alimony.

Durational Alimony

Durational alimony²⁴ provides a party with assistance following dissolution of a marriage. Like permanent alimony, it terminates upon the death of either party or upon remarriage of the recipient,²⁵ but unlike permanent alimony it ends after a fixed duration of time. It may also terminate upon a change in circumstances²⁶ or when the recipient lives with another in a "supportive relationship,"²⁷ and may also be extended on a petition for modification. The bill:

- Provides that durational alimony may be awarded for a short-term, mid-term, or long-term marriage.
- Provides that an award of durational alimony must contain written findings that no other form of alimony is appropriate.

¹⁵ Section 61.08(6), F.S.

¹⁶ Section 61.08(7), F.S.

¹⁷ Section 61.08(8), F.S.

¹⁸ Section 61.08(5), F.S.

¹⁹ Section 61.08(6)(a), F.S.

²⁰ Section 61.08, F.S.

²¹ Section 61.08(8), F.S.

²² *Id.*

²³ *Id.*

²⁴ "The 2010 amendments [to ch. 61, F.S.], created durational alimony, an intermediate form of alimony between bridge-the-gap and permanent alimony." *Nousari v. Nousari*, 94 So.3d 704 (Fla. 4th DCA 2012).

²⁵ Section 61.08(7), F.S.

²⁶ Sections 61.08(7) and 61.14(1)(a), F.S.

²⁷ Section 61.14(1)(b)1, F.S.

- Requires modification or termination upon the existence of a supportive relationship.
- Limits the duration of durational alimony to 50 percent of the length of the marriage, unless the recipient proves by clear and convincing evidence that exceptional circumstances justify the need for a longer award of alimony, which exceptional circumstances must be set out in writing by the court.

Rehabilitative Alimony and Bridge-the-Gap Alimony

The bill makes no change that directly affects the definition of or general concepts governing either rehabilitative alimony or bridge-the-gap alimony. However, like durational alimony, the bill does alter qualifications for and the legal standards affecting an initial claim for, or modification of, such an award, as further explained below.

Multiple Types of Alimony

Current law provides that the court may award the four different types of alimony individually or in combination.²⁸ The bill provides that the court must prioritize an award of bridge-the-gap alimony, followed by rehabilitative alimony, over any other form. The bill further provides that these three forms of alimony may be awarded in combination only when the goal is to achieve rehabilitation.

Establishment of Alimony - Changes by Duration of Marriage

Short-Term Marriage

Under current law, all forms of alimony may be awarded after a short-term marriage. However, permanent alimony may only be awarded upon a showing of "exceptional circumstances" and a showing that no other form of alimony is fair and reasonable. The bill:

- Creates a presumption against any award of alimony following a short-term marriage, unless need is shown by clear and convincing evidence.
- Requires that need for alimony be shown by clear and convincing evidence.
- Limits any award of alimony to 20 percent of the obligor's net income.
- Repeals authority for an award of permanent alimony.
- Requires imputation of income (see below).

Mid-Term Marriage

Under current law, all forms of alimony may be awarded after a mid-term marriage. However, permanent alimony may only be awarded upon a showing that such award is "appropriate" based on clear and convincing evidence and a showing that no other form of alimony is fair and reasonable. The bill:

- Provides that there is no presumption in favor of or against an award of alimony following a mid-term marriage.
- Limits alimony to the 30 percent of the obligor's net income.
- Repeals authority for an award of permanent alimony.
- Requires imputation of income (see below).

²⁸ Section 61.08, F.S.
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Long-Term Marriage

Under current law, all forms of alimony may be awarded after a long-term marriage. However, permanent alimony may only be awarded upon a showing that no other form of alimony is fair and reasonable. The bill:

- Creates a rebuttable presumption in favor of an award of alimony that may only be overcome by clear and convincing evidence that there is no need for alimony.
- Limits alimony in a long-term marriage to a maximum of 33 percent of the obligor's monthly net income.
- Repeals authority for an award of permanent alimony.

Factors Applicable to All Alimony Awards

Factors - In General

Current statutory factors that a court must consider in awarding alimony include:²⁹

- The standard of living established during the marriage.
- The duration of the marriage.
- The age and the physical and emotional condition of each party.
- The financial resources of each party, including the nonmarital and the marital assets and liabilities distributed to each.
- The earning capacities, educational levels, vocational skills, and employability of the parties and, when applicable, the time necessary for either party to acquire sufficient education or training to enable such party to find appropriate employment.
- The contribution of each party to the marriage, including, but not limited, services rendered in homemaking, child care, education, and career building of the other party.
- The responsibility each party will have for minor children they have in common.
- The tax consequences to both parties of any alimony award, including the designation of all or a portion of the payment as a nontaxable nondeductible payment.
- All sources of income available to either party, including income available through investments of any asset held by that party.
- Any other factor necessary to do equity and justice between the parties.

The bill:

- Eliminates consideration of the standard of living established during the marriage as a criterion in awarding alimony.
- Provides the court may consider as income any asset acquired outside the marriage and relied upon during the marriage.
- Requires the court to consider the standard of living the parties will have after application of the alimony award.
- Adds a rebuttable presumption that the standard of living of both parties will be lower after dissolution, which presumption may be overcome by a preponderance of the evidence.
- Requires the court to specifically identify any other factor used in making the alimony award, and requires the court to list all findings of fact supporting that factor.
- Provides that the court may order alimony exceeding the limits set forth in the statutory system if there is a need, which determination must be set out in writing.
- Provides that a party against whom alimony is sought who has met the requirements for retirement in accordance with s. 61.14(12), F.S., before the filing of the petition for dissolution is

not required to pay alimony unless the party seeking alimony proves by clear and convincing evidence the other party has the ability to pay alimony.

The bill also makes numerous grammatical and style changes to the list of statutory factors which do not appear to affect alimony awards.³⁰

Relative Incomes

Under current law, an award of alimony may not leave the obligor with significantly less net income than the net income of the recipient without written findings of exceptional circumstances.³¹ This provision is repealed and replaced with a provision providing that alimony may not be awarded to a party with an equal or greater monthly net income than the obligor.

Imputed Income

Under current law, the court has the discretion to impute income in appropriate circumstances.³² Imputed income can be thought of as the income that the party should be earning. If the trial court determines that a spouse's past income has declined due to voluntary action, the court may impute a higher income based on "history, qualifications, and prevailing wages."³³ The trial court's imputation of income must be supported by competent, substantial evidence.³⁴

As applied to short-term and mid-term marriages, the bill prohibits imputation of Social Security retirement benefits to an obligor and requires imputation of income to the obligee as follows:

- An obligee who is unemployed for less than one year prior to the filing of a petition for dissolution has 90% of previous income imputed.
- An obligee who is unemployed between 1 and 2 years prior to the filing of the petition has 80% of previous income imputed.
- An obligee who is unemployed between 2 and 3 years prior to the filing of the petition has 70% of previous income imputed.
- An obligee who is unemployed between 3 and 4 years prior to the filing of a petition for dissolution has 60% of previous income imputed.
- An obligee who is unemployed between 4 and 5 years prior to the filing of a petition for dissolution has 50% of previous income imputed.
- An obligee who is unemployed more than 5 years prior to the filing of a petition for dissolution has 40% of previous income imputed, or the current minimum wage, whichever is greater.

However, the court must reduce these imputations if the obligee proves by a preponderance of the evidence that he or she does not have the ability to earn the imputed income through reasonable means. An obligee alleging a decreased earning capacity as the result of a disability must meet the definition of disability as determined by the Social Security Administration.

³⁰ For instance, the paragraph on tax treatment removes the clause regarding designation of alimony as nontaxable and substitutes a clause requiring that an alimony award be consistent with state and federal tax laws. Federal tax laws provide that, in general, alimony is deductible by the obligor and is income to the recipient, which is usually the preferable strategy to minimize tax burdens. However, federal tax law allows the court order awarding alimony to designate that a portion or all of the alimony is not deductible by the obligor and thus not income to the recipient. Thus, this change in language has no apparent legal consequence. See generally Publication 17 by the IRS, last accessed on February 11, 2013 at: <http://www.irs.gov/publications/p17/ch18.html>.

³¹ Section 61.08(9), F.S.

³² Section 61.08(2)(c), F.S., provides that the court may look to the "earning capacities" of both parties.

³³ *Konsoulas v. Konsoulas*, 904 So.2d 440, 444 (Fla. 4th DCA 2005).

³⁴ *Zarycki-Weig v. Weig*, 25 So.3d 573 (Fla. 4th DCA 2009).

Requirements of an Alimony Award

Findings of Fact

Case law requires that an award of alimony which is not based upon a settlement must include findings of fact relating the award to the factors in the statute which must be considered by the court.³⁵ "Failure to include findings of fact as required by section 61.08, F.S., is reversible error."³⁶ Further, "[t]he purpose of these findings is to 'assist the appellate court in providing a meaningful review.'³⁷ Statutory law also requires the court to make findings of fact to support its award of alimony.³⁸ The bill adds the following requirements regarding written findings of fact:

- The order must determine the duration of the alimony and the type awarded.
- If the court utilizes any factor other than the statutory factors for an award of alimony, the factor must be specifically identified, together with findings of fact justifying the application of the factor.
- The order must include written findings that the obligor party has the ability to pay and that the party seeking alimony has met the burden of proof.

Burden of Proof

The bill also incorporates current law into statute by providing that the burden of proof to show need is on the party seeking alimony.

Enforcement of an Alimony Award

Security for an Alimony Award

Under current law, the court may protect an alimony award by requiring the obligor to purchase life insurance or post a bond. The bill:

- Provides that any requirement to purchase life insurance must be for a decreasing term policy.
- Requires that the policy may only be awarded upon a showing of special circumstances, with the court making specific evidentiary findings on the cost and impact on the party paying for the policy.
- Provides that such security may be modified if the underlying alimony award is modified.

Modification of an Alimony Award

Modification - In General

Under current law, either party may request modification of an award of alimony, either agreed upon or based upon a court order. Current law requires the moving party to show a substantial change in circumstances of one of the parties to justify the modification. The court in an action for modification has discretion to make an equitable award based upon the current circumstances of the parties.³⁹ A modification order may be retroactive to the date of the filing of the action, or the filing of the petition for modification, as equity requires.⁴⁰ A marital settlement agreement becomes a contractual duty which,

³⁵ Section 61.08(1), F.S.

³⁶ *Farley v. Farley*, 800 So.2d 710, 711 (Fla. 2d DCA 2001).

³⁷ *Esaw v. Esaw*, 965 So.2d 1261 (Fla. 2d DCA 2007), citing *Milo v. Milo*, 718 So.2d 343, 344 (Fla. 2d DCA 1998).

³⁸ Section 61.08(1), F.S.

³⁹ Section 61.14(1), F.S.

⁴⁰ *Id.*

when endorsed by court order, may not be set aside or revisited, according to principles of collateral estoppel and res judicata.⁴¹ "Florida courts do not take lightly agreements made by husband and wife concerning spousal support. A marital settlement agreement as to alimony or property rights which is entered before the dissolution of marriage is binding upon the parties."⁴² The bill:

- Codifies the requirement that there be a substantial change in circumstances to justify a modification of an alimony award.
- Limits modification based on an increase in an obligor's income to provide that an increase is not considered permanent unless it has been maintained for 2 years and will be sustained in the future.
- Provides that an alimony order will be modified upward upon a showing by clear and convincing evidence of an increased ability to pay alimony.

Modification of Alimony Based on the Existence of a Supportive Relationship

Under current law, a court may reduce or terminate an award of alimony based on its specific written findings that since the award of alimony the spouse receiving alimony has entered into a supportive relationship with another person with whom he or she is living.⁴³ The bill:

- Provides that the court must reduce or terminate the alimony award because of the supportive relationship, except upon a showing by "clear and convincing evidence" that the need for alimony has not been reduced by the relationship.
- Removes the requirement that the obligee spouse is residing with the other person.
- Provides that there is a rebuttable presumption that any modification or termination based on a supportive relationship is retroactive to the date of filing the petition.
- Adds a provision for attorney's fees in the event of unreasonable requests for modification of an existing award.

Modification Based on Child Support Change

The bill adds a new provision that if child support and alimony were set at the same time, the alimony award may not be modified solely because of a later deduction or termination of child support payments, unless the alimony award as determined by the court at the time of dissolution is insufficient to meet the needs of the obligee. Future reduction in the amount of child support is not grounds for modification of the related alimony award.

Modification or Termination of Alimony Based on Retirement

Current law provides that retirement of the obligor is a substantial change in circumstances that may warrant the filing of a petition to modify alimony.⁴⁴ There are no statutory standards relating to modification or termination of alimony based on retirement, it is strictly up to the trial court's discretion. The bill provides for modification or termination of an alimony award based on retirement.

Age of Oblige

The bill provides that alimony terminates when the obligee reaches full retirement age under the Social Security law. However, this may be overcome by the obligee if he or she proves by clear and

⁴¹ See, eg., *Perry v. Perry*, 976 So.2d 1151 (Fla. 4th DCA 2008).

⁴² *Griffith v. Griffith*, 860 So.2d 1069, 1073 (Fla. 1st DCA 2003), citing *Dowie v. Dowie*, 668 So.2d 290, 292 (Fla. 1st DCA 1996).

⁴³ Section 61.14(1)(b)1., F.S.

⁴⁴ *Pimm v. Pimm*, 601 So.2d 534 (Fla. 1992).

convincing evidence that the need for alimony exists even after receipt of the Social Security benefits and that the obligor's ability to pay has not diminished.

Age or Retirement of the Obligor

Under current law, if an obligor is unemployed or underemployed, the court in an enforcement proceeding may order the obligor to seek employment or participate in training to seek employment, among other tasks, in order to avoid contempt of court.⁴⁵ Case law holds that retirement is a change in circumstances that may be considered together with other factors in a petition to modify an alimony award.⁴⁶ The bill:

- Provides that the point at which an obligor reaching a "reasonable retirement age for his or her profession" and who has actually retired, is a substantial change in circumstances as a matter of law.
- Provides that reaching the retirement age for full Social Security payments is a substantial change in circumstances.
- Provides that a court, when reviewing the retirement of an obligor who has not reached normal or Social Security age for retirement, must consider the age and health of the obligor, the type of work, and the normal retirement age for that type of work for early retirement.
- Provides that in anticipation of retirement, the obligor may file a petition for termination or modification of the alimony award effective upon the retirement date, or the date that the obligor reaches full retirement age for full Social Security benefits.
- Provides that the court must terminate or reduce the alimony award upon retirement, unless the obligee proves by clear and convincing evidence that the need continues and the ability to pay of the obligor remains the same.

Alimony Outside of a Dissolution of Marriage Action

Under current law, alimony and child support may be sought without filing a dissolution proceeding.⁴⁷ Although the term is not used in Florida law, this effectively creates what many other states refer to as a legal separation. The bill provides that alimony awarded apart from dissolution will be calculated in accordance with s. 61.08, F.S.

Other Changes to Dissolution of Marriage Laws

Alimony Pendente Lite and Suit Money

Alimony pendente lite is temporary alimony awarded during pendency of a dissolution of marriage action to furnish a dependent spouse with a means of living so he or she may not become a charge upon the state while the case is being adjudicated.⁴⁸ The court may also order that one party pay for the legal costs of the case, called "suit money."⁴⁹ Under current law, in every proceeding for dissolution, a party may claim alimony pendente lite and suit money.⁵⁰ The court may grant either or both, so long as the award is "reasonable."⁵¹ By simply referring to "reasonable," current law does not limit alimony pendent lite or provide any standard for an award.

⁴⁵ Section 61.14(5)(b), F.S.

⁴⁶ *Pimm v. Pimm*, 601 So.2d 534 (Fla. 1992).

⁴⁷ Section 61.09, F.S.

⁴⁸ *Grace v. Grace*, 162 So.2d 314 (Fla. 1964).

⁴⁹ Section 61.071, F.S.; Section 61.16, F.S.; *Scanlon v. Scanlon*, 154 So.2d 899 (Fla. 1963).

⁵⁰ Section 61.071, F.S.

⁵¹ *Id.*

The bill requires that alimony pendente lite be calculated pursuant to the same statutory standards as any other award of alimony.⁵²

Bifurcation of Dissolution of Marriage Case

Under current law, the court may, upon a showing that injustice would result from delay, enter a judgment of dissolution, reserving jurisdiction to determine other matters such as property division and child support.⁵³ This is called "bifurcation" of the action. A party might petition the court for bifurcation where the party would like to expedite the divorce so he or she can remarry. Current case law discourages the use of bifurcation. Specifically, in *Cloughton v. Cloughton*, the Florida Supreme Court explained:

[W]e believe trial judges should avoid this split procedure. The general law and our procedural rules at both the trial and appellate levels are designed for one final judgment and one appeal. Splitting the process can cause multiple legal and procedural problems which result in delay and additional expense to the litigants. This split procedure should be used only when it is clearly necessary for the best interests of the parties or their children. The convenience of one of the parties for an early remarriage does not justify its use.⁵⁴

The bill:

- Provides that a court may not bifurcate the divorce until more than 180 days have elapsed from filing of the action, unless written findings are made regarding exceptional circumstances. This appears to be a codification of current law applicable to the entire case.
- Provides that if more than 180 days have elapsed since the filing of the petition, the court may bifurcate the action, but only if appropriate temporary orders are made.
- Provides that if more than 365 days have elapsed since the filing of the petition, the court must grant dissolution of the marriage with a reservation of all other substantive issues. In such case the court must enter temporary terms as are necessary.

Effect of Bill on Existing Alimony Awards

Current awards of alimony, including permanent alimony, are subject to modification upon a showing of changed circumstances as set forth in the statutes.⁵⁵ The burden of proof is on the petitioner to show changes that would require modification.⁵⁶ The bill:

- Provides that the amended statute applies to all initial awards of and agreements to pay alimony, and modifications of alimony made prior to July 1, 2013, unless those agreements or awards are "expressly non-modifiable."
- Provides that the amendments to the statute may serve as a basis to modify awards entered into before July 1, 2013, to change the amount or duration.
- Provides that the amendments to the statute may also serve as a basis to modify an agreement for alimony if the agreement is 25 percent or more in duration or amount than an alimony award calculated under the amendments made by the bill.
- Changes the schedule by which obligors may file for modifications.
- An obligor whose initial agreement or modification was made before July 1, 2013 may file a modification action according to the following schedule:

⁵² See s. 61.08, F.S.

⁵³ Section 61.19, F.S.

⁵⁴ *Cloughton v. Cloughton*, 393 So.2d 1061, 1062 (Fla. 1981).

⁵⁵ Section 61.14, F.S.

⁵⁶ *Koski v. Koski*, 98 So.3d 93 (Fla. 4th DCA 2012).

- An obligor subject to an award of less than 8 years may file for modification on or after July 1, 2013.
- An obligor subject to an award of 8 to 15 years may file for modification on or after July 1, 2014.
- An obligor subject to an award of less than 8 years may file for modification after July 1, 2015.
- An obligor who has agreed to permanent alimony may file for modification on or after July 1, 2013.
- An obligor who has agreed to durational alimony of 10 years or more may file a modification action on or after July 1, 2014.
- An obligor who has agreed to durational alimony of 5 to 10 years may file a modification action on or after July 1, 2015.

B. SECTION DIRECTORY:

Section 1 amends s. 61.071, F.S., regarding alimony pendente lite.

Section 2 amends s. 61.08, F.S., relating to alimony.

Section 3 amends s. 61.09, F.S., regarding alimony and child support unconnected with dissolution.

Section 4 amends s. 61.14, F.S., regarding enforcement and modification of support, maintenance, or alimony agreements or orders.

Section 5 amends s. 61.19, F.S., regarding entry of judgment of dissolution of marriage; delay period; separate adjudication of issues.

Section 6 provides for applicability.

Section 7 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

This bill may increase the court workloads in dissolution of marriage cases. The bill requires written findings for many court determinations, and enables review of existing alimony awards in light of the new standards and other amendments to ch. 61, F.S. This bill may also decrease court workloads because it creates alimony standards that are more certain than those under current law, which may encourage settlement of cases that are currently litigated. There is no way to quantify the possible costs or savings resulting from passage of this bill.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 13, 2013, the Civil Justice Subcommittee adopted one amendment and reported the bill favorably as a committee substitute. The amendment provides changes to conform to SB 718. The amendment makes changes to the original bill as follows:

- The court is directed to prioritize an award of bridge-the-gap alimony, followed by rehabilitative alimony, over any other form of alimony.
- The court may determine that all or a portion of the alimony payment is a nontaxable, nondeductible amount.
- The court may consider as income any asset acquired outside the marriage and relied upon during the marriage.
- Durational alimony may not exceed 50 percent of the length of the marriage unless the party seeking alimony proves by clear and convincing evidence that exceptional circumstances justify the need for a longer award of alimony, which exceptional circumstances must be set out in writing by the court.
- The presumption in favor of awarding alimony for a long-term marriage is rebuttable.
- Alimony in a mid-term marriage is limited to 30 percent (formerly 50 percent) of the obligor's monthly net income.
- The sliding scale formula in the original bill that conformed alimony to the number of years of the marriage is removed.
- Alimony in a long-term marriage is limited to a maximum of 33 percent (formerly 50 percent) of the obligor's monthly net income.
- The court may order alimony exceeding the limits in the statutory system if there is a need, which determination must be set out in writing.
- The provisions related to proof of disability or reaching age 65 is removed from the original bill.

- A party seeking alimony must prove by clear and convincing evidence the other party has the ability to pay alimony.
- An obligee alleging a decreased earning capacity as the result of a disability must meet the definition of disability as determined by the Social Security Administration.
- The provision in the original bill that imputed income will be determined solely on the basis of federal tax returns is removed.
- The provision in the original bill that the court may only consider adultery if it caused significant depletion of marital assets or a reduction in marital income.
- The provision in the original bill that the determination of equitable distribution or child support may be used by the court to offset or otherwise consider an alimony obligation is removed.
- Alimony unconnected with dissolution under s. 61.09, F.S., is restored, and alimony awarded apart from dissolution will be calculated in accordance with s. 61.08, F.S.
- An alimony order will be modified upward upon a showing by clear and convincing evidence of an increased ability to pay alimony.
- The provision in the original bill that, "A court terminating an alimony award based on the existence of a supportive relationship may not reserve jurisdiction to later reinstate alimony," is removed.
- The provision in the original bill that, "If the obligor remarries or resides with another person, the income and assets of the obligor's spouse or the person with whom the obligor resides may not be considered in a modification action regarding such obligor, except for purposes of discovery to determine the obligor's income or assets within the pooled income and assets," is removed.
- The provision in the original bill providing that a monetary award pursuant to a contempt hearing may not exceed the alimony obligation of the obligor is removed.
- If the court orders alimony payable concurrent with a child support order, the alimony award may not be modified solely because of a later reduction or termination of child support, "unless the alimony award as determined by the court at the time of dissolution is insufficient to meet the needs of the obligee."
- The original bill's provision codifying current law that the court may offset or otherwise consider an alimony obligation in determining equitable distribution or child support is removed.
- The amendments to the statutes apply to initial awards of and agreements for alimony entered before July 1, 2013, unless those agreements are "expressly non-modifiable."
- The amendments to the statute may also serve as a basis to modify an agreement for alimony if the agreement is 25 percent or more in duration or amount than an alimony award calculated under the amendments made by the bill.
- The schedule by which obligors may file for modifications set out in the original bill are changed.
- An obligor whose initial agreement or modification was made before July 1, 2013 may file a modification action according to the following schedule:
 - If the obligation is for permanent alimony, the obligor may file a modification on or after July 1, 2013.
 - If the obligation is for durational alimony of 10 years or more, the obligor may file a modification action on or after July 1, 2014.
 - An obligor who has agreed to durational alimony of between 5 and 10 years may file a modification action on or after July 1, 2015.
 - An obligor who has agreed to durational alimony of less than 10 years may file a modification action on or after July 1, 2015.

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

1 A bill to be entitled
 2 An act relating to dissolution of marriage; amending
 3 s. 61.071, F.S.; requiring that alimony pendente lite
 4 be calculated in accordance with s. 61.08, F.S.;
 5 amending s. 61.08, F.S.; defining terms; revising
 6 factors to be considered for alimony awards; requiring
 7 a court to make written findings regarding the basis
 8 for awarding a combination of forms of alimony,
 9 including the type of alimony and length of time for
 10 which it is awarded; revising factors to be considered
 11 when deciding whether to award alimony; providing that
 12 an award of alimony automatically terminates without
 13 further action under certain circumstances; providing
 14 that the party seeking alimony has the burden of proof
 15 of demonstrating a need for alimony and that the other
 16 party has the ability to pay alimony; requiring the
 17 court to consider specified relevant factors when
 18 determining the proper type and amount of alimony;
 19 revising provisions relating to the protection of
 20 awards of alimony; revising provisions for an award of
 21 durational alimony; specifying criteria related to the
 22 rebuttable presumption to award or not to award
 23 alimony; deleting a provision authorizing permanent
 24 alimony; requiring written findings regarding the
 25 incomes and standard of living of the parties after
 26 dissolution of marriage; amending s. 61.09, F.S.;
 27 providing for the calculation of alimony; amending s.
 28 61.14, F.S.; authorizing a party to apply for an order

29 to terminate the amount of support, maintenance, or
 30 alimony; requiring that an alimony order be modified
 31 upward upon a showing by clear and convincing evidence
 32 of an increased ability to pay alimony by the other
 33 party; prohibiting an increase in an obligor's income
 34 from being considered permanent in nature until it has
 35 been maintained for a specified period without
 36 interruption; providing an exemption from the
 37 reduction or termination of an alimony award in
 38 certain circumstances; providing that there is a
 39 rebuttable presumption that any modification or
 40 termination of an alimony award is retroactive to the
 41 date of the filing of the petition; providing for an
 42 award of attorney fees and costs if it is determined
 43 that an obligee unnecessarily or unreasonably
 44 litigates a petition for modification or termination
 45 of an alimony award; revising provisions relating to
 46 the effect of a supportive relationship on an award of
 47 alimony; providing that income and assets of the
 48 obligor's spouse or the person with whom the obligor
 49 resides may not be considered in the redetermination
 50 in a modification action; prohibiting an alimony award
 51 from being modified providing that if the court orders
 52 alimony concurrent with a child support order, the
 53 alimony award may not be modified because of the later
 54 modification or termination of child support payments;
 55 providing that the attaining of retirement age is a
 56 substantial change in circumstances; requiring the

57 court to consider certain factors in determining
 58 whether the obligor's retirement is reasonable;
 59 requiring a court to terminate or reduce an alimony
 60 award based on certain factors; amending s. 61.19,
 61 F.S.; authorizing separate adjudication of issues in a
 62 dissolution of marriage case in certain circumstances;
 63 providing for retroactive application of the act to
 64 alimony awards entered before July 1, 2013; providing
 65 allowable dates for the modification of such awards;
 66 providing an effective date.

67

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

69

70 Section 1. Section 61.071, Florida Statutes, is amended to
 71 read:

72 61.071 Alimony pendente lite; suit money.—In every
 73 proceeding for dissolution of the marriage, a party may claim
 74 alimony and suit money in the petition or by motion, and if the
 75 petition is well founded, the court shall allow alimony
 76 calculated in accordance with s. 61.08 and a reasonable sum of
 77 suit money ~~therefor~~. If a party in any proceeding for
 78 dissolution of marriage claims alimony or suit money in his or
 79 her answer or by motion, and the answer or motion is well
 80 founded, the court shall allow alimony calculated in accordance
 81 with s. 61.08 and a reasonable sum of suit money ~~therefor~~.

82 Section 2. Section 61.08, Florida Statutes, is amended to
 83 read:

84 61.08 Alimony.—

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

86 (a) "Alimony" means a court-ordered payment of support by
 87 an obligor to an obligee after the dissolution of a marriage.

88 (b) "Long-term marriage" means a marriage having a
 89 duration of 20 years or more, as measured from the date of the
 90 marriage to the date of filing the petition for dissolution.

91 (c) "Mid-term marriage" means a marriage having a duration
 92 of more than 10 years but less than 20 years, as measured from
 93 the date of the marriage to the date of filing the petition for
 94 dissolution.

95 (d) "Net income" means net income as determined in
 96 accordance with s. 61.30.

97 (e) "Short-term marriage" means a marriage having a
 98 duration equal to or less than 10 years, as measured from the
 99 date of the marriage to the date of filing the petition for
 100 dissolution.

101 (2) (a) ~~(1)~~ In a proceeding for dissolution of marriage, the
 102 court may grant alimony to either party in the form of ~~7, which~~
 103 ~~alimony may be~~ bridge-the-gap, rehabilitative, or durational
 104 ~~alimony, or a permanent in nature or any~~ combination of these
 105 forms of alimony, but shall prioritize an award of bridge-the-
 106 gap alimony, followed by rehabilitative alimony, over any other
 107 form of alimony. In an any award of alimony, the court may order
 108 periodic payments, ~~or~~ payments in lump sum, or both. Alimony may
 109 not be awarded in any other action.

110 (b) The court shall make written findings regarding the
 111 basis for awarding a combination of forms of alimony, including
 112 the type of alimony and the length of time for which it is

113 awarded. The court may award only a combination of forms of
 114 alimony to provide greater economic assistance in order to allow
 115 the recipient to achieve rehabilitation.

116 (c) The court may consider the adultery of either party
 117 spouse and the circumstances thereof in determining the amount
 118 of alimony, if any, to be awarded.

119 (d) In all dissolution actions, the court shall include
 120 written findings of fact relative to the factors enumerated in
 121 subsection (3) ~~(2)~~ supporting an award or denial of alimony.

122 (e) An award of alimony granted under this section
 123 automatically terminates without further action of either party
 124 or the court upon the earlier of:

- 125 1. The durational limits specified in this section; or
- 126 2. The obligee's normal retirement age for social security
 127 retirement benefits.

128
 129 If the obligee proves by clear and convincing evidence that the
 130 need for alimony continues to exist and the court determines
 131 that the obligor continues to have the ability to pay, the court
 132 shall issue written findings justifying an extension of alimony
 133 consistent with the provisions of this section.

134 (f) The clerk of the court shall, upon request, indicate
 135 in writing that an alimony obligation has terminated in
 136 accordance with paragraph (e), unless there is a pending motion
 137 before the court disputing the fulfillment of the alimony
 138 obligation.

139 (3) ~~(2)~~ The party seeking alimony has the burden of proof
 140 of demonstrating a need for alimony in accordance with

141 subsection (8) and that the other party has the ability to pay
 142 alimony. In determining whether to award alimony ~~or maintenance~~,
 143 the court shall ~~first~~ make, in writing, a specific factual
 144 determination as to whether the other ~~either~~ party ~~has an actual~~
 145 ~~need for alimony or maintenance and whether either party has the~~
 146 ability to pay alimony ~~or maintenance~~. If the court finds that
 147 the a party seeking alimony has met its burden of proof in
 148 demonstrating a need for alimony ~~or maintenance~~ and that the
 149 other party has the ability to pay alimony ~~or maintenance~~, then
 150 in determining the proper type and amount of alimony ~~or~~
 151 ~~maintenance~~ under subsections (5)-(9) ~~(5)-(8)~~, the court shall
 152 consider all relevant factors, including, ~~but not limited to:~~
 153 ~~(a) The standard of living established during the~~
 154 ~~marriage.~~
 155 (a) ~~(b)~~ The duration of the marriage.
 156 (b) ~~(e)~~ The age and the physical and emotional condition of
 157 each party.
 158 (c) ~~(d)~~ The financial resources of each party, including
 159 the portion of nonmarital assets that were relied upon by the
 160 parties during the marriage and the marital assets and
 161 liabilities distributed to each.
 162 (d) ~~(e)~~ The earning capacities, educational levels,
 163 vocational skills, and employability of the parties and, when
 164 applicable, the time necessary for either party to acquire
 165 sufficient education or training to enable such party to find
 166 appropriate employment.
 167 (e) ~~(f)~~ The contribution of each party to the marriage,
 168 including, but not limited to, services rendered in homemaking,

169 child care, education, and career building of the other party.

170 (f)~~(g)~~ The responsibilities each party will have with
 171 regard to any minor children that the parties ~~they~~ have in
 172 common.

173 (g)~~(h)~~ The tax treatment and consequences to both parties
 174 of an any alimony award, which must be consistent with
 175 applicable state and federal tax laws and may include ~~including~~
 176 the designation of all or a portion of the payment as a
 177 nontaxable, nondeductible payment.

178 (h)~~(i)~~ All sources of income available to either party,
 179 including income available to either party through investments
 180 of any asset held by that party which was acquired during the
 181 marriage or acquired outside the marriage and relied upon during
 182 the marriage.

183 (i) The net income and standard of living available to
 184 each party after the application of the alimony award. There is
 185 a rebuttable presumption that both parties will have a lower
 186 standard of living after the dissolution of marriage than the
 187 standard of living they enjoyed during the marriage. This
 188 presumption may be overcome by a preponderance of the evidence.

189 (j) Any other factor necessary to do equity and justice
 190 between the parties, if that factor is specifically identified
 191 in the award with findings of fact justifying the application of
 192 the factor.

193 (4)~~(3)~~ To the extent necessary to protect an award of
 194 alimony, the court may order any party who is ordered to pay
 195 alimony to purchase or maintain a decreasing term life insurance
 196 policy or a bond, or to otherwise secure such alimony award with

197 any other assets ~~that which~~ may be suitable for that purpose, in
 198 an amount adequate to secure the alimony award. Any such
 199 security may be awarded only upon a showing of special
 200 circumstances. If the court finds special circumstances and
 201 awards such security, the court must make specific evidentiary
 202 findings regarding the availability, cost, and financial impact
 203 on the obligated party. Any security may be modifiable in the
 204 event that the underlying alimony award is modified and shall be
 205 reduced in an amount commensurate with any reduction in the
 206 alimony award.

207 ~~(4) For purposes of determining alimony, there is a~~
 208 ~~rebuttable presumption that a short-term marriage is a marriage~~
 209 ~~having a duration of less than 7 years, a moderate-term marriage~~
 210 ~~is a marriage having a duration of greater than 7 years but less~~
 211 ~~than 17 years, and long-term marriage is a marriage having a~~
 212 ~~duration of 17 years or greater. The length of a marriage is the~~
 213 ~~period of time from the date of marriage until the date of~~
 214 ~~filing of an action for dissolution of marriage.~~

215 (5) Bridge-the-gap alimony may be awarded to assist a
 216 party by providing support to allow the party to make a
 217 transition from being married to being single. Bridge-the-gap
 218 alimony is designed to assist a party with legitimate
 219 identifiable short-term needs, and the length of an award may
 220 not exceed 2 years. An award of bridge-the-gap alimony
 221 terminates upon the death of either party or upon the remarriage
 222 of the party receiving alimony. An award of bridge-the-gap
 223 alimony is ~~shall~~ not be modifiable in amount or duration.

224 (6) (a) Rehabilitative alimony may be awarded to assist a

225 party in establishing the capacity for self-support through
 226 either:

- 227 1. The redevelopment of previous skills or credentials; or
- 228 2. The acquisition of education, training, or work
 229 experience necessary to develop appropriate employment skills or
 230 credentials.

231 (b) In order to award rehabilitative alimony, there must
 232 be a specific and defined rehabilitative plan which shall be
 233 included as a part of any order awarding rehabilitative alimony.

234 (c) An award of rehabilitative alimony may be modified or
 235 terminated only during the rehabilitative period in accordance
 236 with §. 61.14 based upon a substantial change in circumstances,
 237 upon noncompliance with the rehabilitative plan, or upon
 238 completion of the rehabilitative plan.

239 (7) Durational alimony may be awarded ~~when permanent~~
 240 ~~periodic alimony is inappropriate. The purpose of durational~~
 241 ~~alimony is to provide a party with economic assistance for a set~~
 242 ~~period of time following a short-term, mid-term, or long-term~~
 243 ~~marriage of short or moderate duration or following a marriage~~
 244 ~~of long duration if there is no ongoing need for support on a~~
 245 ~~permanent basis. When awarding durational alimony, the court~~
 246 ~~must make written findings that an award of another form of~~
 247 ~~alimony or a combination of the other forms of alimony is not~~
 248 ~~appropriate.~~ An award of durational alimony terminates upon the
 249 death of either party or upon the remarriage of the party
 250 receiving alimony. The amount of an award of durational alimony
 251 shall ~~may~~ be modified or terminated based upon a substantial
 252 change in circumstances or upon the existence of a supportive

253 relationship in accordance with s. 61.14. ~~However,~~ The length of
 254 an award of durational alimony may not ~~be modified except under~~
 255 ~~exceptional circumstances and may not~~ exceed 50 percent of the
 256 length of the marriage, unless the party seeking alimony proves
 257 by clear and convincing evidence that exceptional circumstances
 258 justify the need for a longer award of alimony, which
 259 exceptional circumstances must be set out in writing by the
 260 court ~~the length of the marriage.~~

261 (8)(a) There is a rebuttable presumption against awarding
 262 alimony for a short-term marriage. A party seeking alimony may
 263 overcome this presumption by demonstrating by clear and
 264 convincing evidence a need for alimony. If the court finds that
 265 the party has met its burden in demonstrating a need for alimony
 266 and that the other party has the ability to pay alimony, the
 267 court shall determine a monthly award of alimony that may not
 268 exceed 20 percent of the obligor's monthly net income.

269 (b) There is no presumption in favor of either party to an
 270 award of alimony for a mid-term marriage. A party seeking such
 271 alimony must prove by a preponderance of the evidence a need for
 272 alimony. If the court finds that the party has met its burden in
 273 demonstrating a need for alimony and that the other party has
 274 the ability to pay alimony, the court shall determine a monthly
 275 alimony obligation that may not exceed 30 percent of the
 276 obligor's monthly net income.

277 (c) There is a rebuttable presumption in favor of awarding
 278 alimony for a long-term marriage. A party against whom alimony
 279 is sought may overcome this presumption by demonstrating by
 280 clear and convincing evidence that there is no need for alimony.

281 If the court finds that the party against whom alimony is sought
 282 fails to meet its burden to demonstrate that there is no need
 283 for alimony and that the party has the ability to pay alimony,
 284 the court shall determine a monthly alimony obligation that may
 285 not exceed 33 percent of the obligor's monthly net income.

286 (9) The court may order alimony exceeding the monthly net
 287 income limits established in subsection (8) if the court
 288 determines, in accordance with the factors in subsection (3),
 289 that there is a need for additional alimony, which determination
 290 must be set out in writing. ~~Permanent alimony may be awarded to~~
 291 ~~provide for the needs and necessities of life as they were~~
 292 ~~established during the marriage of the parties for a party who~~
 293 ~~lacks the financial ability to meet his or her needs and~~
 294 ~~necessities of life following a dissolution of marriage.~~
 295 ~~Permanent alimony may be awarded following a marriage of long~~
 296 ~~duration if such an award is appropriate upon consideration of~~
 297 ~~the factors set forth in subsection (2), following a marriage of~~
 298 ~~moderate duration if such an award is appropriate based upon~~
 299 ~~clear and convincing evidence after consideration of the factors~~
 300 ~~set forth in subsection (2), or following a marriage of short~~
 301 ~~duration if there are written findings of exceptional~~
 302 ~~circumstances. In awarding permanent alimony, the court shall~~
 303 ~~include a finding that no other form of alimony is fair and~~
 304 ~~reasonable under the circumstances of the parties. An award of~~
 305 ~~permanent alimony terminates upon the death of either party or~~
 306 ~~upon the remarriage of the party receiving alimony. An award may~~
 307 ~~be modified or terminated based upon a substantial change in~~
 308 ~~circumstances or upon the existence of a supportive relationship~~

309 in accordance with s. 61.14.

310 (10) A party against whom alimony is sought who has met
 311 the requirements for retirement in accordance with s. 61.14(12)
 312 before the filing of the petition for dissolution is not
 313 required to pay alimony unless the party seeking alimony proves
 314 by clear and convincing evidence the other party has the ability
 315 to pay alimony, in addition to all other requirements of this
 316 section.

317 (11)(9) Notwithstanding any other provision of law,
 318 alimony may not be awarded to a party who has a monthly net
 319 income that is equal to or more than the other party. Except in
 320 the case of a long-term marriage, in awarding alimony, the court
 321 shall impute income to the obligor and obligee as follows:

322 (a) In the case of the obligor, social security retirement
 323 benefits may not be imputed to the obligor, as demonstrated by a
 324 social security retirement benefits entitlement letter.

325 (b) In the case of the obligee, if the obligee:

326 1. Is unemployed at the time the petition is filed and has
 327 been unemployed for less than 1 year before the time of the
 328 filing of the petition, the obligee's monthly net income shall
 329 be imputed at 90 percent of the obligee's prior monthly net
 330 income.

331 2. Is unemployed at the time the petition is filed and has
 332 been unemployed for at least 1 year but less than 2 years before
 333 the time of the filing of the petition, the obligee's monthly
 334 net income shall be imputed at 80 percent of the obligee's prior
 335 monthly net income.

336 3. Is unemployed at the time the petition is filed and has

337 been unemployed for at least 2 years but less than 3 years
 338 before the time of the filing of the petition, the obligee's
 339 monthly net income shall be imputed at 70 percent of the
 340 obligee's prior monthly net income.

341 4. Is unemployed at the time the petition is filed and has
 342 been unemployed for at least 3 years but less than 4 years
 343 before the time of the filing of the petition, the obligee's
 344 monthly net income shall be imputed at 60 percent of the
 345 obligee's prior monthly net income.

346 5. Is unemployed at the time the petition is filed and has
 347 been unemployed for at least 4 years but less than 5 years
 348 before the time of the filing of the petition, the obligee's
 349 monthly net income shall be imputed at 50 percent of the
 350 obligee's prior monthly net income.

351 6. Is unemployed at the time the petition is filed and has
 352 been unemployed for at least 5 years before the time of the
 353 filing of the petition, the obligee's monthly net income shall
 354 be imputed at 40 percent of the obligee's prior monthly net
 355 income, or the monthly net income of a minimum wage earner at
 356 the time of the filing of the petition, whichever is greater.

357 7. Proves by a preponderance of the evidence that he or
 358 she does not have the ability to earn the imputed income through
 359 reasonable means, the court shall reduce the imputation of
 360 income specified in this paragraph. If the obligee alleges that
 361 a physical disability has impaired his or her ability to earn
 362 the imputed income, such disability must meet the definition of
 363 disability as determined by the Social Security Administration.
 364 ~~The award of alimony may not leave the payer with significantly~~

365 ~~less net income than the net income of the recipient unless~~
 366 ~~there are written findings of exceptional circumstances.~~

367 (12) (a) ~~(10) (a)~~ With respect to any order requiring the
 368 payment of alimony entered on or after January 1, 1985, unless
 369 ~~the provisions of paragraph (c) or paragraph (d) applies~~ apply,
 370 the court shall direct in the order that the payments of alimony
 371 be made through the appropriate depository as provided in s.
 372 61.181.

373 (b) With respect to any order requiring the payment of
 374 alimony entered before January 1, 1985, upon the subsequent
 375 appearance, on or after that date, of one or both parties before
 376 the court having jurisdiction for the purpose of modifying or
 377 enforcing the order or in any other proceeding related to the
 378 order, or upon the application of either party, unless ~~the~~
 379 ~~provisions of paragraph (c) or paragraph (d) applies~~ apply, the
 380 court shall modify the terms of the order as necessary to direct
 381 that payments of alimony be made through the appropriate
 382 depository as provided in s. 61.181.

383 (c) If there is no minor child, alimony payments need not
 384 be directed through the depository.

385 (d)1. If there is a minor child of the parties and both
 386 parties so request, the court may order that alimony payments
 387 need not be directed through the depository. In this case, the
 388 order of support must ~~shall~~ provide, or be deemed to provide,
 389 that either party may subsequently apply to the depository to
 390 require that payments be made through the depository. The court
 391 shall provide a copy of the order to the depository.

392 2. If ~~the provisions of subparagraph 1.~~ applies ~~apply~~,

393 either party may subsequently file with the depository an
 394 affidavit alleging default or arrearages in payment and stating
 395 that the party wishes to initiate participation in the
 396 depository program. The party shall provide copies of the
 397 affidavit to the court and the other party or parties. Fifteen
 398 days after receipt of the affidavit, the depository shall notify
 399 all parties that future payments shall be directed to the
 400 depository.

401 3. In IV-D cases, the IV-D agency has ~~shall have~~ the same
 402 rights as the obligee in requesting that payments be made
 403 through the depository.

404 Section 3. Section 61.09, Florida Statutes, is amended to
 405 read:

406 61.09 Alimony and child support unconnected with
 407 dissolution.—If a person having the ability to contribute to the
 408 maintenance of his or her spouse and support of his or her minor
 409 child fails to do so, the spouse who is not receiving support
 410 may apply to the court for alimony and for support for the child
 411 without seeking dissolution of marriage, and the court shall
 412 enter an order as it deems just and proper. Alimony awarded
 413 under this section shall be calculated in accordance with s.
 414 61.08.

415 Section 4. Subsection (1) of section 61.14, Florida
 416 Statutes, is amended, paragraph (c) is added to subsection (11)
 417 of that section, and subsection (12) is added to that section,
 418 to read:

419 61.14 Enforcement and modification of support,
 420 maintenance, or alimony agreements or orders.—

421 (1) (a) When the parties enter into an agreement for
 422 payments for, or instead of, support, maintenance, or alimony,
 423 whether in connection with a proceeding for dissolution or
 424 separate maintenance or with any voluntary property settlement,
 425 or when a party is required by court order to make any payments,
 426 and the circumstances or the financial ability of either party
 427 changes or the child who is a beneficiary of an agreement or
 428 court order as described herein reaches majority after the
 429 execution of the agreement or the rendition of the order, either
 430 party may apply to the circuit court of the circuit in which the
 431 parties, or either of them, resided at the date of the execution
 432 of the agreement or reside at the date of the application, or in
 433 which the agreement was executed or in which the order was
 434 rendered, for an order terminating, decreasing, or increasing
 435 the amount of support, maintenance, or alimony, and the court
 436 has jurisdiction to make orders as equity requires, with due
 437 regard to the changed circumstances or the financial ability of
 438 the parties or the child, decreasing, increasing, or confirming
 439 the amount of separate support, maintenance, or alimony provided
 440 for in the agreement or order. A finding that medical insurance
 441 is reasonably available or the child support guidelines schedule
 442 in s. 61.30 may constitute changed circumstances. Except as
 443 otherwise provided in s. 61.30(11)(c), the court may modify an
 444 order of support, maintenance, or alimony by terminating,
 445 increasing, or decreasing the support, maintenance, or alimony
 446 retroactively to the date of the filing of the action or
 447 supplemental action for modification as equity requires, giving
 448 due regard to the changed circumstances or the financial ability

449 of the parties or the child.

450 (b)1. If the court has determined that an existing alimony
 451 award as determined by the court at the time of dissolution is
 452 insufficient to meet the needs of the obligee, and that such
 453 need continues to exist, an alimony order shall be modified
 454 upward upon a showing by clear and convincing evidence of a
 455 permanently increased ability to pay alimony. Clear and
 456 convincing evidence must include, but need not be limited to,
 457 federal tax returns. An increase in an obligor's income may not
 458 be considered permanent in nature unless the increase has been
 459 maintained without interruption for at least 2 years, taking
 460 into account the obligor's ability to sustain his or her income.

461 2.1. Notwithstanding subparagraph 1., the court shall ~~may~~
 462 reduce or terminate an award of alimony upon specific written
 463 findings by the court that since the granting of a divorce and
 464 the award of alimony, a supportive relationship has existed
 465 between the obligee and another a person, except upon a showing
 466 by clear and convincing evidence by the obligee that his or her
 467 long-term need for alimony, taking into account the totality of
 468 the circumstances, has not been reduced by the supportive
 469 relationship with whom the obligee resides. On the issue of
 470 whether alimony should be reduced or terminated under this
 471 paragraph, the burden is on the obligor to prove by a
 472 preponderance of the evidence that a supportive relationship
 473 exists.

474 3.2. In determining whether an existing award of alimony
 475 should be reduced or terminated because of an alleged supportive
 476 relationship between an obligee and a person who is not related

477 | by consanguinity or affinity and with whom the obligee resides,
 478 | the court shall elicit the nature and extent of the relationship
 479 | in question. The court shall give consideration, without
 480 | limitation, to circumstances, including, but not limited to, the
 481 | following, in determining the relationship of an obligee to
 482 | another person:

483 | a. The extent to which the obligee and the other person
 484 | have held themselves out as a married couple by engaging in
 485 | conduct such as using the same last name, using a common mailing
 486 | address, referring to each other in terms such as "my husband"
 487 | or "my wife," or otherwise conducting themselves in a manner
 488 | that evidences a permanent supportive relationship.

489 | b. The period of time that the obligee has resided with
 490 | the other person in a permanent place of abode.

491 | c. The extent to which the obligee and the other person
 492 | have pooled their assets or income or otherwise exhibited
 493 | financial interdependence.

494 | d. The extent to which the obligee or the other person has
 495 | supported the other, in whole or in part.

496 | e. The extent to which the obligee or the other person has
 497 | performed valuable services for the other.

498 | f. The extent to which the obligee or the other person has
 499 | performed valuable services for the other's company or employer.

500 | g. Whether the obligee and the other person have worked
 501 | together to create or enhance anything of value.

502 | h. Whether the obligee and the other person have jointly
 503 | contributed to the purchase of any real or personal property.

504 | i. Evidence in support of a claim that the obligee and the

505 other person have an express agreement regarding property
 506 sharing or support.

507 j. Evidence in support of a claim that the obligee and the
 508 other person have an implied agreement regarding property
 509 sharing or support.

510 k. Whether the obligee and the other person have provided
 511 support to the children of one another, regardless of any legal
 512 duty to do so.

513 ~~4.3.~~ This paragraph does not abrogate the requirement that
 514 every marriage in this state be solemnized under a license, does
 515 not recognize a common law marriage as valid, and does not
 516 recognize a de facto marriage. This paragraph recognizes only
 517 that relationships do exist that provide economic support
 518 equivalent to a marriage and that alimony terminable on
 519 remarriage may be reduced or terminated upon the establishment
 520 of equivalent equitable circumstances as described in this
 521 paragraph. The existence of a conjugal relationship, though it
 522 may be relevant to the nature and extent of the relationship, is
 523 not necessary for the application of ~~the provisions of this~~
 524 paragraph.

525 5. There is a rebuttable presumption that any modification
 526 or termination of an alimony award is retroactive to the date of
 527 the filing of the petition. In an action under this section, if
 528 it is determined that the obligee unnecessarily or unreasonably
 529 litigated the underlying petition for modification or
 530 termination, the court may award the obligor his or her
 531 reasonable attorney fees and costs pursuant to s. 61.16 and
 532 applicable case law.

533 (c) For each support order reviewed by the department as
 534 required by s. 409.2564(11), if the amount of the child support
 535 award under the order differs by at least 10 percent but not
 536 less than \$25 from the amount that would be awarded under s.
 537 61.30, the department shall seek to have the order modified and
 538 any modification shall be made without a requirement for proof
 539 or showing of a change in circumstances.

540 (d) The department may ~~shall have authority to~~ adopt rules
 541 to administer ~~implement~~ this section.

542 (11)

543 (c) If the court orders alimony payable concurrent with a
 544 child support order, the alimony award may not be modified
 545 solely because of a later reduction or termination of child
 546 support payments, unless the court finds the obligor has the
 547 ability to pay the modified alimony award, the existing alimony
 548 award as determined by the court at the time of dissolution is
 549 insufficient to meet the needs of the obligee, and such need
 550 continues to exist.

551 (12)(a) The fact that an obligor has reached a reasonable
 552 retirement age for his or her profession, has retired, and has
 553 no intent to return to work, or has reached the normal
 554 retirement age for social security benefits, is considered a
 555 substantial change in circumstances as a matter of law. An
 556 obligor who has reached the normal retirement age for social
 557 security benefits shall be considered to have reached a
 558 reasonable retirement age. With regard to an obligor who has
 559 retired before the normal retirement age for social security
 560 benefits, the court shall consider the following in determining

561 whether the obligor's retirement age is reasonable:

562 1. Age.

563 2. Health.

564 3. Type of work.

565 4. Normal retirement age for that type of work.

566 (b) In anticipation of retirement, the obligor may file a
 567 petition for termination or modification of the alimony award
 568 effective upon the earlier of the retirement date or the date
 569 the obligor reaches the normal retirement age for social
 570 security benefits. The court shall terminate the award or reduce
 571 the award based on the circumstances of the parties after
 572 retirement and based on the factors in s. 61.08, unless the
 573 obligee proves by clear and convincing evidence that the need
 574 for alimony at the present level continues to exist and that the
 575 obligor's ability to pay has not been diminished.

576 Section 5. Section 61.19, Florida Statutes, is amended to
 577 read:

578 61.19 Entry of judgment of dissolution of marriage; ~~17~~ delay
 579 period; separate adjudication of issues.-

580 (1) A ~~Ne~~ final judgment of dissolution of marriage may not
 581 be entered until at least 20 days have elapsed from the date of
 582 filing the original petition for dissolution of marriage, ~~17~~ but
 583 the court, on a showing that injustice would result from this
 584 delay, may enter a final judgment of dissolution of marriage at
 585 an earlier date.

586 (2) (a) During the first 180 days after the date of service
 587 of the original petition for dissolution of marriage, the court
 588 may not grant a final dissolution of marriage with a reservation

589 of jurisdiction to subsequently determine all other substantive
 590 issues unless the court makes written findings that there are
 591 exceptional circumstances that make the use of this process
 592 clearly necessary to protect the parties or their children and
 593 that granting a final dissolution will not cause irreparable
 594 harm to either party or the children. Before granting a final
 595 dissolution of marriage with a reservation of jurisdiction to
 596 subsequently determine all other substantive issues, the court
 597 shall enter temporary orders necessary to protect the parties
 598 and their children, which orders remain effective until all
 599 other issues can be adjudicated by the court. The desire of one
 600 party to remarry does not justify the use of this process.

601 (b) If more than 180 days have elapsed after the date of
 602 service of the original petition for dissolution of marriage,
 603 the court may grant a final dissolution of marriage with a
 604 reservation of jurisdiction to subsequently determine all other
 605 substantive issues only if the court enters temporary orders
 606 necessary to protect the parties and their children, which
 607 orders remain effective until such time as all other issues can
 608 be adjudicated by the court, and makes a written finding that no
 609 irreparable harm will result from granting a final dissolution.

610 (c) If more than 365 days have elapsed after the date of
 611 service of the original petition for dissolution of marriage,
 612 absent a showing by either party that irreparable harm will
 613 result from granting a final dissolution, the court shall, upon
 614 request of either party, immediately grant a final dissolution
 615 of marriage with a reservation of jurisdiction to subsequently
 616 determine all other substantive issues. Before granting a final

617 dissolution of marriage with a reservation of jurisdiction to
 618 subsequently determine all other substantive issues, the court
 619 shall enter temporary orders necessary to protect the parties
 620 and their children, which orders remain effective until all
 621 other issues can be adjudicated by the court.

622 (d) The temporary orders necessary to protect the parties
 623 and their children entered before granting a dissolution of
 624 marriage without an adjudication of all substantive issues may
 625 include, but are not limited to, temporary orders that:

- 626 1. Restrict the sale or disposition of property.
- 627 2. Protect and preserve the marital assets.
- 628 3. Establish temporary support.
- 629 4. Provide for maintenance of health insurance.
- 630 5. Provide for maintenance of life insurance.

631 (e) The court is not required to enter temporary orders to
 632 protect the parties and their children if the court enters a
 633 final judgment of dissolution of marriage that adjudicates
 634 substantially all of the substantive issues between the parties
 635 but reserves jurisdiction to address ancillary issues such as
 636 the entry of a qualified domestic relations order or the
 637 adjudication of attorney fees and costs.

638 Section 6. (1) The amendments to chapter 61, Florida
 639 Statutes, made by this act apply to all initial awards of, and
 640 agreements for, alimony entered before July 1, 2013, and to all
 641 modifications of such awards or agreements made before July 1,
 642 2013, with the exception of agreements that are expressly
 643 nonmodifiable. Such amendments may serve as a basis to modify
 644 the amount or duration of an award existing before July 1, 2013.

645 Such amendments may also serve as a basis to modify an agreement
 646 for alimony if the agreement is 25 percent or more in duration
 647 or amount than an alimony award calculated under the amendments
 648 made by this act.

649 (2) An obligor whose initial award or modification of such
 650 award was made before July 1, 2013, may file a modification
 651 action according to the following schedule:

652 (a) An obligor who is subject to an alimony award of 15
 653 years or more may file a modification action on or after July 1,
 654 2013.

655 (b) An obligor who is subject to an alimony award of 8
 656 years of more, but less than 15 years, may file a modification
 657 action on or after July 1, 2014.

658 (c) An obligor who is subject to an alimony award of less
 659 than 8 years may file a modification action on or after July 1,
 660 2015.

661 (3) An obligor whose initial agreement or modification of
 662 such agreement was made before July 1, 2013, may file a
 663 modification action according to the following schedule:

664 (a) An obligor who has agreed to permanent alimony may
 665 file a modification action on or after July 1, 2013.

666 (b) An obligor who has agreed to durational alimony of 10
 667 years or more may file a modification action on or after July 1,
 668 2014.

669 (c) An obligor who has agreed to durational alimony of
 670 more than 5 years but less than 10 years may file a modification
 671 action on or after July 1, 2015.

672 Section 7. This act shall take effect July 1, 2013.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee
2 Representative Workman offered the following:

3

4 **Amendment**

5 Remove lines 108-109 and insert:
6 periodic payments, ~~or~~ payments in lump sum, or both.

7



Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Workman offered the following:

Amendment

Remove lines 126-138 and insert:

6 2. The obligor's normal retirement age for social security
 7 retirement benefits. If the obligee proves by clear and
 8 convincing evidence that the need for alimony continues to exist
 9 and the court determines that the obligor continues to have the
 10 ability to pay, the court shall issue written findings
 11 justifying an extension of alimony consistent with the
 12 provisions of this section.



Amendment No. 3

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee

2 Representative Workman offered the following:

3

4 **Amendment**

5 Remove lines 257-259 and insert:

6 by clear and convincing evidence the circumstances justifying
7 the need for a longer award of alimony, which circumstances must
8 be set out in writing by the
9



Amendment No. 4

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee

2 Representative Workman offered the following:

3

4 **Amendment**

5 Remove line 646 and insert:

6 for alimony, unless the agreement is expressly nonmodifiable, if
7 the agreement is 25 percent or more in duration

8



Amendment No. 5

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Workman offered the following:

Amendment (with title amendment)

Between lines 414 and 415, insert:

Section 4. Paragraph (c) of subsection (2) of section 61.13, Florida Statutes, is amended to read:

61.13 Support of children; parenting and time-sharing; powers of court.-

(2)

(c) The court shall determine all matters relating to parenting and time-sharing of each minor child of the parties in accordance with the best interests of the child and in accordance with the Uniform Child Custody Jurisdiction and Enforcement Act, except that modification of a parenting plan and time-sharing schedule requires a showing of a substantial, material, and unanticipated change of circumstances.

1. It is the public policy of this state that each minor child has frequent and continuing contact with both parents after the parents separate or the marriage of the parties is



Amendment No. 5

21 dissolved and to encourage parents to share the rights and
22 responsibilities, and joys, of childrearing. There is no
23 presumption for or against the father or mother of the child or
24 for or against any specific time-sharing schedule when creating
25 or modifying the parenting plan of the child. Equal time-sharing
26 with a minor child by both parents is presumed to be in the best
27 interests of the child unless the court finds that:

28 a. The safety, well-being, and physical, mental, and
29 emotional health of the child would be endangered by equal time
30 sharing, that visitation would be presumed detrimental
31 consistent with s. 39.0139(3), or that supervised visitation is
32 appropriate, if any is appropriate;

33 b. Clear and convincing evidence of extenuating
34 circumstances justify a departure from equal time-sharing and
35 the court makes written findings justifying the departure from
36 equal time-sharing;

37 c. A parent is incarcerated;

38 d. The distance between parental residences makes equal
39 time-sharing impracticable;

40 e. A parent does not request at least 50 percent time
41 sharing; or

42 f. There is evidence of domestic violence.

43 2. The court shall order that the parental responsibility
44 for a minor child be shared by both parents unless the court
45 finds that shared parental responsibility would be detrimental
46 to the child. Evidence that a parent has been convicted of a
47 misdemeanor of the first degree or higher involving domestic
48 violence, as defined in s. 741.28 and chapter 775, or meets the



Amendment No. 5

49 criteria of s. 39.806(1)(d), creates a rebuttable presumption of
50 detriment to the child. If the presumption is not rebutted after
51 the convicted parent is advised by the court that the
52 presumption exists, shared parental responsibility, including
53 time-sharing with the child, and decisions made regarding the
54 child, may not be granted to the convicted parent. However, the
55 convicted parent is not relieved of any obligation to provide
56 financial support. If the court determines that shared parental
57 responsibility would be detrimental to the child, it may order
58 sole parental responsibility and make such arrangements for
59 time-sharing as specified in the parenting plan as will best
60 protect the child or abused spouse from further harm. Whether or
61 not there is a conviction of any offense of domestic violence or
62 child abuse or the existence of an injunction for protection
63 against domestic violence, the court shall consider evidence of
64 domestic violence or child abuse as evidence of detriment to the
65 child.

66 a. In ordering shared parental responsibility, the court
67 may consider the expressed desires of the parents and may grant
68 to one party the ultimate responsibility over specific aspects
69 of the child's welfare or may divide those responsibilities
70 between the parties based on the best interests of the child.
71 Areas of responsibility may include education, health care, and
72 any other responsibilities that the court finds unique to a
73 particular family.

74 b. The court shall order sole parental responsibility for
75 a minor child to one parent, with or without time-sharing with



Amendment No. 5

76 the other parent if it is in the best interests of the minor
77 child.

78 3. Access to records and information pertaining to a minor
79 child, including, but not limited to, medical, dental, and
80 school records, may not be denied to either parent. Full rights
81 under this subparagraph apply to either parent unless a court
82 order specifically revokes these rights, including any
83 restrictions on these rights as provided in a domestic violence
84 injunction. A parent having rights under this subparagraph has
85 the same rights upon request as to form, substance, and manner
86 of access as are available to the other parent of a child,
87 including, without limitation, the right to in-person
88 communication with medical, dental, and education providers.

89 Section 5. The amendment by this act to s. 61.13, Florida
90 Statutes, which creates a presumption in favor of equal time
91 sharing applies prospectively to initial final custody orders
92 made on or after July 1, 2013. The amendments do not constitute
93 a substantial change in circumstances which warrant the
94 modification of a final custody order entered before July 1,
95 2013.

96
97
98 -----
99 **T I T L E A M E N D M E N T**

100 Remove lines 2-27 and insert:

101 An act relating to family law; amending s. 61.071, F.S.;
102 requiring that alimony pendente lite be calculated in accordance
103 with s. 61.08, F.S.; amending s. 61.08, F.S.; defining terms;



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104 revising factors to be considered for alimony awards; requiring
105 a court to make written findings regarding the basis for
106 awarding a combination of forms of alimony, including the type
107 of alimony and length of time for which it is awarded; revising
108 factors to be considered when deciding whether to award alimony;
109 providing that an award of alimony automatically terminates
110 without further action under certain circumstances; providing
111 that the party seeking alimony has the burden of proof of
112 demonstrating a need for alimony and that the other party has
113 the ability to pay alimony; requiring the court to consider
114 specified relevant factors when determining the proper type and
115 amount of alimony; revising provisions relating to the
116 protection of awards of alimony; revising provisions for an
117 award of durational alimony; specifying criteria related to the
118 rebuttable presumption to award or not to award alimony;
119 deleting a provision authorizing permanent alimony; requiring
120 written findings regarding the incomes and standard of living of
121 the parties after dissolution of marriage; amending s. 61.09,
122 F.S.; providing for the calculation of alimony; amending s.
123 61.15, F.S.; establishing a presumption that it is in the best
124 interests of the child for the court to order equal time-sharing
125 for each minor child; providing exceptions; providing for
126 prospective application of the presumption in favor of equal
127 time-sharing; amending s.

128

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 905 Family Law
SPONSOR(S): Steube
TIED BILLS: None IDEN./SIM. BILLS: SB 1210

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	13 Y, 0 N	Ward	Bond
2) Judiciary Committee		Ward <i>mw</i>	Havlicak <i>RN</i>

SUMMARY ANALYSIS

The bill amends child support guidelines to add that the court may take into account the parenting plan recognized by the parties, even if it is not reduced to writing, in awarding child support outside the statutory schedule.

The bill amends the Florida Evidence Code to allow the court to take judicial notice of court records in determining family law cases where there is imminent threat of harm, notice is impractical, and a later hearing is scheduled to challenge the matter.

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

The bill provides an effective date of July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Child Support Guidelines

Current Situation

Child support guidelines allow the court to adjust a statutory award based upon additional factors.¹ Included in those factors which might adjust an award up or down, is the "parenting plan."² Currently, deviations from the promulgated schedule of child support must be supported by the factors listed in the statute.

The parenting plan is defined by statute and must be reduced to a document endorsed by the court.³ The courts do not recognize a course of dealing by the parties as a formal parenting plan when considering the amount of child support.⁴

Recently, a number of child support cases have turned upon the lack of a written parenting plan as defined in the statute. The courts have determined that they may not take into account the amount of time that the child spends routinely with one parent or the other unless there is a written parenting plan. Courts have not considered less formal arrangements in deviating from the child support guidelines.⁵

Effect of Proposed Changes

The bill amends s. 61.30, F.S., to expand the court's ability to recognize a course of dealing by the parents in awarding child support outside the schedule. The bill includes in the deviation factors of s. 61.30(11)(a), F.S., "a court ordered timesharing schedule or a timesharing schedule exercised by agreement of the parties." This will allow the court to take into consideration the actions of the parties, even if not reduced to writing. The expanded factor which the court may consider appears both places where the term "parenting plan" appears in s. 61.30, F.S.

Judicial Notice

Current Situation

Judicial notice takes the place of proof, and makes evidence unnecessary.⁶ The Florida Evidence Code⁷ addresses matters that may be, or must be noticed by the judge, so that evidence of the fact is not required.⁸

Generally, notice is afforded to both parties before the court will take judicial notice of a fact.⁹ The court must give each party an opportunity to challenge the information offered for judicial notice prior to taking it into evidence.¹⁰

¹ Section 61.30, F.S.

² Section 61.30(11)10, F.S.

³ Section 61.046, F.S.

⁴ See cases cited below.

⁵ See *State Dept. of Revenue v. Kline*, 95 So.3d 440 (Fla. 1st DCA 2012); *Department of Revenue v. Dorkins*, 91 So.3d 278 (Fla. 1st DCA 2012); *Department of Revenue v. Aluscar*, 82 So.3d 1165 (Fla. 1st DCA 2012).

⁶ *Amos v. Moseley*, 77 So. 619 (Fla. 1917).

⁷ Chapter 90, F.S.

⁸ Sections 90.201 - 90.207, F.S.

⁹ Sections 90.203, 90.204, F.S.

¹⁰ *Id.*

In a recent case,¹¹ a judge issued a domestic violence injunction¹² based upon testimony she observed in a separate matter between the parties. The ruling was entered without giving advance notice of the matter, pursuant to the current terms of the statute. Because the court essentially took judicial notice of the other hearing in ruling on the injunction, the injunction was reversed.¹³

Effect of Proposed Changes

The bill amends s. 90.204, F.S., to provide that in a family law case the court may take judicial notice of "records of any court of this state or of any court of record of the United States or of any state, territory, or jurisdiction of the United States,"¹⁴ when:

- Imminent danger has been alleged.
- It is impractical to give notice.
- A later opportunity is provided to challenge the matter noticed.

The judge must, within 2 business days, file a notice in the pending case of the matter noticed.

The bill will allow the court to take judicial notice without further proof of court records at the state and national level in determining family law cases. Family law cases are defined by the Florida Rules of Family Law Procedure.

B. SECTION DIRECTORY:

Section 1 amends s. 61.30, F.S., regarding child support guidelines; retroactive child support.

Section 2 amends s. 90.204, F.S., regarding determination of propriety of judicial notice and nature of matter noticed.

Section 3 provides an effective date of July 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

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

¹¹ *Coe v. Coe*, 39 So.3d 542 (Fla. 2d DCA 2010).

¹² Domestic violence injunctions are governed by s. 741.30, F.S.

¹³ *Coe* at 543.

¹⁴ Section 90.202(6), F.S.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
 2 An act relating to family law; amending s. 61.30,
 3 F.S.; providing for consideration of time-sharing
 4 schedules as a factor in the adjustment of awards of
 5 child support; amending s. 90.204, F.S.; authorizing
 6 judges in family law cases to take judicial notice of
 7 certain court records without prior notice to the
 8 parties when imminent danger to persons or property
 9 has been alleged and it is impractical to give prior
 10 notice; providing for a deferred opportunity to
 11 present evidence; requiring a notice of such judicial
 12 notice having been taken to be filed within a
 13 specified period; providing that court rules define
 14 the term "family law cases"; providing an effective
 15 date.

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

18
 19 Section 1. Paragraphs (a) and (b) of subsection (11) of
 20 section 61.30, Florida Statutes, are amended to read:

21 61.30 Child support guidelines; retroactive child
 22 support.—

23 (11)(a) The court may adjust the total minimum child
 24 support award, or either or both parents' share of the total
 25 minimum child support award, based upon the following deviation
 26 factors:

27 1. Extraordinary medical, psychological, educational, or
 28 dental expenses.

29 2. Independent income of the child, not to include moneys
 30 received by a child from supplemental security income.

31 3. The payment of support for a parent which has been
 32 regularly paid and for which there is a demonstrated need.

33 4. Seasonal variations in one or both parents' incomes or
 34 expenses.

35 5. The age of the child, taking into account the greater
 36 needs of older children.

37 6. Special needs, such as costs that may be associated
 38 with the disability of a child, that have traditionally been met
 39 within the family budget even though fulfilling those needs will
 40 cause the support to exceed the presumptive amount established
 41 by the guidelines.

42 7. Total available assets of the obligee, obligor, and the
 43 child.

44 8. The impact of the Internal Revenue Service Child &
 45 Dependent Care Tax Credit, Earned Income Tax Credit, and
 46 dependency exemption and waiver of that exemption. The court may
 47 order a parent to execute a waiver of the Internal Revenue
 48 Service dependency exemption if the paying parent is current in
 49 support payments.

50 9. An application of the child support guidelines schedule
 51 that requires a person to pay another person more than 55
 52 percent of his or her gross income for a child support
 53 obligation for current support resulting from a single support
 54 order.

55 10. The particular parenting plan, court-ordered
 56 timesharing schedule, or particular time-sharing schedule

57 exercised by agreement of the parties, such as where the child
 58 spends a significant amount of time, but less than 20 percent of
 59 the overnights, with one parent, thereby reducing the financial
 60 expenditures incurred by the other parent; or the refusal of a
 61 parent to become involved in the activities of the child.

62 11. Any other adjustment that is needed to achieve an
 63 equitable result which may include, but not be limited to, a
 64 reasonable and necessary existing expense or debt. Such expense
 65 or debt may include, but is not limited to, a reasonable and
 66 necessary expense or debt that the parties jointly incurred
 67 during the marriage.

68 (b) Whenever a particular parenting plan, court-ordered
 69 timesharing schedule, or particular time-sharing schedule
 70 exercised by agreement of the parties provides that each child
 71 spend a substantial amount of time with each parent, the court
 72 shall adjust any award of child support, as follows:

73 1. In accordance with subsections (9) and (10), calculate
 74 the amount of support obligation apportioned to each parent
 75 without including day care and health insurance costs in the
 76 calculation and multiply the amount by 1.5.

77 2. Calculate the percentage of overnight stays the child
 78 spends with each parent.

79 3. Multiply each parent's support obligation as calculated
 80 in subparagraph 1. by the percentage of the other parent's
 81 overnight stays with the child as calculated in subparagraph 2.

82 4. The difference between the amounts calculated in
 83 subparagraph 3. shall be the monetary transfer necessary between
 84 the parents for the care of the child, subject to an adjustment

85 for day care and health insurance expenses.

86 5. Pursuant to subsections (7) and (8), calculate the net
87 amounts owed by each parent for the expenses incurred for day
88 care and health insurance coverage for the child.

89 6. Adjust the support obligation owed by each parent
90 pursuant to subparagraph 4. by crediting or debiting the amount
91 calculated in subparagraph 5. This amount represents the child
92 support which must be exchanged between the parents.

93 7. The court may deviate from the child support amount
94 calculated pursuant to subparagraph 6. based upon the deviation
95 factors in paragraph (a), as well as the obligee parent's low
96 income and ability to maintain the basic necessities of the home
97 for the child, the likelihood that either parent will actually
98 exercise the time-sharing schedule set forth in the parenting
99 plan granted by the court, and whether all of the children are
100 exercising the same time-sharing schedule.

101 8. For purposes of adjusting any award of child support
102 under this paragraph, "substantial amount of time" means that a
103 parent exercises time-sharing at least 20 percent of the
104 overnights of the year.

105 Section 2. Subsection (4) is added to section 90.204,
106 Florida Statutes, to read:

107 90.204 Determination of propriety of judicial notice and
108 nature of matter noticed.—

109 (4) In family law cases, the court may take judicial
110 notice of any matter described in s. 90.202(6) when imminent
111 danger to persons or property has been alleged and it is
112 impractical to give prior notice to the parties of the intent to

113 take judicial notice. Opportunity to present evidence relevant
 114 to the propriety of taking judicial notice under subsection (1)
 115 may be deferred until after judicial action has been taken. If
 116 judicial notice is taken under this subsection, the judge shall,
 117 within 2 business days, file a notice in the pending case of the
 118 matters judicially noticed. For purposes of this subsection, the
 119 term "family law cases" has the same meaning as provided in
 120 court rules.

121 Section 3. This act shall take effect July 1, 2013.

122



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Judiciary Committee
 2 Representative Steube offered the following:

Amendment (with title amendment)

Remove lines 109-120 and insert:

6 (4) In family cases, the court may take judicial notice of
 7 any matter described in s. 90.202(6) when imminent danger to
 8 persons or property has been alleged and it is impractical to
 9 give prior notice to the parties of the intent to take judicial
 10 notice. Opportunity to present evidence relevant to the
 11 propriety of taking judicial notice under subsection (1) may be
 12 deferred until after judicial action has been taken. If judicial
 13 notice is taken under this subsection, the court shall, within 2
 14 business days, file a notice in the pending case of the matters
 15 judicially noticed. For purposes of this subsection, the term
 16 "family cases" has the same meaning as provided in the Rules of
 17 Judicial Administration.

18 Section 3. Subsections (4), (5), (6), (7), (8), (9), (10),
 19 (11), (12), and (13) of section 409.2564, Florida Statutes, are
 20 renumbered as subsections (5), (6), (7), (8), (9), (10), (11),



Amendment No. 1

21 (12), (13), and (14), respectively, and subsection (4) is added
22 to that section, to read:

23 409.2564 Actions for support.—

24 (4) (a) The Department of Revenue shall not undertake an
25 action to determine paternity, to establish an obligation of
26 support, or to enforce or modify an obligation of support
27 unless:

28 1. Public assistance is being received by one of the
29 parents, both parents or the dependent child or children; or

30 2. The custodial parent or the parent entitled to receive
31 support has requested the Department of Revenue's assistance in
32 enforcing or modifying a child support order and has filed a
33 signed application for services under Title IV-D of the Social
34 Security Act.

35 (b) Notwithstanding the provisions of subparagraph (a)2.,
36 a parent is not eligible to receive assistance from the
37 Department of Revenue to determine paternity, to establish an
38 obligation of support, or to enforce or modify an obligation of
39 support, whichever is applicable, if that parent is being
40 represented by a private attorney in proceedings to determine
41 paternity, to establish an obligation of support, or to enforce
42 or modify an obligation of support, whichever is applicable,
43 unless public assistance is being received by that parent, the
44 other parent, or the dependent child or children.

45 Section 4. Paragraph (b) of subsection (5) of section
46 741.30, Florida Statutes, is amended to read:

47 741.30 Domestic violence; injunction; powers and duties of
48 court and clerk; petition; notice and hearing; temporary



Amendment No. 1

49 injunction; issuance of injunction; statewide verification
50 system; enforcement; public records exemption.—

51 (5)

52 (b) Except as provided in s. 90.204, in a hearing ex parte
53 for the purpose of obtaining such ex parte temporary injunction,
54 no evidence other than verified pleadings or affidavits shall be
55 used as evidence, unless the respondent appears at the hearing
56 or has received reasonable notice of the hearing. A denial of a
57 petition for an ex parte injunction shall be by written order
58 noting the legal grounds for denial. When the only ground for
59 denial is no appearance of an immediate and present danger of
60 domestic violence, the court shall set a full hearing on the
61 petition for injunction with notice at the earliest possible
62 time. Nothing herein affects a petitioner's right to promptly
63 amend any petition, or otherwise be heard in person on any
64 petition consistent with the Florida Rules of Civil Procedure.

65 Section 5. Paragraph (b) of subsection (6) of section
66 784.046, Florida Statutes, is amended to read:

67 784.046 Action by victim of repeat violence, sexual
68 violence, or dating violence for protective injunction; dating
69 violence investigations, notice to victims, and reporting;
70 pretrial release violations; public records exemption.—

71 (6)

72 (b) Except as provided in s. 90.204, in a hearing ex parte
73 for the purpose of obtaining such temporary injunction, no
74 evidence other than the verified pleading or affidavit shall be
75 used as evidence, unless the respondent appears at the hearing
76 or has received reasonable notice of the hearing.



Amendment No. 1

77 Section 6. Paragraph (b) of subsection (5) of section
78 784.0485, Florida Statutes, is amended to read:

79 784.0485 Stalking; injunction; powers and duties of court
80 and clerk; petition; notice and hearing; temporary injunction;
81 issuance of injunction; statewide verification system;
82 enforcement.-

83 (5)

84 (b) Except as provided in s. 90.204, in a hearing ex parte
85 for the purpose of obtaining such ex parte temporary injunction,
86 evidence other than verified pleadings or affidavits may not be
87 used as evidence, unless the respondent appears at the hearing
88 or has received reasonable notice of the hearing. A denial of a
89 petition for an ex parte injunction shall be by written order
90 noting the legal grounds for denial. If the only ground for
91 denial is no appearance of an immediate and present danger of
92 stalking, the court shall set a full hearing on the petition for
93 injunction with notice at the earliest possible time. This
94 paragraph does not affect a petitioner's right to promptly amend
95 any petition, or otherwise be heard in person on any petition
96 consistent with the Florida Rules of Civil Procedure.

97

98

99

100 -----

101

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

102

Remove lines 6-14 and insert:

103

the court in family cases to take judicial notice of certain

104

court records without prior notice to the parties when imminent



Amendment No. 1

105 | danger to persons or property has been alleged and it is
106 | impractical to give prior notice; providing for a deferred
107 | opportunity to present evidence; requiring a notice of such
108 | judicial notice having been taken to be filed within a specified
109 | period; providing that term "family cases" has the same meaning
110 | as provided in the Rules of Judicial Administration; amending s.
111 | 409.2564, F.S.; providing that the Department of Revenue may not
112 | undertake certain actions regarding paternity or support except
113 | in certain circumstances; providing that a parent is not
114 | eligible to receive assistance from the department for certain
115 | actions if the parent is being represented by a private attorney
116 | unless public assistance is being received; amending ss. 741.30,
117 | 784.046, and 784.0485, F.S.; creating an exception to a
118 | prohibition against using evidence other than the verified
119 | pleading or affidavit in an ex parte hearing for a temporary
120 | injunction for protection against domestic violence, repeat
121 | violence, sexual violence, dating violence, or stalking;
122 | providing an effective
123 |

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7035 (PCB CRJS 13-03) Pretrial Detention
SPONSOR(S): Criminal Justice Subcommittee; Eagle and others
TIED BILLS: None **IDEN./SIM. BILLS:** CS/SB 1372

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Criminal Justice Subcommittee	10 Y, 1 N	Jones	Cunningham
1) Judiciary Committee		Jones <i>LD</i>	Havlicak <i>RH</i>

SUMMARY ANALYSIS

Article I, Section 14, of the Florida Constitution provides, with some exceptions, that every person charged with a crime or violation of a municipal or county ordinance is entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

Section 907.041(4)(c), F.S., lists numerous instances in which a court is authorized to detain a defendant prior to trial. For example, a court may detain a defendant if the court finds that the defendant:

- Is charged with specified offenses;
- Has threatened a potential witness with the intent to obstruct justice; or
- The defendant poses the threat of harm to the community.

The bill amends s. 907.041(4)(c), F.S., to add the following additional instances in which a court may detain a defendant prior to trial:

- When the court finds that the defendant has been sentenced, pursuant to ss. 775.082(9) or 775.084, F.S., as a prison releasee reoffender, a habitual violent felony offender, a three-time violent felony offender, or a violent career criminal; or
- When the state attorney files a notice seeking that the defendant be sentenced pursuant to ss. 775.082(9) or 775.084, F.S., as a prison releasee reoffender, a habitual violent felony offender, a three-time violent felony offender, or a violent career criminal.

In addition to the above, a judge must find that there is a substantial probability that the defendant committed the offense charged and there are no conditions of release that can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial to detain a defendant.

The bill could have a negative jail bed impact on local governments because it provides another instance in which a judge can order pretrial detention.

The bill is effective on July 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Pretrial Detention

Article I, Section 14, of the Florida Constitution, provides:

Unless charged with a capital offense or an offense punishable by life imprisonment and the proof of guilt is evident or the presumption is great, every person charged with a crime or violation of municipal or county ordinance shall be entitled to pretrial release on reasonable conditions. If no conditions of release can reasonably protect the community from risk of physical harm to persons, assure the presence of the accused at trial, or assure the integrity of the judicial process, the accused may be detained.

Section 907.041(4)(c), F.S., authorizes a trial court to detain a defendant prior to trial if it finds there is a substantial probability based on the defendant's past and present patterns of behavior, the criteria in s. 903.046, F.S.,¹ and any other relevant facts, that any of the following circumstances exists:

- The defendant has previously violated conditions of release and that no further conditions of release are reasonably likely to assure the defendant's appearance at subsequent proceedings;
- The defendant, with the intent to obstruct the judicial process, has threatened, intimidated, or injured any victim, potential witness, juror, or judicial officer, or has attempted or conspired to do so, and that no condition of release will reasonably prevent the obstruction of the judicial process;
- The defendant is charged with trafficking in controlled substances as defined by s. 893.135, F.S., that there is a substantial probability that the defendant has committed the offense, and that no conditions of release will reasonably assure the defendant's appearance at subsequent criminal proceedings;
- The defendant is charged with DUI manslaughter, as defined by s. 316.193, F.S., and that there is a substantial probability that the defendant committed the crime and that the defendant poses a threat of harm to the community;²
- The defendant poses the threat of harm to the community;³
- The defendant was on probation, parole, or other release pending completion of sentence or on pretrial release for a dangerous crime at the time the current offense was committed; or
- The defendant has violated one or more conditions of pretrial release or bond for the offense currently before the court and the violation, in the discretion of the court, supports a finding that no conditions of release can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial.

¹ Section 903.046, F.S., contains criteria that a court must consider when determining whether to release a defendant on bail or other conditions, and what that bail or those conditions may be.

² Conditions that would support a finding by the court that the defendant poses a threat of harm to the community include, but are not limited to, any of the following:

- The defendant has previously been convicted of any crime under s. 316.193, F.S., or of any crime in any other state or territory of the United States that is substantially similar to any crime under s. 316.193, F.S.;
- The defendant was driving with a suspended driver's license when the charged crime was committed; or
- The defendant has previously been found guilty of, or has had adjudication of guilt withheld for, driving while the defendant's driver's license was suspended or revoked in violation of s. 322.34, F.S. Section 907.041(4)(c)4., F.S.

³ The court may so conclude if it finds that the defendant is presently charged with a dangerous crime, that there is a substantial probability that the defendant committed such crime, that the factual circumstances of the crime indicate a disregard for the safety of the community, and that there are no conditions of release reasonably sufficient to protect the community from the risk of physical harm to persons. Section 907.041(4)(c)5., F.S.

Sentencing Enhancements for Certain Offenders

Section 775.082., F.S., requires a court to impose a mandatory minimum prison sentence if a defendant is classified as a “prison releasee reoffender” and s. 775.084, F.S., allows a court to impose an extended sentence for a defendant who is classified as a “habitual violent felony offender”, a “three-time violent felony offender”, or a “violent career criminal.”

Prison Releasee Reoffender

Section 775.082(9), F.S., requires a defendant to be sentenced to specified mandatory minimum terms of imprisonment if classified as a “prison releasee reoffender.” To be classified as a “prison releasee reoffender” the defendant must have committed or attempted to commit one of the following crimes within three years of being released from prison:

- Treason; murder; manslaughter; sexual battery; carjacking; home-invasion robbery; robbery; arson; kidnapping; aggravated assault with a deadly weapon; aggravated battery; aggravated stalking; aircraft piracy; unlawful throwing, placing, or discharging of a destructive device or bomb; any felony that involves the use or threat of physical force or violence against an individual; armed burglary; burglary of a dwelling or burglary of an occupied structure; or any felony violation of s. 790.07, s. 800.04, s. 827.03, s. 827.071, or s. 847.0135(5), F.S.⁴

The term also includes any defendant who committed or attempted to commit any offense listed above while the defendant was serving a prison sentence or on escape status from a correctional facility.⁵

Habitual Violent Felony Offender

To be classified as a “habitual violent felony offender,” the court must find that the defendant has previously been convicted of a felony or an attempt or conspiracy to commit a felony and one or more of such convictions was for:

- Arson; sexual battery; robbery; kidnapping; aggravated child abuse; aggravated abuse of an elderly person or disabled adult; aggravated assault with a deadly weapon; murder; manslaughter; aggravated manslaughter of an elderly person or disabled adult; aggravated manslaughter of a child; unlawful throwing, placing, or discharging of a destructive device or bomb; armed burglary; aggravated battery; or aggravated stalking.⁶

The court must also find that the felony for which the defendant is to be sentenced was committed:

- While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or
- Within 5 years of the date of the conviction of the last prior enumerated felony, or within 5 years of the defendant’s release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.⁷

Three-Time Violent Felony Offender

To be classified as a “three-time violent felony offender” the court must find the defendant has been convicted as an adult two or more times of a felony and two or more of such convictions were for the felonies listed above (including home invasion/robbery, carjacking, or a similar offense in another jurisdiction) or an attempt to commit any such felony offense.⁸ The court must also find that the felony which the defendant is being sentenced for was committed:

- While the defendant was serving a prison sentence or other sentence imposed as a result of a prior conviction for any enumerated offense; or

⁴ Section 775.082(9), F.S.

⁵ *Id.*

⁶ Section 775.084(1)(b), F.S.

⁷ *Id.*

⁸ Section 775.084(1)(c), F.S.

- Within 5 years after the date of the conviction of the last prior enumerated offense, or within 5 years after the defendant's release from a prison sentence, probation, community control, or other sentence imposed as a result of a prior conviction for any enumerated offense, whichever is later.⁹

Violent Career Criminal

To be classified as a "violent career criminal" the court must find that the defendant has been convicted three or more times of:

- Any forcible felony, as described in s. 776.08, F.S.; aggravated stalking, as described in s. 784.048(3) and (4), F.S.; aggravated child abuse, as described in s. 827.03(2), F.S.; aggravated abuse of an elderly person or disabled adult, as described in s. 825.102(2), F.S.; lewd or lascivious battery, lewd or lascivious molestation, lewd or lascivious conduct, or lewd or lascivious exhibition, as described in ss. 800.04 or 847.0135(5), F.S.; escape, as described in s. 944.40, F.S.; or a felony violation of ch. 790, F.S., involving the use or possession of a firearm.

In addition, the court must find that the defendant has been incarcerated in a state or federal prison, and that the felony which the defendant is being sentenced for was committed on or after October 1, 1995, and:

- While the defendant was serving a prison sentence or other sentence, or court-ordered or lawfully imposed supervision that is imposed as a result of a prior conviction for an enumerated felony; or
- Within 5 years after the conviction of the last prior enumerated felony, or within 5 years after the defendant's release from a prison sentence, probation, community control, control release, conditional release, parole, or court-ordered or lawfully imposed supervision or other sentence that is imposed as a result of a prior conviction for an enumerated felony, whichever is later.¹⁰

Effect of the Bill

The bill amends s. 907.041(4)(c), F.S., to add the following additional instances in which a court may detain a defendant prior to trial:

- When the court finds that the defendant has been sentenced, pursuant to ss. 775.082(9) or 775.084, F.S., as a prison releasee reoffender, a habitual violent felony offender, a three-time violent felony offender, or a violent career criminal; or
- When the state attorney files a notice seeking that the defendant be sentenced pursuant to ss. 775.082(9) or 775.084, F.S., as a prison releasee reoffender, a habitual violent felony offender, a three-time violent felony offender, or a violent career criminal.

In addition to the above, a judge must find that there is a substantial probability that the defendant committed the offense charged and there are no conditions of release that can reasonably protect the community from risk of physical harm to persons or assure the presence of the accused at trial to detain a defendant.

B. SECTION DIRECTORY:

Section 1. Amends s. 907.041, F.S., relating to pretrial detention and release.

Section 2. Provides an effective date of July 1, 2013.

⁹ *Id.*

¹⁰ Section 775.084(1)(d), F.S.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

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

2. Expenditures:

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

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

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

2. Expenditures:

The bill could have a negative jail bed impact because it provides another circumstance in which a judge can order pretrial detention.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18, of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

N/A

1 A bill to be entitled
 2 An act relating to pretrial detention; amending s.
 3 907.041, F.S.; providing additional factors a court
 4 may consider when ordering pretrial detention;
 5 providing an effective date.

6
 7 Be It Enacted by the Legislature of the State of Florida:

8
 9 Section 1. Paragraph (c) of subsection (4) of section
 10 907.041, Florida Statutes, is amended to read:

11 907.041 Pretrial detention and release.—

12 (4) PRETRIAL DETENTION.—

13 (c) The court may order pretrial detention if it finds a
 14 substantial probability, based on a defendant's past and present
 15 patterns of behavior, the criteria in s. 903.046, and any other
 16 relevant facts, that any of the following circumstances exists:

17 1. The defendant has previously violated conditions of
 18 release and that no further conditions of release are reasonably
 19 likely to assure the defendant's appearance at subsequent
 20 proceedings;

21 2. The defendant, with the intent to obstruct the judicial
 22 process, has threatened, intimidated, or injured any victim,
 23 potential witness, juror, or judicial officer, or has attempted
 24 or conspired to do so, and that no condition of release will
 25 reasonably prevent the obstruction of the judicial process;

26 3. The defendant is charged with trafficking in controlled
 27 substances as defined by s. 893.135, that there is a substantial
 28 probability that the defendant has committed the offense, and

29 that no conditions of release will reasonably assure the
 30 defendant's appearance at subsequent criminal proceedings; ~~or~~

31 4. The defendant is charged with DUI manslaughter, as
 32 defined by s. 316.193, and that there is a substantial
 33 probability that the defendant committed the crime and that the
 34 defendant poses a threat of harm to the community; conditions
 35 that would support a finding by the court pursuant to this
 36 subparagraph that the defendant poses a threat of harm to the
 37 community include, but are not limited to, any of the following:

38 a. The defendant has previously been convicted of any
 39 crime under s. 316.193, or of any crime in any other state or
 40 territory of the United States that is substantially similar to
 41 any crime under s. 316.193;

42 b. The defendant was driving with a suspended driver's
 43 license when the charged crime was committed; or

44 c. The defendant has previously been found guilty of, or
 45 has had adjudication of guilt withheld for, driving while the
 46 defendant's driver's license was suspended or revoked in
 47 violation of s. 322.34;

48 5. The defendant poses the threat of harm to the
 49 community. The court may so conclude, if it finds that the
 50 defendant is presently charged with a dangerous crime, that
 51 there is a substantial probability that the defendant committed
 52 such crime, that the factual circumstances of the crime indicate
 53 a disregard for the safety of the community, and that there are
 54 no conditions of release reasonably sufficient to protect the
 55 community from the risk of physical harm to persons;-

56 6. The defendant was on probation, parole, or other

57 | release pending completion of sentence or on pretrial release
 58 | for a dangerous crime at the time the current offense was
 59 | committed; ~~or~~

60 | 7. The defendant has violated one or more conditions of
 61 | pretrial release or bond for the offense currently before the
 62 | court and the violation, in the discretion of the court,
 63 | supports a finding that no conditions of release can reasonably
 64 | protect the community from risk of physical harm to persons or
 65 | assure the presence of the accused at trial; or

66 | 8.a. The defendant has ever been sentenced pursuant to s.
 67 | 775.082(9) or s. 775.084 as a prison releasee reoffender,
 68 | habitual violent felony offender, three-time violent felony
 69 | offender, or violent career criminal, or the state attorney
 70 | files a notice seeking that the defendant be sentenced pursuant
 71 | to s. 775.082(9) or s. 775.084, as a prison releasee reoffender,
 72 | habitual violent felony offender, three-time violent felony
 73 | offender, or violent career criminal;

74 | b. There is a substantial probability that the defendant
 75 | committed the offense; and

76 | c. There are no conditions of release that can reasonably
 77 | protect the community from risk of physical harm or ensure the
 78 | presence of the accused at trial.

79 | Section 2. This act shall take effect July 1, 2013.

Inmate Reentry

Identification Cards:

- Department of Corrections will issue an Inmate Discharge Certificate to all inmates upon release from prison. This document will contain certain identifying information including their photograph, that will assist the inmate in acquiring:
 - State of Florida Identification Card—the document may be recognized by the Department of Highway Safety and Motor Vehicles as evidence of proof of identity of the offender.
 - Certified Copy of Birth Certificate—the document may be recognized by the Department of Health, Office of Vital Statistics for offender to receive copy of birth certificate.
 - Fees waived for an inmate upon release applying for copy of birth certificate and a state ID card.

Faith- and Character-based Institutions:

- Encourages the Department of Corrections to expand the use of Faith- and Character-based institutions for both male and female inmates.
- Requires peer-to-peer programming within Faith- and Character-based Facilities (rather than just authorizes) such as Alcoholics Anonymous.

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1 A bill to be entitled
 2 An act relating to inmate reentry; amending s.
 3 322.051, F.S.; specifying that an inmate discharge
 4 certificate may be evidence of applicant's identity in
 5 applying for an identification card; amending s.
 6 382.025, F.S.; providing certified copy of birth
 7 certificate to be provided to registrant upon
 8 producing an inmate discharge certificate; amending s.
 9 382.0255, F.S.; requiring a waiver of fees for an
 10 inmate requesting a certified copy of birth
 11 certificate; amending ss. 944.605 and 944.704, F.S.;
 12 requiring the department to issue inmates an inmate
 13 discharge certificate upon release; providing
 14 identifying information on certificate; amending ss.
 15 944.803, F.S.; authorizing the department to operate
 16 male and female faith- and character-based
 17 institutions; providing an effective date.

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

20
 21 Section 1. Subsections (1) and (9) of section 322.051,
 22 Florida Statutes, are amended to read:

23 322.051 Identification cards.—

24 (1) Any person who is 5 years of age or older, or any
 25 person who has a disability, regardless of age, who applies for
 26 a disabled parking permit under s. 320.0848, may be issued an
 27 identification card by the department upon completion of an
 28 application and payment of an application fee.

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29 (a) The application must include the following information
 30 regarding the applicant:
 31 1. Full name (first, middle or maiden, and last), gender,
 32 proof of social security card number satisfactory to the
 33 department, county of residence, mailing address, proof of
 34 residential address satisfactory to the department, country of
 35 birth, and a brief description.
 36 2. Proof of birth date satisfactory to the department.
 37 3. Proof of identity satisfactory to the department. Such
 38 proof must include one of the following documents issued to the
 39 applicant:
 40 a. A driver license record or identification card record
 41 from another jurisdiction that required the applicant to submit
 42 a document for identification which is substantially similar to
 43 a document required under sub-subparagraph b., sub-subparagraph
 44 c., sub-subparagraph d., sub-subparagraph e., sub-subparagraph
 45 f., sub-subparagraph g., or sub-subparagraph h.;
 46 b. A certified copy of a United States birth certificate;
 47 c. A valid, unexpired United States passport;
 48 d. A naturalization certificate issued by the United
 49 States Department of Homeland Security;
 50 e. A valid, unexpired alien registration receipt card
 51 (green card);
 52 f. A Consular Report of Birth Abroad provided by the
 53 United States Department of State;
 54 g. An unexpired employment authorization card issued by
 55 the United States Department of Homeland Security; ~~or~~
 56 h. Proof of nonimmigrant classification provided by the

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57 United States Department of Homeland Security, for an original
 58 identification card. In order to prove nonimmigrant
 59 classification, an applicant must provide at least one of the
 60 following documents. In addition, the department may require
 61 applicants to produce United States Department of Homeland
 62 Security documents for the sole purpose of establishing the
 63 maintenance of, or efforts to maintain, continuous lawful
 64 presence:

65 (I) A notice of hearing from an immigration court
 66 scheduling a hearing on any proceeding.

67 (II) A notice from the Board of Immigration Appeals
 68 acknowledging pendency of an appeal.

69 (III) A notice of the approval of an application for
 70 adjustment of status issued by the United States Bureau of
 71 Citizenship and Immigration Services.

72 (IV) An official documentation confirming the filing of a
 73 petition for asylum or refugee status or any other relief issued
 74 by the United States Bureau of Citizenship and Immigration
 75 Services.

76 (V) A notice of action transferring any pending matter
 77 from another jurisdiction to Florida, issued by the United
 78 States Bureau of Citizenship and Immigration Services.

79 (VI) An order of an immigration judge or immigration
 80 officer granting relief that authorizes the alien to live and
 81 work in the United States, including, but not limited to,
 82 asylum.

83 (VII) Evidence that an application is pending for
 84 adjustment of status to that of an alien lawfully admitted for

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85 permanent residence in the United States or conditional
 86 permanent resident status in the United States, if a visa number
 87 is available having a current priority date for processing by
 88 the United States Bureau of Citizenship and Immigration
 89 Services.

90 (VIII) On or after January 1, 2010, an unexpired foreign
 91 passport with an unexpired United States Visa affixed,
 92 accompanied by an approved I-94, documenting the most recent
 93 admittance into the United States; or-

94 i. An inmate discharge certificate issued to the inmate by
 95 the Department of Corrections or its designee pursuant to s.
 96 944.605(4) that contains the inmate's name, social security
 97 number, date of birth, race, sex, height, weight, hair and eye
 98 color, and the inmate's photograph and signature.

99
 100 An identification card issued based on documents required in
 101 sub-subparagraphs g. through i. ~~sub-subparagraph g. or sub-~~
 102 ~~subparagraph h.~~ is valid for a period not to exceed the
 103 expiration date of the document presented or 1 year, whichever
 104 occurs first.

105 (b) An application for an identification card must be
 106 signed and verified by the applicant in a format designated by
 107 the department before a person authorized to administer oaths
 108 and payment of the applicable fee pursuant to s. 322.21.

109 (c) Each such applicant may include fingerprints and any
 110 other unique biometric means of identity.

111 (9) Notwithstanding any other provision of this section or
 112 s. 322.21 to the contrary, the department shall issue or renew a

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113 card at no charge to a person who presents evidence satisfactory
114 to the department that he or she is homeless as defined in s.
115 414.0252(7) or presents an inmate discharge certificate issued
116 to the person by the Department of Corrections within the past
117 12 months.

118 Section 2. Paragraph (a) of subsection (1) of section
119 382.025, Florida Statutes, is amended to read:

120 382.025 Certified copies of vital records;
121 confidentiality; research.—

122 (1) BIRTH RECORDS.—Except for birth records over 100 years
123 old which are not under seal pursuant to court order, all birth
124 records of this state shall be confidential and are exempt from
125 the provisions of s. 119.07(1).

126 (a) Certified copies of the original birth certificate or
127 a new or amended certificate, or affidavits thereof, are
128 confidential and exempt from the provisions of s. 119.07(1) and,
129 upon receipt of a request and payment of the fee prescribed in
130 s. 382.0255, shall be issued only as authorized by the
131 department and in the form prescribed by the department, and
132 only:

133 1. To the registrant, if the registrant is of legal age,
134 is a certified homeless youth, or is a minor who has had the
135 disabilities of nonage removed under s. 743.01 or s. 743.015;

136 2. To the registrant's parent or guardian or other legal
137 representative;

138 3. Upon receipt of the registrant's death certificate, to
139 the registrant's spouse or to the registrant's child,
140 grandchild, or sibling, if of legal age, or to the legal

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141 representative of any of such persons;
 142 4. To any person if the birth record is over 100 years old
 143 and not under seal pursuant to court order;
 144 5. To a law enforcement agency for official purposes;
 145 6. To any agency of the state or the United States for
 146 official purposes upon approval of the department; ~~or~~
 147 7. Upon order of any court of competent jurisdiction;-
 148 8. To the registrant, if the registrant has produced an
 149 inmate discharge certificate issued to the inmate by the
 150 Department of Corrections or its designee pursuant to s.
 151 944.605(4) that contains the inmate's name, social security
 152 number, date of birth, race, sex, height, weight, hair and eye
 153 color, and the inmate's photograph and signature.
 154 Section 3. Subsection (3) of section 382.0255, Florida
 155 Statutes, is amended to read:
 156 382.0255 Fees.—
 157 (3) Fees shall be established by rule. However, until
 158 rules are adopted, the fees assessed pursuant to this section
 159 shall be the minimum fees cited. The fees established by rule
 160 must be sufficient to meet the cost of providing the service.
 161 All fees shall be paid by the person requesting the record, are
 162 due and payable at the time services are requested, and are
 163 nonrefundable, except that, when a search is conducted and no
 164 vital record is found, any fees paid for additional certified
 165 copies shall be refunded. The department may waive all or part
 166 of the fees required under this section for any government
 167 entity. The department shall waive fees associated with a
 168 request for a certified copy of an original birth certificate

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169 from a registrant that presents an inmate discharge certificate
 170 issued to the registrant by the Department of Corrections within
 171 the past 12 months.

172 Section 4. Section 944.605, Florida Statutes, is amended
 173 to read:

174 944.605 Inmate release; notification.—

175 (1) Within 6 months before the release of an inmate from
 176 the custody of the Department of Corrections or a private
 177 correctional facility by expiration of sentence under s.
 178 944.275, any release program provided by law, or parole under
 179 chapter 947, or as soon as possible if the offender is released
 180 earlier than anticipated, notification of such anticipated
 181 release date shall be made known by the Department of
 182 Corrections to the chief judge of the circuit in which the
 183 offender was sentenced, the appropriate state attorney, the
 184 original arresting law enforcement agency, the Department of Law
 185 Enforcement, and the sheriff as chief law enforcement officer of
 186 the county in which the inmate plans to reside. In addition,
 187 unless otherwise requested by the victim, the victim's parent or
 188 guardian if the victim is a minor, the lawful representative of
 189 the victim or of the victim's parent or guardian if the victim
 190 is a minor, the victim's next of kin in the case of a homicide,
 191 the state attorney or the Department of Corrections, whichever
 192 is appropriate, shall notify such person within 6 months before
 193 the inmate's release, or as soon as possible if the offender is
 194 released earlier than anticipated, when the name and address of
 195 such victim, or the name and address of the parent, guardian,
 196 next of kin, or lawful representative of the victim has been

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197 furnished to the agency. The state attorney shall provide the
 198 latest address documented for the victim, or for the victim's
 199 parent, guardian, next of kin, or lawful representative, as
 200 applicable, to the sheriff with the other documents required by
 201 law for the delivery of inmates to those agencies for service of
 202 sentence. Upon request, within 30 days after an inmate is
 203 approved for community work release, the state attorney, the
 204 victim, the victim's parent or guardian if the victim is a
 205 minor, the victim's next of kin in the case of a homicide, or
 206 the lawful representative of the victim or of the victim's
 207 parent or guardian if the victim is a minor shall be notified
 208 that the inmate has been approved for community work release.
 209 This section does not imply any repeal or modification of any
 210 provision of law relating to notification of victims.

211 (2) Within 60 days before the anticipated release of an
 212 inmate under subsection (1), a digitized photograph of the
 213 inmate to be released shall be made by the Department of
 214 Corrections or a private correctional facility, whichever has
 215 custody of the inmate. If a private correctional facility makes
 216 the digitized photograph, this photograph shall be provided to
 217 the Department of Corrections. Additionally, the digitized
 218 photograph, whether made by the Department of Corrections or a
 219 private correctional facility, shall be placed in the inmate's
 220 file. The Department of Corrections shall make the digitized
 221 photograph available electronically to the Department of Law
 222 Enforcement as soon as the digitized photograph is in the
 223 department's database and must be in a format that is compatible
 224 with the requirements of the Florida Crime Information Center.

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225 The department shall provide a copy of the digitized photograph
 226 to a local law enforcement agency upon request.

227 (3)(a) If an inmate is to be released after having served
 228 one or more sentences for a conviction of robbery, sexual
 229 battery, home-invasion robbery, or carjacking, or an inmate to
 230 be released has a prior conviction for robbery, sexual battery,
 231 home-invasion robbery, or carjacking or similar offense, in this
 232 state or in another jurisdiction, and if such prior conviction
 233 information is contained in department records, the department
 234 shall release to the sheriff of the county in which the inmate
 235 plans to reside, and, if the inmate plans to reside within a
 236 municipality, to the chief of police of that municipality, the
 237 following information, which must include, but need not be
 238 limited to:

- 239 1. Name.
- 240 2. Social security number.
- 241 3. Date of birth.
- 242 4. Race.
- 243 5. Sex.
- 244 6. Height.
- 245 7. Weight.
- 246 8. Hair and eye color.
- 247 9. Tattoos or other identifying marks.
- 248 10. Fingerprints.
- 249 11. A digitized photograph as provided in subsection (2).

250
 251 The department shall release the information specified in this
 252 paragraph within 6 months prior to the discharge of the inmate

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253 from the custody of the department.

254 (b) The department may electronically submit the
 255 information listed in paragraph (a) to the sheriff of the county
 256 in which the inmate plans to reside, and, if the inmate plans to
 257 reside within a municipality, to the chief of police of that
 258 municipality.

259 (4) At the time of an inmate's release, or at any time up
 260 to three months prior to the inmate's anticipated release, the
 261 department shall issue the inmate an inmate discharge
 262 certificate. The inmate discharge certificate must include, but
 263 need not be limited to, the following identifying information:

- 264 1. Name.
- 265 2. Social security number.
- 266 3. Date of birth.
- 267 4. Race.
- 268 5. Sex.
- 269 6. Height.
- 270 7. Weight.
- 271 8. Hair and eye color.
- 272 9. Signature.
- 273 10. A photograph or digitized photograph as provided in
 274 subsection (2).

275 (5)(4) An inmate who refuses to submit to the taking of
 276 a photograph or a digitized photograph commits a felony of the
 277 third degree, punishable as provided in s. 775.082, s. 775.083,
 278 or s. 775.084.

279 (6)(5) The department shall, at least 10 days before the
 280 anticipated date of release on work release of an inmate, notify

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281 in writing the county law enforcement agency in the county in
 282 this state in which the inmate is scheduled to be released.

283 (7)~~(6)~~ Upon request of the victim, the personal
 284 representative of the victim, or the state attorney, the
 285 department shall notify the requesting person when an inmate has
 286 been approved for community work release within 30 days after
 287 the date of approval.

288 Section 5. Subsection 7 is added to section 944.704,
 289 Florida Statutes, to read:

290 944.704 Staff who provide transition assistance; duties.—
 291 The department shall provide a transition assistance specialist
 292 at each of the major institutions whose duties include, but are
 293 not limited to:

294 (7) Providing a photo identification card or an inmate
 295 discharge certificate to all inmates prior to their release.
 296 Such identification card or certificate must include the
 297 following identifying information:

- 298 1. Name.
- 299 2. Social security number.
- 300 3. Date of birth.
- 301 4. Race.
- 302 5. Sex.
- 303 6. Height.
- 304 7. Weight.
- 305 8. Hair and eye color.
- 306 9. Signature.
- 307 10. A photograph or digitized photograph as provided in s.
 308 944.605(2).

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The transition assistance specialist may not be a correctional officer or correctional probation officer as defined in s. 943.10.

Section 6. Section 944.803, Florida Statutes, is amended to read:

944.803 Faith- and character-based programs.—

(1) The Legislature finds and declares that faith- and character-based programs offered in state and private correctional institutions and facilities have the potential to facilitate inmate institutional adjustment, help inmates assume personal responsibility, and reduce recidivism.

(2) It is the intent of the Legislature that the department expand the faith- and character-based initiative through the use of faith- and character-based institutions. The department is encouraged to phase out the faith-based and self improvement dormitory programs and move toward the goal of only implementing faith- and character-based institutions. The department is also encouraged to dedicate and maintain faith- and character-based institutions that serve both male institutions and female institutions.

(3) It is the intent of the Legislature that the department and the private vendors operating private correctional facilities continuously:

(a) Measure recidivism rates for inmates who have participated in faith- and character-based programs.

(b) Increase the number of volunteers who minister to inmates from various faith-based and secular institutions in the

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337 community.

338 (c) Develop community linkages with secular institutions
 339 as well as churches, synagogues, mosques, and other faith-based
 340 institutions to assist inmates in their release back into the
 341 community.

342 (4)(a) The department shall ensure that an inmate's faith
 343 orientation, or lack thereof, will not be considered in
 344 determining admission to a faith- and character-based program
 345 and that the program does not attempt to convert an inmate
 346 toward a particular faith or religious preference.

347 (b) The programs shall operate 24 hours a day within the
 348 existing correctional facilities and must emphasize the
 349 importance of personal responsibility, meaningful work,
 350 education, substance abuse treatment, and peer support.

351 (c) Participation in a program shall be voluntary.
 352 Assignment to a program shall be based on evaluation and the
 353 length of time the inmate is projected to be assigned to that
 354 particular institution. The department may not remove an inmate
 355 once assigned to a program except for the purposes of population
 356 management, for inmate conduct that may subject the inmate to
 357 disciplinary confinement or loss of gain-time, for physical or
 358 mental health concerns, or for security or safety concerns.

359 (5) The department shall ensure that any faith component
 360 of any program authorized in this chapter is offered on a
 361 voluntary basis and an offender's faith orientation, or lack
 362 thereof, will not be considered in determining admission to such
 363 a program and that the program does not attempt to convert an
 364 offender toward a particular faith or religious preference.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

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365 (6) Within faith- and character-based institutions of the
366 state correctional system, peer-to-peer programming shall be
367 offered ~~allowed~~, such as Alcoholics Anonymous, literacy
368 instruction, and other activities, ~~when appropriate~~.

369 (7) The department shall ensure that state funds are not
370 expended for the purpose of furthering religious indoctrination,
371 but rather, that state funds are expended for purposes of
372 furthering the secular goals of criminal rehabilitation, the
373 successful reintegration of offenders into the community, and
374 the reduction of recidivism.

375 Section 7. This act shall take effect July 1, 2013.

Offender Reentry Program

- Reentry program –conditional split sentence (prison time followed by drug offender probation).
 - Includes a prison-based substance abuse treatment program.
 - If inmate successfully completes in-prison program, he/she is placed on drug offender probation for the last year of their conditional sentence.
- Eligibility: Sentencing court orders reentry program and conditional drug offender probation at initial sentencing.
 - Must be a nonviolent, low-risk offender.
 - An inmate has no right to be sentenced or placed in reentry program.
- If court orders the inmate into reentry program, DOC will place the inmate into in-prison treatment component of the program not more than 120 days prior the last year of the inmate's sentence.
- In-prison substance abuse treatment portion of the program is a minimum of 90 days.
- Inmate must serve at least 85% of the incarceration portion of the split sentence.
- Upon successful completion of in-prison portion of program, inmate shall be transitioned into the community on drug offender probation for the last year of his sentence.
- Department of Corrections may contract out any or all of the services used in the reentry program.
- The Department will report annually to the Governor and Legislature on the number of offenders that go through the reentry program.

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A bill to be entitled
An act relating to offender reentry programs;
providing an effective date.

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

Section 1. Section 948.0125, Florida Statutes, is created
to read:

948.0125 Reentry Program Sentence.-

(1) PROGRAM DEVELOPMENT. The department shall develop and
implement a reentry program for nonviolent offenders.

(a) It is the intent of the Legislature that a judge may
sentence a nonviolent offender to the reentry program, which
program will increase the offender's ability to successfully
transition from prison to society. This will be accomplished
through the use of substance abuse treatment and rehabilitative
programming both in prison and after release from prison while
the offender serves the probation portion of his or her sentence
under the reentry program. The reentry program is intended to
best serve the needs of society by punishing criminal offenders,
providing opportunity for offender rehabilitation and reducing
recidivism, which will result in fewer new crime victims.

(b) The program shall provide a mechanism by which an
eligible, nonviolent, low-risk offender for whom the reentry
program has been ordered as part of his or her conditional split
sentence by the court may be transitioned into the community
during the last year of the sentence. The reentry program shall
consist of a prison-based substance abuse treatment program for

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29 a minimum of 90 days and a community-based aftercare treatment
 30 program. The reentry program may include a work-release
 31 component.

32 (c) The in-prison component may be operated in a secure
 33 area in or adjacent to an adult institution, a community
 34 residential facility, or a work release center. The department
 35 may contract with private entities to provide any or all of the
 36 services needed for the reentry program.

37 (2) ELIGIBILITY. For an offender to participate in the
 38 reentry program, the court at the time of ordering a state
 39 prison sentence must have imposed a conditional split sentence
 40 whereby the offender is ordered into the department's reentry
 41 program that consists of an in-prison treatment component
 42 followed by conditional drug offender probation. Entry into the
 43 department's reentry program is subject to available funding and
 44 resources the department has at the various stages of its
 45 reentry program.

46 (a) The sentencing court may order the offender into the
 47 department's reentry program if the offender meets the following
 48 criteria:

49 1. The primary offense is a felony of the third degree;
 50 and

51 2. The offender has never been convicted of:

52 a. A forcible felony as defined in s. 776.08;

53 b. An offense listed in s. 775.082(9)(a)1. without regard
 54 to prior incarceration or release;

55 c. An offense described in chapter 847 involving a minor
 56 or a depiction of a minor;

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57 d. An offense described in chapter 827
 58 e. Any offense described in s. 784.07, s.784.074, s.
 59 784.075, s. 784.076, s. 784.08, s. 784.083, or s. 784.085;
 60 f. Any offense involving the possession or use of a
 61 firearm;
 62 g. A capital felony or a felony of the first or second
 63 degree;
 64 h. Any offense that requires a person to register as a
 65 sexual offender pursuant to s. 943.0435, F.S.; and
 66 i. Any offense in another jurisdiction that would be an
 67 offense described in this subparagraph if that offense had been
 68 committed in this state.
 69 (b) Placement on drug offender probation, by a judge
 70 sentencing an offender to the reentry program, shall be
 71 conditioned upon the offender's successful completion of the
 72 prison-based treatment program.
 73 (3) ADMISSION AND PARTICIPATION IN THE REENTRY PROGRAM.
 74 (a) If an offender meets the eligibility criteria under
 75 subsection (2), the sentencing court may order the reentry
 76 program at the time of sentencing. Admission into the reentry
 77 program, and an offender's continued participation in the
 78 program, is not a right. Accordingly, a sentencing court is not
 79 required to sentence an offender to the reentry program, and an
 80 offender, based upon conduct in prison may lose eligibility to
 81 continue participating in the reentry program.
 82 (4) PROCEDURE UPON ADMISSION TO PROGRAM; IN-PRISON
 83 TREATMENT. If the sentencing court orders the offender into the
 84 reentry program, the department shall, subject to available

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85 funding and resources, place the offender into the in-prison
 86 treatment component not more than 120 days prior to beginning of
 87 the last year of the offender's total conditional split sentence
 88 including any gain time accrued.

89 (a) Before the offender completes the in-prison treatment
 90 component, the department shall evaluate the offender's needs
 91 for community placement and develop a post-release treatment
 92 plan that includes substance abuse aftercare services.

93 (b) If an offender in the reentry program becomes
 94 unmanageable, the department may revoke the offender's gain-time
 95 and place the offender in disciplinary confinement in accordance
 96 with department rule. Except as provided in paragraph (c), the
 97 offender shall be readmitted to the reentry program after
 98 completing the ordered discipline. Any period during which the
 99 offender is unable to participate in the reentry program shall
 100 be excluded from the specified time requirements in the reentry
 101 program.

102 (c) The department may terminate an offender from the
 103 reentry program if:

- 104 1. The offender commits a violent act;
- 105 2. The department determines that the offender is unable
 106 to participate in the reentry program due to the offender's
 107 medical condition;
- 108 3. The offender's sentence is modified or expires;
- 109 4. The department reassigns the offender's classification
 110 status; or
- 111 5. The department determines that removing the offender
 112 from the reentry program is in the best interest of the offender

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113 or the security of the institution.

114 (d) An offender in the in-prison component of the reentry
 115 program is subject to the rules of conduct established by the
 116 department and may have sanctions imposed, including loss of
 117 privileges, restrictions, disciplinary confinement, forfeiture
 118 of gain-time or the right to earn gain-time in the future,
 119 alteration of release plans, termination from the reentry
 120 program, or other program modifications in keeping with the
 121 nature and gravity of the program violation. The department may
 122 place an offender in the reentry program in an administrative or
 123 protective confinement, as necessary.

124 (e) An offender must serve at least 85 percent of the
 125 incarceration portion of the conditional split sentence before
 126 being released to drug offender probation. If the offender does
 127 not successfully complete the prison-based treatment reentry
 128 program, the drug offender probation portion of the conditional
 129 split sentence becomes a term of imprisonment to be served while
 130 incarcerated. The offender must then serve at least 85 percent
 131 of the total term of imprisonment.

132 (5) PROCEDURE UPON COMPLETION OF IN-PRISON TREATMENT.
 133 Following successful completion of the in-prison treatment
 134 component, the offender shall be transitioned into the community
 135 on drug offender probation to serve the last year of the
 136 offender's conditional split sentence.

137 (a) While in the community, the offender shall be subject
 138 to all standard terms of drug offender probation under s.
 139 948.20, any special conditions of supervision ordered by the
 140 sentencing court, including participation in an aftercare

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141 substance abuse program, residence in a post-release
 142 transitional residential halfway house, or any other appropriate
 143 form of supervision or treatment.

144 (b) Violation of any condition or order may result in
 145 revocation of supervision by the court and imposition of any
 146 sentence that is authorized by law, subject to time served in
 147 prison.

148 (c) If there is a postadjudicatory drug court program as
 149 described in s. 397.334 in the county of the sentencing court,
 150 or the county to which the offender returns, and the drug court
 151 is willing to accept the case, the offender's case shall be
 152 transferred to the drug court for supervision for the probation
 153 portion of the offender's conditional split sentence. The drug
 154 court judge shall be deemed the sentencing judge for purposes of
 155 ensuring compliance with this section.

156 (d) While on drug offender probation, the department shall
 157 collect from the offender the cost of supervision as provided
 158 for in s. 948.09. An offender who is financially able shall
 159 also pay all costs of his or her drug rehabilitation. The
 160 sentencing judge may impose on the offender additional
 161 conditions requiring payment of court costs and fines, public
 162 service and compliance with other court-ordered special
 163 conditions.

164 (6) DEPARTMENT DUTIES. The department shall implement the
 165 reentry program to the fullest extent feasible within available
 166 resources.

167 (7) CONTRACTORS. The department may develop and enter
 168 into performance-based contracts with qualified individuals,

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169 agencies, or corporations to supply any or all services provided
 170 in the reentry program. The department may establish a system
 171 of incentives within the reentry program to promote
 172 participation by private-sector employers in the rehabilitative
 173 reentry programs and the orderly operation of institutions and
 174 facilities.

175 (8) NO RIGHTS CONFERRED UPON OFFENDERS. This section does
 176 not create or confer any right to any offender to placement in
 177 the reentry program or any right to placement or early release
 178 under supervision of any type. An offender does not have a
 179 cause of action against the department, a court, the state
 180 attorney, or a victim related to placement in or continued
 181 participation in the reentry program.

182 (9) REPORTING. The department shall track recidivism and
 183 recommitment of offenders who have participated in the reentry
 184 program. Beginning October 1, 2014, and on October 1 of each
 185 year thereafter, the department shall submit an annual report of
 186 the results of the collected data to the Governor, the President
 187 of the Senate and the Speaker of the House of Representatives.
 188 This report shall also include a detailed account of the
 189 department's implementation of the reentry program; the number
 190 of offenders sentenced to the program; the number of inmates
 191 that successfully complete the in-prison portion of the program;
 192 and the number of inmates that successfully complete the drug
 193 offender probation.

194 (10) RULEMAKING. The department may adopt rules pursuant
 195 to ss. 120.536(1) and 120.54, to implement the provisions of
 196 this section.

F L O R I D A H O U S E O F R E P R E S E N T A T I V E S

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Section 2. This act shall take effect July 1, 2013.

Inmate R

Provisions in the draft language:

- Identification Cards for Inmates Upon Release
- Faith- and Character-Based Institutions

Inmate R

Identification Cards:

- DOC issues an "Inmate Discharge Certificate" upon release
 - Certificate serves as proof of identification for DHSMV & DOH (birth certificate)
- Waives fees

Inmate R

Faith- and Character-Based:

- Encourages DOC to expand FCB institutions to serve both male and female inmates
- Requires peer-to-peer programming in FCB programs, e.g., Alcoholics Anonymous

Reentry Pro

Background:

- **HB 177 (2012)—back-end reentry proposal**
- **Governor veto—based in part on Florida’s existing Truth in Sentencing Law (85%)**

Reentry Pro

Proposed bill:

- **Front-end approach**
- **At sentencing: Judge sentences inmate to a conditional split sentence**
 - Includes a term of years (that includes a prison-based substance abuse treatment program) followed by drug offender probation
 - Qualifying criteria: non-violent, low risk offender with a substance abuse problem
- **Does not violate 85% law.**

Reentry Pro

Proposed bill:

- **In-prison treatment program—begins not more than 120 days prior to the last year of the offender’s sentence**
 - Program in prison will last at least 90 days
- **If offender successfully completes in-prison portion of treatment, offender is transitioned into the community on drug offender probation**

Reentry Pr

Proposed bill:

- Department may contract out part or all of services used in reentry program
- Department will track offenders sentenced to reentry program
- Report annually to Governor & Legislature on reentry program
