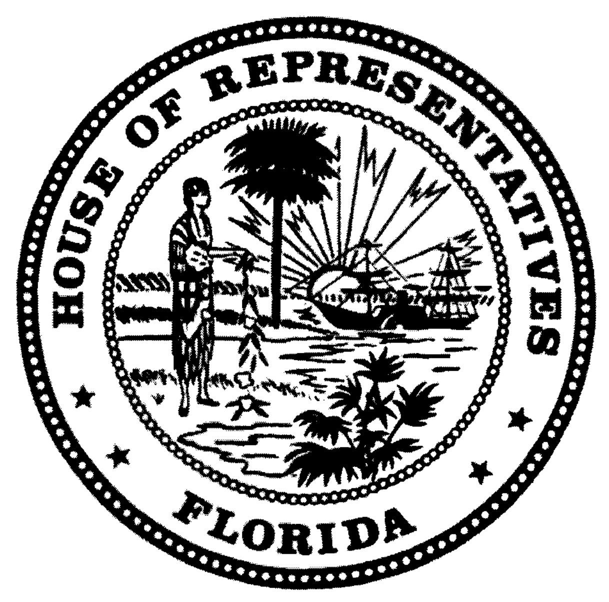


# Civil Justice Subcommittee

**Tuesday, January 26, 2016**
**8:00 a.m. – 11:00 a.m.**
**Sumner Hall (404 HOB)**

**MEETING PACKET**

**Steve Crisafulli**
**Speaker**

**Kathleen Passidomo**
**Chair**

# Committee Meeting Notice

## HOUSE OF REPRESENTATIVES

### Civil Justice Subcommittee

**Start Date and Time:** Tuesday, January 26, 2016 08:00 am

**End Date and Time:** Tuesday, January 26, 2016 11:00 am

**Location:** Sumner Hall (404 HOB)

**Duration:** 3.00 hrs

**Consideration of the following bill(s):**

HB 339 Housing Discrimination by Rouson
HB 557 Vulnerable Adults by Harrison
HB 967 Family Law by Stevenson
HB 1077 Convenience Business Security by Stone
HB 1181 Bad Faith Assertions of Patent Infringement by Grant
HB 1263 Real Property by Wood
HB 1357 Community Associations by La Rosa, Cortes, J.

**Consideration of the following proposed committee substitute(s):**

PCS for HB 1231 -- Service of Process

**NOTICE FINALIZED on 01/22/2016 4:17PM by Ingram.Michele**

HB 339

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 339 Housing Discrimination
**SPONSOR(S):** Rouson and others
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 7008

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Civil Justice Subcommittee | | Robinson TR | Bond VB |
| 2) Government Operations Appropriations Subcommittee | | | |
| 3) Judiciary Committee | | | |

### SUMMARY ANALYSIS


The Florida Commission on Human Relations was established by the Legislature in 1969 and is charged with enforcing the state's civil rights laws, including the Florida Fair Housing Act (FFHA). Modeled upon the federal Fair Housing Act, the FFHA prohibits a person from refusing to sell or rent, or otherwise make unavailable a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion. A person aggrieved by a discriminatory housing practice may file a complaint with the commission, and later pursue administrative or civil action if the Commission is unable to obtain the respondent's compliance with the FFHA.

The Commission is certified as a "substantially equivalent" agency by the United States Department of Housing and Urban Development (HUD) and, through annual work share agreements, receives and investigates housing discrimination complaints referred by HUD which may have been filed under the federal Fair Housing Act. HUD provides funding to the Commission through the Fair Housing Assistance Program (FHAP) for processing complaints, training, technical assistance, and the creation and maintenance of data information systems.

Recent judicial decisions interpreting the FFHA have held that a person must first exhaust his or her administrative remedies before pursuing a civil action under the FFHA. A person aggrieved by housing discrimination may commence a civil action at any time under the federal Fair Housing Act, without regard to whether a complaint was filed with HUD or the status of any complaint. Due to this disparity, HUD currently maintains that FFHA, as interpreted by the courts, is not substantially equivalent to the federal Fair Housing Act. As a result, HUD has notified the Commission that its participation in FHAP will be terminated if the FFHA is not amended to eliminate this requirement by March 12, 2016.

This bill amends the FFHA to eliminate the requirement that a person aggrieved by a discriminatory housing practice exhaust his or her administrative remedies prior to bringing a civil action under the FFHA.

While the bill if passed does not appear to have a fiscal impact on state government, the state may lose federal grants of approximately $600,000 annually should the bill fail to pass. This bill does not appear to have a fiscal impact on local governments.

The bill has an effective date of July 1, 2016.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**BACKGROUND**

The Florida Commission on Human Relations (the Commission) was established by the Legislature in 1969 and is charged with enforcing the state's civil rights laws. The Commission investigates complaints of discrimination under the Florida Fair Housing Act of 1983, the Florida Civil Rights Act of 1992, and the Whistle-Blower's Act of 1999.

**Florida Fair Housing Act**

The Florida Fair Housing Act (FFHA) is modeled upon the federal Fair Housing Act.[1] The FFHA prohibits a person from refusing to sell or rent, or otherwise make unavailable a dwelling to any person because of race, color, national origin, sex, handicap, familial status, or religion.[2] In addition, protection is afforded to persons who are pregnant or in the process of becoming legal custodians of children 18 years of age or younger, or persons who are themselves handicapped or associated with a handicapped person.[3]

A person alleging discrimination under the FFHA has one year after the discriminatory housing practice to file a complaint with the Commission.[4] The Commission has 100 days after receiving the complaint to complete its investigation and issue a determination.[5] The Commission can also decide to resolve the complaint and eliminate or correct the alleged discriminatory housing practice through conciliation.[6] If, within 180 days after a complaint is filed, the Commission has been unable to obtain voluntary compliance, the complainant may initiate civil action or petition for an administrative determination.[7] If the Commission finds reasonable cause, the claimant may request that the Attorney General bring the civil action against the respondent.[8] A civil action must be commenced within two years after the alleged discriminatory act occurred.[9] The court may continue a civil case if conciliation efforts by the Commission or by a local housing agency are likely to result in a satisfactory settlement.[10] If the court finds that a discriminatory housing practice has occurred, the court must issue an order prohibiting the practice and providing affirmative relief.[11]

Remedies available under the FFHA include fines and actual and punitive damages.[12] The court may also award reasonable attorney's fees and costs to the Commission.[13]

[1] Part II of Chapter 760, F.S., is the Florida Fair Housing Act. See Florida Fair Housing Commission, *Fair Housing Laws* http://fchr.state.fl.us/resources/the_laws/florida_fair_housing_laws (last visited Jan. 24, 2016).
[2] s. 760.23(1), F.S.
[3] ss. 760.23(6)-(9), F.S.
[4] s. 760.34(1) and (2), F.S.
[5] s. 760.34(1), F.S.
[6] *Id.*
[7] s. 760.34(4), F.S.
[8] *Id.*
[9] s. 760.35(1), F.S.
[10] *Id.*
[11] s. 760.35(2), F.S.
[12] Fines are capped in a tiered system based on the number of prior violations of the Fair Housing Act: up to $10,000 if the respondent has no prior findings of guilt under the Fair Housing Act; up to $25,000 if the respondent has had one prior violation of the Fair Housing Act; and up to $50,000, if the respondent has had two or more violations of the Fair Housing Act. s. 760.34(7)(b), F.S.
[13] s. 760.34(7)(c), F.S.

## Federal Fair Housing Act

Substantially Equivalent Agencies

The United States Department of Housing and Urban Development (HUD) administers and enforces the federal Fair Housing Act.[14] The federal Fair Housing Act recognizes that a state or local government may also enact laws or ordinances prohibiting unlawful housing discrimination.[15] HUD may certify a state or local government agency as "substantially equivalent" if HUD determines that the state or local law and the federal Fair Housing Act are substantially equivalent with respect to:[16]

- The substantive rights protected by such agency in the jurisdiction with respect to which certification is to be made;
- The procedures followed by such agency;
- The remedies available to such agency; and
- The availability of judicial review of such agency's action.

HUD has developed a two-step process of substantial equivalency certification. The first step considers the *adequacy of the law*, meaning that the law which the agency administers facially provides rights, procedures, remedies, and the availability of judicial review that are substantially equivalent to those provided in the federal Fair Housing Act.[17] A determination of the adequacy of a state or local fair housing law "on its face" is intended to focus on the meaning and intent of the text of the law, as distinguished from the effectiveness of its administration. Accordingly, this determination is not limited to an analysis of the literal text of the law. Regulations, directives, rules of procedure, judicial decisions, or interpretations of the law by competent authorities will be considered in making the determination.[18] The second step considers the *adequacy of performance* of the law, meaning that in operation the fair housing law provides rights, procedures, remedies, and the availability of judicial review that are substantially equivalent to those provided in the federal Fair Housing Act.[19]

If a housing discrimination complaint is filed with HUD under the Federal Fair Housing Act and the complaint falls with the jurisdiction of a "substantially equivalent" agency, HUD must refer the complaint to the local or state agency and may take no further action except under limited circumstances.[20]

The Commission, charged with enforcement of the FFHA which is modeled upon the federal Fair Housing Act, serves as the main, certified "substantially equivalent" HUD agency in Florida.[21] Through annual work-share agreements with HUD, the Commission, in its capacity as a substantially equivalent agency, accepts and investigates housing discrimination cases from HUD. **Figure 1** illustrates the number of housing complaints investigated and closed by the Commission from 2010-2015. According to the Commission's Fiscal Year 2010-11 through Fiscal Year 2014-15 Annual Reports, housing complaints represented on average 15% of all complaints received by the Commission.

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[14] 42 U.S.C. 3601, *et seq.*
[15] 42 U.S.C. 3610.
[16] *Id.*
[17] 24 C.F.R. § 115.201.
[18] 24 C.F.R. § 115.204
[19] 24 C.F.R. § 115.201
[20] 42 U.S.C. 3610
[21] HUD additionally certified as substantially equivalent the Broward County Office of Equal Opportunity, Jacksonville Human Rights Commission, Office of Community Affairs – Human Relations Department (Orlando), Palm Beach County Office of Equal Opportunity, Pinellas County Office of Human Rights, and City of Tampa Office of Community Relations. United States Department of Housing and Urban Development, *Fair Housing Assistance Program (FHAP) Agencies,* http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP/agencies#FL (last visited Jan. 22, 2016).

**Figure 1: Florida Commission on Human Relations Resolved Housing Discrimination Cases**

| Closure Type | FY 10/11 | FY 11/12 | FY 12/13 | FY 13/14 | FY 14/15 |
|---|---|---|---|---|---|
| No Cause | 171(64%) | 126(69%) | 92(50%) | 138(73%) | 123(67%) |
| Administrative | 46(17%) | 15(8%) | 50(27%) | 29(15%) | 52(28%) |
| Cause | 20(7%) | 14(8%) | 4(2%) | 11(6%) | 0(0%) |
| Settlement | 16(6%) | 16(9%) | 18(10%) | 0(0%) | 0(0%) |
| Withdrawal with Benefits | 16(6%) | 11(6%) | 19(11%) | 12(6%) | 10(5%) |
| **TOTAL CLOSURES** | **269** | **182** | **183** | **190** | **185** |

Fair Housing Assistance Program

A "Substantially equivalent" agency is eligible for federal funding through the Fair Housing Assistance Program (FHAP).[22] FHAP permits HUD to reimburse state and local agencies for services that further the purposes of the federal Fair Housing Act. The financial assistance is designed to provide support for:[23]

- The processing of dual-filed complaints;
- Training under the Fair Housing Act and the agencies' fair housing law;
- The provision of technical assistance;
- The creation and maintenance of data and information systems;
- The development and enhancement of education and outreach projects, special enforcement efforts, partnership initiatives, and other fair housing projects.

The Commission is reimbursed by HUD for closing housing cases, through deposit from HUD into the Human Relations Commission Operating Trust Fund within the Commission as illustrated in **Figure 2**. Trust fund monies received from HUD in Fiscal Year 2014-15 totaled $604,978, an increase from the Fiscal Year 2013-14 total of $516,536.

**Figure 2: Florida Commission on Human Relations Operating Trust Fund**

| All Revenues | FY 10/11 | FY 11/12 | FY 12/13 | FY 13/14 | FY 14/15 |
|---|---|---|---|---|---|
| EEOC Federal Contract | $198, 750 | $817,100 | $259,850 | $540,950 | $335,841 |
| HUD Contract/Grant | $926,693 | $940,219 | $677,998 | $485,462 | $559,469 |
| HUD Registration | $21,170 | $33,415 | $32,149 | $23,680 | $35,720 |
| Interest Earnings | $5,023 | $28,565 | $26,665 | $15,250 | $15,313 |
| Refunds | $4,570 | $9,117 | $57,777 | $43,361 | $7,848 |
| TOTAL | $1,156,206 | $1,828,416 | $1,054,439 | $1,065,342 | $954,191 |
| **HUD Percentage of Total Funds** | **82.67%** | **54.37%** | **73.21%** | **48.49%** | **63.93%** |

**Exhaustion of Administrative Remedies**

A series of recent judicial decisions regarding the applicability of administrative remedies under the FFHA have threatened the Commission's status as a "substantially equivalent" HUD agency.

In 2004, the Fourth District Court of Appeal held in *Belletete v. Halford*, that an aggrieved person must first exhaust administrative remedies under the FFHA before commencing a civil action in court, citing the doctrine of exhaustion of administrative remedies.[24] The Court's holding was not based upon an

[22] United States Department of Housing and Urban Development, *Fair Housing Assistance Program (FHAP)*, http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP (last visited Jan. 22, 2016).

[23] 24 C.F.R. § 115.300.

[24] *Belletete v. Halford*, 886 So. 2d 308, 310 (Fla. 4th DCA 2004); *See also Fla. Welding & Erection Serv., Inc. v. Am. Mut. Ins. Co. of Boston*, 285 So. 2d 386, 389-90 (Fla. 1973). The doctrine of the exhaustion of administrative remedies is the

analysis of the FFHA, which does not explicitly require exhaustion of administrative remedies. Rather, the court provided a cursory analysis of what it considered to be an analogous provision of the Florida Civil Rights Act. The *Belletete* holding has been criticized by the Florida Attorney General, and has been rejected by the U.S. District Court for the Southern District of Florida.[25] Nevertheless, Florida state courts, both in and outside of the Fourth District Court of Appeal have continued to adopt the holding of *Belletete*, and dismiss claims brought under the FFHA where the plaintiff has not exhausted the administrative process.[26]

In ongoing discussions since 2008, HUD has informed the Commission that the judicial interpretation of FFHA in *Belletete* requiring the exhaustion of administrative remedies, "renders the Florida law fundamentally inconsistent with federal law." The Federal Fair Housing Act explicitly allows an aggrieved person to commence a civil action whether or not a complaint has been filed with HUD and without regard to the status of any such complaint.[27] Efforts to amend the FFHA during the 2012,[28] 2013,[29] and 2014[30] legislative sessions to remove the administrative exhaustion requirement were unsuccessful and courts continue to apply the *Belletete* rule in FFHA civil actions.

On July 2, 2015, HUD notified the Commission that HUD would suspend the Commission's participation in FHAP if the FFHA was not amended by January 25, 2016, to overcome the judicially-created requirement that a plaintiff exhaust their administrative remedies as a condition precedent to filing a housing discrimination claim under the FFHA.[31] In light of the legislative calendar, HUD has agreed to extend the deadline to amend the FFHA until March 12, 2016.[32]

## EFFECT OF THE BILL

The bill amends the FFHA to provide that a person aggrieved by a discriminatory housing practice is not required to petition for an administrative hearing or exhaust his or her administrative remedies prior to bringing a civil action under the FFHA. Therefore, a person who alleges that he or she has been injured by unlawful housing discrimination may file a civil action at any time under the FFHA regardless of whether a complaint has been filed with the Commission or the status of any such complaint.

The bill prohibits the filing of a civil action under the FFHA if the claimant and the respondent have entered into a conciliation agreement which has been approved by the Commission other than to enforce the terms of the agreement. Also, an aggrieved person may not file a civil action regarding a discriminatory housing practice once an administrative hearing has begun. These provisions are consistent with similar provisions under the federal Fair Housing Act.

The bill also makes conforming changes to s. 760.07, F.S.

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principle that if an administrative remedy is provided by statute, a claimant must first seek relief from the administrative body before judicial relief is available. BLACK'S LAW DICTIONARY (2014).

[25] In *Milsap v. Cornerstone Residential Management, Inc.*, 2008 WL 1994840 (S.D. Fla. 2008), the United States District Court for the Southern District of Florida, relying on *Belletete* as the only state court case on the issue, dismissed a familial status claim brought under the FFHA for failure to exhaust administrative remedies. On reconsideration, in which the Florida Attorney General intervened and argued that *Belletete* was wrongly decided, the court reversed itself and reinstated the FFHA claims. *See,* 2010 WL 427436 (S. D. Fla. 2010).

[26] *Sun Harbor Homeowners Association v. Bonura*, 95 So. 3d 262, 267 (Fla. 4th DCA 2012); *State v. Leisure Village, Inc.*, 40 Fla. L. Weekly D934 (Fla. 4th DCA 2015); *HOPE v. SPV Realty, L.C.*, Case No. 14-32184-CA-01 (Eleventh Judicial Circuit April 30, 2015).

[27] 42 U.S.C. 3613.

[28] SB 442 (Senator Braynon) and HB 283(Representative Watson).

[29] SB 310 (Senator Braynon) and HB 523 (Representative Watson).

[30] SB 410 (Senator Braynon) and HB 453 (Representative Watson).

[31] Phone call between Tashiba Robinson and Cheyanne Costilla, General Counsel, Florida Commission on Human Relations (Jan. 19, 2016).

[32] *Id.*

B. SECTION DIRECTORY:

Section 1 amends s. 760.07, F.S., regarding remedies for unlawful discrimination.

Section 2 amends s. 760.34, F.S., regarding enforcement.

Section 3 amends s. 760.35, F.S., regarding civil actions, relief and administrative procedures.

Section 4 provides an effective date of July 1, 2016.

## 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 Office of the State Courts Administrator indicates that the fiscal impact of the bill is unknown due to the unavailability of data needed to establish both additional revenue expected to be generated from an increase in civil filings and increased expenditures due to additional workload.[33]

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:

The Commission does not expect a fiscal or workload impact from the bill. While the Commission maintains that existing law allows a person aggrieved by a discriminatory housing practice to commence a civil action without first filing a complaint for an administrative remedy, the bill clarifies that individuals can bypass the investigation and conciliation process in order to better access Florida's court system.

According to the Commission, if the proposed bill does not pass, the Commission will continue to investigate any complaints of housing discrimination directly filed with the Commission under the FFHA, but would no longer receive or investigate cases for HUD. Additionally, federal funding from HUD for investigations, administrative costs, or training would be at risk. HUD has indicated to the Commission that cases previously referred by HUD would have to be investigated by HUD.

The Commission received $604,978 from HUD in the 2014-2015 fiscal year. The ending fund balance of the Human Relations Commission Operating Trust Fund for Fiscal Year 2015-2016 is estimated to be $17,360.[34] As a result of the potential loss of federal funds, a deficit of ($1,264,105) is projected to

[33] Office of State Courts Administrator, *2016 Judicial Impact Statement SB 7008* (Nov. 2, 2015).
[34] Accrual Fund Balance Analysis – Human Relations Commission Operating Trust Fund (Jan 11, 2016).

occur in the Human Relations Commission Operating Trust Fund in Fiscal Year 2016-2017. If the bill does pass and federal funds continue to be received from HUD for investigations, the Commission projects an ending fund balance of ($664,105) in Fiscal Year 2016-2017.

## 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:

Due to the HUD amendment deadline of March 12, 2016, the effective date of the bill may need to be revised to an earlier date.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
2 An act relating to housing discrimination; amending s.
3 760.07, F.S.; removing housing discrimination as a
4 cause of action for certain relief and damages
5 stemming from violations of the Florida Civil Rights
6 Act of 1992; amending s. 760.34, F.S.; making
7 technical changes; revising the conditions under which
8 an aggrieved person may commence a civil action in any
9 appropriate court against a specified respondent to
10 enforce specified rights; providing that the aggrieved
11 person does not need to take specified actions before
12 bringing a civil action; amending s. 760.35, F.S.;
13 authorizing, rather than requiring, a civil action to
14 commence within 2 years after an alleged
15 discriminatory housing practice; authorizing an
16 aggrieved person to commence a civil action regardless
17 of whether a specified complaint has been filed and
18 regardless of the status of any such complaint;
19 prohibiting an aggrieved person from filing a
20 specified action in certain circumstances; providing
21 an exception; prohibiting an aggrieved person from
22 commencing a specified civil action if an
23 administrative law judge has commenced a hearing on
24 the record on the allegation; providing an effective
25 date.
26

27 Be It Enacted by the Legislature of the State of Florida:
28
29 Section 1. Section 760.07, Florida Statutes, is amended to
30 read:
31 760.07 Remedies for unlawful discrimination.—Any violation
32 of any Florida statute that makes ~~making~~ unlawful discrimination
33 because of race, color, religion, gender, pregnancy, national
34 origin, age, handicap, or marital status in the areas of
35 education, employment, ~~housing,~~ or public accommodations gives
36 rise to a cause of action for all relief and damages described
37 in s. 760.11(5), unless greater damages are expressly provided
38 for. If the statute prohibiting unlawful discrimination provides
39 an administrative remedy, the action for equitable relief and
40 damages provided for in this section may be initiated only after
41 the plaintiff has exhausted his or her administrative remedy.
42 The term "public accommodations" does not include lodge halls or
43 other similar facilities of private organizations which are made
44 available for public use occasionally or periodically. The right
45 to trial by jury is preserved in any case in which the plaintiff
46 is seeking actual or punitive damages.
47 Section 2. Subsections (2) and (4) of section 760.34,
48 Florida Statutes, are amended to read:
49 760.34 Enforcement.—
50 (2) Any person who files a complaint under subsection (1)
51 must do so ~~be filed~~ within 1 year after the alleged
52 discriminatory housing practice occurred. The complaint must be



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

53 in writing and shall state the facts upon which the allegations
54 of a discriminatory housing practice are based. A complaint may
55 be reasonably and fairly amended at any time. A respondent may
56 file an answer to the complaint against him or her and, with the
57 leave of the commission, which shall be granted whenever it
58 would be reasonable and fair to do so, may amend his or her
59 answer at any time. Both the complaint and the answer shall be
60 verified.
61 (4) ~~If, within 180 days after a complaint is filed with~~
62 ~~the commission or within 180 days after expiration of any period~~
63 ~~of reference under subsection (3), the commission has been~~
64 ~~unable to obtain voluntary compliance with ss. 760.20-760.37,~~
65 The person aggrieved may commence a civil action in any
66 appropriate court against the respondent named in the complaint
67 or petition for an administrative determination pursuant to s.
68 760.35 to enforce the rights granted or protected by ss. 760.20-
69 760.37. The person aggrieved is not required to petition for an
70 administrative hearing or exhaust administrative remedies before
71 bringing a civil action. If, as a result of its investigation
72 under subsection (1), the commission finds there is reasonable
73 cause to believe that a discriminatory housing practice has
74 occurred, at the request of the person aggrieved, the Attorney
75 General may bring an action in the name of the state on behalf
76 of the aggrieved person to enforce the provisions of ss. 760.20-
77 760.37.
78 Section 3. Section 760.35, Florida Statutes, is amended to

79 read:

80 760.35 Civil actions and relief; administrative
81 procedures.—

82 (1) An aggrieved person may commence a civil action ~~shall~~
83 ~~be commenced~~ no later than 2 years after an alleged
84 discriminatory housing practice has occurred. However, the court
85 shall continue a civil case brought pursuant to this section or
86 s. 760.34 from time to time before bringing it to trial if the
87 court believes that the conciliation efforts of the commission
88 or local agency are likely to result in satisfactory settlement
89 of the discriminatory housing practice complained of in the
90 complaint made to the commission or to the local agency and
91 which practice forms the basis for the action in court. Any
92 sale, encumbrance, or rental consummated prior to the issuance
93 of any court order issued under the authority of ss. 760.20-
94 760.37 and involving a bona fide purchaser, encumbrancer, or
95 tenant without actual notice of the existence of the filing of a
96 complaint or civil action under the provisions of ss. 760.20-
97 760.37 shall not be affected.

98 (2) An aggrieved person may commence a civil action under
99 this section regardless of whether a complaint has been filed
100 under s. 760.34(1) and regardless of the status of any such
101 complaint. If the commission has obtained a conciliation
102 agreement with the consent of an aggrieved person under s.
103 760.36, the aggrieved person may not file any action under this
104 section regarding the alleged discriminatory housing practice

105 that forms the basis for the complaint except for the purpose of
106 enforcing the terms of such an agreement.
107 (3) An aggrieved person may not commence a civil action
108 under this section regarding an alleged discriminatory housing
109 practice if an administrative law judge has commenced a hearing
110 on the record on the allegation.
111 (4)~~(2)~~ If the court finds that a discriminatory housing
112 practice has occurred, it shall issue an order prohibiting the
113 practice and providing affirmative relief from the effects of
114 the practice, including injunctive and other equitable relief,
115 actual and punitive damages, and reasonable attorney ~~attorney's~~
116 fees and costs.
117 (5)~~(3)~~(a) If the commission is unable to obtain voluntary
118 compliance with ss. 760.20-760.37 or has reasonable cause to
119 believe that a discriminatory practice has occurred:
120 1. The commission may institute an administrative
121 proceeding under chapter 120; or
122 2. The person aggrieved may request administrative relief
123 under chapter 120 within 30 days after receiving notice that the
124 commission has concluded its investigation under s. 760.34.
125 (b) Administrative hearings shall be conducted pursuant to
126 ss. 120.569 and 120.57(1). The respondent must be served written
127 notice by certified mail. If the administrative law judge finds
128 that a discriminatory housing practice has occurred or is about
129 to occur, he or she shall issue a recommended order to the
130 commission prohibiting the practice and recommending affirmative

131 relief from the effects of the practice, including quantifiable
132 damages and reasonable attorney ~~attorney's~~ fees and costs. The
133 commission may adopt, reject, or modify a recommended order only
134 as provided under s. 120.57(1). Judgment for the amount of
135 damages and costs assessed pursuant to a final order by the
136 commission may be entered in any court having jurisdiction
137 thereof and may be enforced as any other judgment.
138 (c) The district courts of appeal may, upon the filing of
139 appropriate notices of appeal, review final orders of the
140 commission pursuant to s. 120.68. Costs or fees may not be
141 assessed against the commission in any appeal from a final order
142 issued by the commission under this subsection. Unless
143 specifically ordered by the court, the commencement of an appeal
144 does not suspend or stay an order of the commission.
145 (d) This subsection does not prevent any other legal or
146 administrative action provided by law.
147 Section 4. This act shall take effect July 1, 2016.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 339 (2016)

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 | ____ | |

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee

2 Representative Rouson offered the following:

3

4 **Amendment**

5 Remove line 147 and insert:

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

HB 557

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 557 Vulnerable Adults
**SPONSOR(S):** Harrison
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1536

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Civil Justice Subcommittee | | Robinson | Bond |
| 2) Children, Families & Seniors Subcommittee | | | |
| 3) Judiciary Committee | | | |

## SUMMARY ANALYSIS


The Adult Protective Services Act (APSA) provides for a civil cause of action against a person who neglects, abuses, or exploits a vulnerable adult. The action may be brought against the perpetrator by the vulnerable adult, the vulnerable adult's guardian, an organization acting on behalf of the vulnerable adult or the vulnerable adult's guardian, or the personal representative of the vulnerable adult's estate to recover actual and punitive damages.

This bill amends the APSA to provide that a "facility" may also bring the civil action in cases of exploitation to recover the costs of goods or services provided by the facility to a vulnerable person. The APSA defines a "facility" as any location providing day or residential care or treatment for vulnerable adults, including, hospitals, nursing homes, assisted living facilities, adult day care centers and adult day training centers.

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

The bill has an effective date of July 1, 2016.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

**BACKGROUND**

Florida is home to more than 3.6 million residents age 65 or older.[1] The state is first in the nation in the percentage of elderly residents, measuring 23% of the total population in 2010 and estimated to soar to 35% of the total state population in 2030.[2] Nationwide, life expectancies of individuals reaching the ages of 65 and 85 are increasing. Individuals who survive to the age of 65 can be expected to live another 19.2 years.[3] However, with increasing age comes the increased likelihood of developing disabilities from chronic conditions. In 2014, 33.7%, or approximately 1.2 million persons, in Florida's elderly population were reported to have a disability.[4] An additional 1.2 million Floridians age 18-64 also reported a disability in 2014.[5]

**Abuse, Neglect, and Exploitation of Vulnerable Adults**

A large population of vulnerable adults greatly increases the pool of potential victims of abuse, neglect, or exploitation. The true incidence of abuse, neglect, or exploitation of the elderly or disabled adults is difficult to assess. According to the Centers for Disease Control and Prevention, between 1,000,000 and 2,000,000 persons aged 65 and older have been abused, neglected, or exploited. Over 90% of the time such acts are perpetrated by family members with substance abuse issues, a poor financial situation, extreme levels of stress, or an inadequate understanding of the needs of the vulnerable adult.[6]

Abuse, neglect, and exploitation of a vulnerable adult usually takes one of the following forms:[7]

- Physical abuse: The intentional use of physical force that results in acute or chronic illness, bodily injury, physical pain, functional impairment, distress, or death.
- Sexual Abuse or Abusive Sexual Contact: Forced and/or unwanted sexual interaction (touching and non-touching acts) of any kind with an older adult.
- Emotional or Psychological Abuse: Verbal or nonverbal behavior that results in the infliction of anguish, mental pain, fear, or distress.
- Neglect: Failure by a caregiver or other responsible person to protect an elder from harm or the failure to meet needs for essential medical care, nutrition, hydration, hygiene, clothing, basic activities of daily living or shelter, which results in a serious risk of compromised health and/or safety.
- Financial Abuse or Exploitation: The illegal, unauthorized, or improper use of an older individual's resources by a caregiver or other person in a trusting relationship, for the benefit of someone other than the older individual.

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[1] Florida Department of Elder Affairs, *2015 Florida State Profile*, available at http://elderaffairs.state.fl.us/doea/pubs/stats/County_2015/Counties/Florida.pdf (last visited January 20, 2016).

[2] Florida Department of Elder Affairs, Summary of Programs and Services 2015, p. 9, available at http://elderaffairs.state.fl.us/doea/sops.php (last visited January 20, 2016)

[3] *Id.* at page 24.

[4] U.S. Department of Commerce, U.S. Census Bureau, American FactFinder, Selected Social Characteristics in the U.S.-Florida-2014 American Community Survey 1 year estimates, available at http://factfinder.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_14_1YR_S0201&prodType=table (last visited January 20, 2016).

[5] *Id.*

[6] Florida Department of Elder Affairs and the Florida Department of Children & Families, *The Power to Prevent Elder Abuse Is In Your Hands*, available at, http://uwf.edu/media/university-of-west-florida/colleges/coh/departments/center-on-aging/Bryant---The-Power-to-Prevent-Elder-Abuse--Is-in-Your-Hands.pdf. (last visited January 22, 2016).

[7] Centers for Disease Control and Prevention, *Injury Prevention & Control: Division of Violence Prevention,* available at http://www.cdc.gov/violenceprevention/elderabuse/definitions.html (last visited January 20, 2016)

*Financial Exploitation*

Financial exploitation of vulnerable adults is often underreported, but is the largest area of growing concern due to the far reaching effects on its victims in particular and society in general. A study of media reports estimated that financial exploitation cost vulnerable adults at least $2.9 billion in 2010.[8] The money that vulnerable adults lose in these cases is rarely recovered, and the loss can undermine both the health of vulnerable adults and their ability to support or care for themselves. Oftentimes, this includes the inability to pay third parties for necessary services and care, leading to discharge or eviction from nursing homes or assisted living facilities.[9] Consequently, the burden of caring for exploited vulnerable adults may fall on various state and federal programs. In 2010, a review of 80 elder financial exploitation cases in Utah found the state's Medicaid program would potentially have to pay about $900,000 to cover the cost of care for vulnerable adults who had suffered substantial losses due to financial exploitation.[10] During the 2014-2015 fiscal year, the Department of Elders Affairs conducted 8,119 investigations into the exploitation of vulnerable adults.[11]

**Adult Protective Services Act**

In 1977, the Legislature enacted the "Adult Protective Services Act" (APSA), ch. 415, F.S., which provides statutory authority for the Department of Children and Families (DCF) to investigate reports of abuse, neglect, or exploitation of a vulnerable adult.

The APSA defines a "vulnerable adult" as a person 18 years of age or older whose ability to perform the normal activities of daily living, or whose ability to provide for his or her own care or protection, is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.[12]

Under the APSA, abuse, neglect, or exploitation constitutes the following conduct

- Abuse:[13] Any willful act or threatened act by a relative, caregiver,[14] or household member which causes or is likely to cause significant impairment to a vulnerable adult's physical, mental, or emotional health.

- Neglect: [15] The failure or omission on the part of the caregiver or vulnerable adult to provide the care, supervision, and services necessary to maintain the physical and mental health of the vulnerable adult, including, but not limited to, food, clothing, medicine, shelter, supervision, and medical services, which a prudent person would consider essential for the well-being of a

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[8] United States Government Accountability Office, *Elder Justice: National Strategy Needed to Effectively Combat Elder Financial Exploitation (November 2012)*, available at, pg. 1, http://www.gao.gov/assets/660/650074.pdf (last visited January 21, 2016).
[9] Consumer Financial Protection Bureau, *We're helping long-term care facilities protect older Americans from financial exploitation*, available at, http://www.consumerfinance.gov/blog/were-helping-long-term-care-facilities-protect-older-americans-from-financial-exploitation/ (last visited January 21, 2016).
[10] *Supra* at FN 8.
[11] Florida Department of Elder Affairs, *The Power to Prevent Elder Abuse is in Your Hands,* available at http://elderaffairs.state.fl.us/doea/elderabuseprevention/Elder%20Abuse%20Brochure%20-%20English2015.pdf (last visited January 22, 2016).
[12] s. 415.102(28), F.S.
[13] s. 415.102(1), F.S.
[14] "Caregiver" means a person who has been entrusted with or has assumed the responsibility for frequent and regular care of or services to a vulnerable adult on a temporary or permanent basis and who has a commitment, agreement, or understanding with that person or that person's guardian that a caregiver role exists. "Caregiver" includes, but is not limited to, relatives, household members, guardians, neighbors, and employees and volunteers of facilities. s. 415.102(5), F.S.
[15] s. 415.102(16), F.S.

vulnerable adult. "Neglect" also means the failure of a caregiver or vulnerable adult to make a reasonable effort to protect a vulnerable adult from abuse, neglect, or exploitation by others.

- Exploitation:[16] Obtaining or using, or endeavoring to obtain or use, a vulnerable adult's funds, assets, or property with the intent to temporarily or permanently deprive a vulnerable adult of the use, benefit, or possession of the funds, assets, or property for the benefit of someone other than the vulnerable adult by a person who stands in a position of trust and confidence[17] with a vulnerable adult or by a person who knows or should know that the vulnerable adult lacks the capacity to consent. Exploitation may include breaches of fiduciary relationships, unauthorized taking of personal assets; misappropriation, misuse, or transfer of moneys belonging to a vulnerable adult from a personal or joint account; or intentional or negligent failure to effectively use a vulnerable adult's income and assets for the necessities required for that person's support and maintenance.

*Civil Remedies*

In addition to DCF intervention and services, s 415.1111, F.S., authorizes a vulnerable adult that has been abused, neglected, or exploited, to bring a civil action to recover actual and punitive damages against the perpetrator.[18]

An action under s. 415.1111, F.S. may be brought by the vulnerable adult, the vulnerable adult's guardian, by a person or organization acting on behalf of the vulnerable adult or the vulnerable adult's guardian, or by the personal representative of the estate of a deceased vulnerable adult.[19] The prevailing party may be entitled to recover attorney fees and costs.[20]

**EFFECT OF THE BILL**

The bill amends s. 415.1111, F.S., to provide that a "facility" may bring the civil action in cases where a vulnerable adult has been exploited, for the cost of goods and services provided by the facility to the vulnerable adult. A "facility" is any location providing day or residential care or treatment to the vulnerable adult, including any hospital, state institution, nursing home, assisted living facility, adult family-care home, adult day care center, residential facility licensed under ch. 393, F.S., adult day training center, or mental health treatment center.[21]

The bill limits recoverable damages in such actions to the amount owed to the facility for goods and services plus attorney fees and costs. Recovered damages must be credited against the sums owed to the facility by the vulnerable adult.

B. SECTION DIRECTORY:

Section 1 amends s. 415.1111, F.S., relating to civil actions.

Section 2 provides an effective date of July 1, 2016.

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[16] s. 415.102(8), F.S.
[17] Must be done knowingly, by deception or intimidation. s. 415.102(8), F.S.
[18] The remedies available in s. 415.1111, F.S., are in addition to and cumulative with other legal and administrative remedies available to a vulnerable adult.
[19] s. 415.1111, F.S.
[20] *Id.*
[21] s. 415.02(9), 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 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 may have a positive impact on facilities that provide goods and services to vulnerable adults by providing an additional collection method for outstanding debt.

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:

The bill does not define the term “goods and services.” It is therefore unclear what constitutes “goods and services” and if such items must have been contracted for by, or on behalf of, the vulnerable adult. It is also unclear if costs that may be recovered are actual costs or the maximum contract allowance if such goods and services were delivered under a contract with a private or public insurance program.

Under current law, creditor claims against deceased individuals are subject to payment through the administration of the decedent’s estate under the Florida Probate Code. This bill appears to prioritize creditor claims of facilities by creating a collection method outside of the probate process. Accordingly,

the facility does not have to "get in line" with other creditors or even notify the estate of its claim while recovering estate assets. Further, most creditor claims are barred if not presented within two years under the probate code. This bill would allow the facility to pursue collection of a debt for up to four years[22] by filing an action under s. 415.1111, F.S.

If a facility pursues a claim under s. 415.1111, F.S. to recover the cost of goods and services delivered to a vulnerable adult, the principle of *res judicata*[23] may prevent the vulnerable adult from bringing another action under s. 415.1111, F.S., to recover assets in excess of the amounts owed to the facility or to recover punitive damages. Although, s. 415.1111, F.S., is cumulative to other remedies under law, *collateral estoppel*[24] may prevent the vulnerable adult from re-litigating the issue of exploitation under a different cause of action. This may have detrimental effects in cases where the facility did not prevail on a claim under s. 415.1111, F.S.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

[22] s. 95.11, F.S.

[23] A judgment on the merits rendered in a former suit between the same parties or their privies, upon the same cause of action, by a court of competent jurisdiction, is conclusive not only as to every matter which was offered and received to sustain or defeat the claim, but as to every other matter which might with propriety have been litigated and determined in that action. *Engle v. Liggett Group*, 945 So. 2d 1246, 1259 (Fla. 2006).

[24] Collateral estoppel generally precludes relitigation of an issue in a subsequent but separate cause of action. *State v. McBride,* 848 So. 2d 287, 291 (Fla. 2003).

1 A bill to be entitled
2 An act relating to vulnerable adults; amending s.
3 415.1111, F.S.; providing for a cause of action
4 against the exploitation of vulnerable adults by a
5 facility providing goods and services to such
6 vulnerable adults under certain circumstances;
7 providing an effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Section 415.1111, Florida Statutes, is amended
12 to read:
13 415.1111 Civil actions.—
14 (1) A vulnerable adult who has been abused, neglected, or
15 exploited as specified in this chapter has a cause of action
16 against any perpetrator and may recover actual and punitive
17 damages for such abuse, neglect, or exploitation.
18 (2) The action may be brought by the vulnerable adult, or
19 that person's guardian, by a person or organization acting on
20 behalf of the vulnerable adult with the consent of that person
21 or that person's guardian, or by the personal representative of
22 the estate of a deceased victim without regard to whether the
23 cause of death resulted from the abuse, neglect, or
24 exploitation. The action may also be brought by a facility for
25 goods and services provided to the vulnerable adult, but
26 recovery shall be only for instances of exploitation and may not

27 exceed the amount owed to the facility plus attorney fees and
28 costs pursuant to subsection (3). Amounts recovered by a
29 facility shall be credited against the sums owed to the
30 facility.
31 (3) The action may be brought in any court of competent
32 jurisdiction to enforce such action and to recover actual and
33 punitive damages for any deprivation of or infringement on the
34 rights of a vulnerable adult. A party who prevails in any such
35 action may be entitled to recover reasonable attorney's fees,
36 costs of the action, and damages.
37 (4) The remedies provided in this section are in addition
38 to and cumulative with other legal and administrative remedies
39 available to a vulnerable adult.
40 (5) Notwithstanding the foregoing, any civil action for
41 damages against any licensee or entity who establishes,
42 controls, conducts, manages, or operates a facility licensed
43 under part II of chapter 400 relating to its operation of the
44 licensed facility shall be brought pursuant to s. 400.023, or
45 against any licensee or entity who establishes, controls,
46 conducts, manages, or operates a facility licensed under part I
47 of chapter 429 relating to its operation of the licensed
48 facility shall be brought pursuant to s. 429.29. Such licensee
49 or entity shall not be vicariously liable for the acts or
50 omissions of its employees or agents or any other third party in
51 an action brought under this section.
52 Section 2. This act shall take effect July 1, 2016.

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 | ______ | |

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Harrison offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Section 415.1111, Florida Statutes, is amended
7 to read:
8 415.1111 Civil actions.—
9 (1) A vulnerable adult who has been abused, neglected, or
10 exploited as specified in this chapter has a cause of action
11 against any perpetrator and may recover actual and punitive
12 damages for such abuse, neglect, or exploitation.
13 (2) The action may be brought by:
14 (a) The vulnerable adult, or that person's guardian;~~, by~~
15 (b) A person or organization acting on behalf of the
16 vulnerable adult with the consent of that person or that
17 person's guardian;~~, or by~~

18 (c) The personal representative of the estate of a
19 deceased victim without regard to whether the cause of death
20 resulted from the abuse, neglect, or exploitation; or.
21 (d) A facility which has an obligation to provide for the
22 health, safety and welfare of the vulnerable adult, provided
23 that the facility has reported the alleged exploitation to law
24 enforcement. The facility must act on behalf of the vulnerable
25 adult and with the consent of the vulnerable adult. If consent
26 cannot be given by the vulnerable adult, the facility must give
27 written notice to the vulnerable adults' next of kin or legal
28 representative, and must show that this action is necessary for
29 the immediate health, safety or welfare of the vulnerable adult.
30 Recovery for the facility shall not exceed the value of the debt
31 owed for services provided to the vulnerable adult plus any
32 reasonable attorney fees or costs incurred in bringing the cause
33 of action. Any recovery in excess of this amount owed belongs to
34 the vulnerable adult or the vulnerable adult's estate.
35 (3) The action may be brought in any court of competent
36 jurisdiction to enforce such action and to recover actual and
37 punitive damages for any deprivation of or infringement on the
38 rights of a vulnerable adult. A party who prevails in any such
39 action may be entitled to recover reasonable attorney's fees,
40 costs of the action, and damages.
41 (4) The remedies provided in this section are in addition
42 to and cumulative with other legal and administrative remedies
43 available to a vulnerable adult.

44 (5) Notwithstanding the foregoing, any civil action for
45 damages against any licensee or entity who establishes,
46 controls, conducts, manages, or operates a facility licensed
47 under part II of chapter 400 relating to its operation of the
48 licensed facility shall be brought pursuant to s. 400.023, or
49 against any licensee or entity who establishes, controls,
50 conducts, manages, or operates a facility licensed under part I
51 of chapter 429 relating to its operation of the licensed
52 facility shall be brought pursuant to s. 429.29. Such licensee
53 or entity shall not be vicariously liable for the acts or
54 omissions of its employees or agents or any other third party in
55 an action brought under this section.
56 Section 2. This act shall take effect July 1, 2016.
57
58 -----------------------------------------------------
59 **T I T L E A M E N D M E N T**
60 Remove everything before the enacting clause and insert:
61 An act relating to vulnerable adults; amending s. 415.1111,
62 F.S.; providing for a cause of action against the exploitation
63 of vulnerable adults by a facility providing goods and services
64 to such vulnerable adults under certain circumstances; providing
65 an effective date.

HB 967

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 967 Family Law
**SPONSOR(S):** Stevenson
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 972

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Civil Justice Subcommittee | | Robinson | Bond |
| 2) Judiciary Committee | | | |

## SUMMARY ANALYSIS


Collaborative law is a non-adversarial alternative dispute resolution concept that, similar to mediation, promotes problem-solving and solutions in lieu of litigation. The process employs collaborative attorneys, mental health professionals, and financial specialists to help adversarial parties reach a consensus on disputed issues. Collaborative law is entirely voluntary, and counsel retained for the purpose of collaborative law may only be used in the collaborative law process. Collaborative law requires extensive confidentiality and privileges to be created by statute, while courts must develop rules of practice and procedure to conform.

The Uniform Collaborative Law Rules/Act (UCLR/A), promulgated by the Uniform Law Commission (ULC) in 2009 and subsequently amended in 2010, standardizes the most important features of collaborative law practice, remaining mindful of ethical considerations and questions of evidentiary privilege. The UCLR/A has been adopted in 12 states as well as the District of Columbia and approved by three sections of the American Bar Association.

The bill creates the Collaborative Law Process Act based upon the UCLR/A for use in dissolution of marriage and paternity actions. The bill provides the grounds for beginning, concluding, and terminating a collaborative law process and provides the necessary statutory privileges and confidentiality of communications required for the collaborative law process.

The framework created by the bill will become effective should the Florida Supreme Court adopt rules to enact a collaborative law process in Florida.

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

The bill has an effective date of July 1, 2016.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background**

Collaborative law is a non-adversarial alternative dispute resolution concept that, similar to mediation, promotes problem-solving and solutions in lieu of litigation. The process employs collaborative attorneys, mental health professionals, and financial specialists to help adversarial parties reach a consensus on disputed issues. Collaborative law is entirely voluntary, and counsel retained for the purpose of collaborative law may only be used in the collaborative law process. Should litigation ensue because the collaborative law process partially or completely failed to resolve the disputed issues, the adversarial parties are required to retain different attorneys for litigation. Collaborative law requires extensive confidentiality and privileges to be created by statute, while courts must develop rules of practice and procedure to conform.[1]

The collaborative process purportedly hastens resolution of disputed issues and the total expenses of the parties are less than the parties would incur in traditional litigation. The International Academy of Collaborative Professionals (IACP) studied 933 divorce cases within the United States and Canada in which the parties agreed to the collaborative process. The IACP found that:

- 80% of all collaborative cases were resolved within 1 year;
- 86% of the cases studied were resolved with a formal agreement and no court appearances; and
- The average fees for all professionals totaled $24,185.[2]

**History of Collaborative Law in the United States**

The collaborative law movement started in 1990, but significantly expanded after 2000.[3] Today, collaborative law professionals are assisting disputing parties in every state of the United States, in every English-speaking country, as well as in a host of other foreign jurisdictions.[4] At least 30,000 attorneys and family professionals in the United States have been trained in the collaborative process.[5]

In 2009, the Uniform Law Commission[6] promulgated the Uniform Collaborative Law Rules/Act (amended in 2010), which regulates the use of collaborative law. According to the UCLR/A:

> At its core Collaborative Law is a voluntary dispute-resolution process in which clients agree that, with respect to a particular matter in dispute, their named counsel will represent them solely for purposes of negotiation, and, if the matter is not settled out of court that new counsel will be retained for purposes of litigation. The parties and their lawyers work together to find an equitable resolution of a dispute, retaining experts as

[1] See the Uniform Law Commission Collaborative Law Summary website for more information at http://www.uniformlaws.org/ActSummary.aspx?title=Collaborative Law Act (last visited Jan. 21, 2016).
[2] Glen L. Rabenn, Marc R. Bertone, and Paul J. Toohey, *Collaborative Divorce – A Follow Up*, 55-APR Orange County Law 32, 36 (Apr. 2013), *available at* http://www.ocbar.org/AllNews/NewsView/tabid/66/ArticleId/1039/April-2013-Collaborative-Divorce-A-Follow-Up.aspx.
[3] John Lande and Forrest S. Mosten, *Family Lawyering: Past, Present, and Future*, 51 FAM. CT. REV. 20, 22 (Jan. 2013), *available at* http://www.mostenmediation.com/books/articles/Family_Lawyering_Past_Present_Future.pdf.
[4] Rabenn, *supra* note 2.
[5] John Lande, *The Revolution in Family Law Dispute Resolution*, 24 J. AM. ACAD. MATRIM. LAW. 411, 430 (2012), *available at* http://scholarship.law.missouri.edu/cgi/viewcontent.cgi?article=1254&context=facpubs.
[6] The Uniform Law Commission (ULC) develops model statutes that are designed to be consistent from state to state to create uniformity in the law between jurisdictions. Florida's commissioners to the ULC are appointed to 4-year terms by the Governor and confirmed by the Senate.

necessary. The process is intended to promote full and open disclosure, and, as is the case in mediation, information disclosed in a collaborative process is privileged against use in any subsequent litigation . . . Collaborative Law is governed by a patchwork of state laws, state Supreme Court rules, local rules, and ethic opinions. The Uniform Collaborative Law Rules/Act ("UCLR/A") is intended to create a uniform national framework for the use of Collaborative Law—one which includes important consumer protections and enforceable privilege provisions.[7]

An essential component of the UCLR/A is the mandatory disqualification of collaborative attorneys if the parties fail to reach an agreement or intend to engage in contested litigation. Once a collaborative attorney is disqualified from further representation, the parties must start again with new counsel. "The disqualification provision thus creates incentives for parties and collaborative lawyers to settle."[8]

Twelve states[9] plus Washington, D.C., have enacted the UCLR/A, and a bill regarding its adoption is pending this year in the Massachusetts Legislature. At least three sections of the American Bar Association have also approved the UCLR/A—the Section of Dispute Resolution, the Section of Individual Rights & Responsibilities, and the Family Law Section.[10]

**History of Collaborative Law in Florida**

In the 1990s, the Florida court system began to move towards establishing family law divisions and support services to accommodate families in conflict. In 2001, the Florida Supreme Court adopted the Model Family Court Initiative. This action by the Court combined all family cases, including dependency, adoption, paternity, dissolution of marriage, and child custody into the jurisdiction of a specially designated family court. The Court noted the need for these cases to have a "system that provide[s] nonadversarial alternatives and flexibility of alternatives; a system that preserve[s] rather than destroy[s] family relationships; ... and a system that facilitate[s] the process chosen by the parties."[11] The court also noted the need to fully staff a mediation program, anticipating that mediation can resolve a high percentage of disputes.[12]

In 2012, the Florida Family Law Rules committee proposed to the Florida Supreme Court a new rule 12.745, to be known as the Collaborative Process Rule.[13] In declining to adopt the rule, the court explained:

> Given the possibility of legislative action addressing the use of the collaborative law process and the fact that certain foundations, such as training or certification of attorneys for participation in the process, have not yet been laid, we conclude that the adoption of a court rule on the subject at this time would be premature.[14]

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[7] Uniform Law Commission, *Uniform Collaborative Law Rules/Act Short Summary*. http://www.uniformlaws.org/Shared/Docs/Collaborative_Law/UCLA%20Short%20Summary.pdf (last viewed January 15, 2016).

[8] Lande, *supra* note 5 at 429; Members of the ABA who objected to the UCLR/A have stated that the disqualification provision unfairly enables one party to disqualify the other party's attorney simply by terminating the collaborative process or initiating litigation. *See* Andrew J. Meyer, *The Uniform Collaborative Law Act: Statutory Framework and the Struggle for Approval by the American Bar Association*, 4 Y.B. ON ARB. & MEDIATION 212, 216 (2012).

[9] Alabama, Arizona, Hawaii, Maryland, Michigan, Montana, Nevada, New Jersey, Ohio, Texas, Utah, and Washington.

[10] New Jersey Law Revision Commission, *Final Report Relating to New Jersey Family Collaborative Law Act*, 5 (Jul. 23, 2013), http://www.lawrev.state.nj.us/ucla/njfclaFR0723131500.pdf.

[11] *In re Report of Family Court Steering Committee*, 794 So. 2d 518, 523 (Fla. 2001).

[12] *Id.* at 520.

[13] *In Re: Amendments to the Florida Family Law Rules of Procedure*, 84 So. 3d 257 (Fla. 2012).

[14] *Id.*

Although the Florida Supreme Court has not adopted rules on collaborative law, at least four judicial circuits in Florida-the 9th, 11th, 13th, and 18th-have adopted local court rules on collaborative law.[15] Each administrative order includes the requirement that an attorney disqualify himself or herself if the collaborative process is unsuccessful. Other circuits have recognized the collaborative process in the absence of issuing a formal administrative order.

**Effect of the Proposed Changes**

The bill creates Part III of ch. 61, F.S., consisting of ss. 61.55-61.58, F.S., the "Collaborative Law Process Act (Act)." The Act establishes a basic framework for the collaborative law process based upon the UCLR/A for use in dissolution of marriage and paternity actions.

**Legislative Declarations and Purpose (Sections 3-4)**

The bill creates s. 61.55, F.S., to provide for the applicability and purpose of the collaborative law process. The authority for the collaborative process is limited to issues governed by ch. 61, F.S. (Dissolution of Marriage; Support; Time-sharing) and ch. 742, F.S. (Determination of Parentage). More specifically, the following issues are subject to resolution through the collaborative law process:

- Marriage, divorce, dissolution, annulment, and marital property distribution;
- Child custody, visitation, parenting plans, and parenting time;
- Alimony, maintenance, child support;
- Parental relocation with a child;
- Premarital, marital, and postmarital agreements; and
- Paternity.

**Definitions (Section 5)**

The bill creates s. 61.56, F.S., to provide definitions applicable to the Act.

**Beginning, Concluding, and Terminating a Collaborative Law Process (Section 6)**

The bill creates s. 61.57, F.S., to provide conditions upon which a collaborative law process begins, concludes, and terminates. The bill provides that a tribunal may not order a party to participate in a collaborative law process over that party's objection and a party may terminate the collaborative law process with or without cause. The process begins when the parties enter into a collaborative participation agreement. If a legal proceeding is pending, the proceeding is put on hold while the collaborative law process is ongoing.

A collaborative law process is concluded in one of four ways. First, the parties may provide for a method by agreement. Second, the parties may sign a record providing a resolution of the matter. Third, the parties may sign a record indicating resolution of certain matters while leaving other matters unresolved. Fourth, the process is concluded by a termination of the process, evidenced when a party:

- Gives notice to other parties that the process is ended;
- Begins a legal proceeding related to a collaborative law matter without the agreement of all the parties;
- Initiates a pleading, motion, order to show cause, or request for a conference with a tribunal in a pending proceeding related to the matter;

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[15] Order Authorizing Collaborative Process Dispute Resolution Model in the Ninth Judicial Circuit of Florida, Fla. Admin. Order No. 2008-06 (Mar. 28, 2008); In re: Authorizing the Collaborative Process Dispute Resolution Model in the Eleventh Judicial Circuit of Florida, Fla. Admin Order No. 07-08 (Oct. 2007); Collaborative Family Law Practice, Fla. Admin. Order No. S-2012-041 (Jul. 31, 2012); In re: Domestic Relations—Collaborative Conflict Resolution in Dissolution of Marriage Cases, Fla. Admin. Order No. 14-04 Amended (Feb. 23, 2014) (on file with the Civil Justice Subcommittee).

- Requests that the proceeding be put on the tribunal's active calendar in a pending proceeding related to the matter or takes a similar action requiring notice to be sent to the parties; or
- Discharges a collaborative lawyer or a collaborative lawyer withdraws.

A party's collaborative lawyer must give prompt notice to all other parties in a record of a discharge or withdrawal.

A collaborative law process may survive the discharge or withdrawal of a collaborative lawyer under the following conditions:

- The unrepresented party engages a successor collaborative lawyer;
- The parties consent in a signed record to continue the process;
- The agreement is amended to identify the successor collaborative lawyer; and
- The successor collaborative lawyer confirms the representation in a signed record.

**Confidentiality of Collaborative Law Communication (Section 7)**

The bill creates s. 61.58, F.S., to provide that a collaborative law communication is confidential to the extent agreed upon by the parties in a signed record or as otherwise provided by law, with limitations as discussed below.

Privilege against Disclosure for Collaborative Law Communications

The bill creates s. 61.58(1), F.S., to provide a privilege against disclosure for collaborative law communications, within limits provided in the bill. A collaborative law communication is not subject to discovery or admissible in evidence in a proceeding before a tribunal. Each party (including a party's attorney during the collaborative law process) has a privilege to refuse to disclose a collaborative law communication, and to prevent any other person from disclosing a communication. A nonparty to the collaborative law process (which is any person other than the party or the party's attorney, in this context) may also refuse to disclose any communication or may prevent any other person from disclosing the nonparty's communication. Therefore, a party has an absolute privilege as to all communications, while the nonparty has a privilege for his or her own communications. However, evidence that would otherwise be admissible does not become inadmissible or protected from discovery solely because it may have been a communication during a collaborative law process. The privilege does not apply if the parties agree in advance in a signed record or if all parties agree in a proceeding that all or part of a collaborative law process is not privileged, as long as the parties had actual notice before the communication was made.

Waiver and Preclusion of Privilege

The bill creates s. 61.58(2), F.S., to provide that a privilege may be expressly waived either orally or in writing during a proceeding if all the parties agree. If a nonparty has a privilege, the nonparty must also agree to waive the privilege. However, if a person makes a disclosure or representation about a collaborative law communication that prejudices another person during a proceeding before a tribunal, that person may not assert a privilege to the extent that it is necessary for the prejudiced person to respond.

Limits of Privilege

The bill creates s. 61.58(3), F.S., to provide that a privilege does not apply to a collaborative law communication that is:

- Available to the public under Florida's Public Records statutes in ch. 119, F.S.;
- Made during a collaborative law session that is open to the public or required by law to be open to the public;

- A threat or statement of a plan to inflict bodily injury or commit a crime of violence;
- Intentionally used to plan or commit a crime, or conceal an ongoing crime or ongoing criminal activity; or
- In an agreement resulting from the collaborative process if there is a record memorializing the agreement, signed by all of the parties.

A privilege does not apply to the extent that the communication is sought or offered to prove or disprove:

- A claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process; or
- Abuse, neglect, abandonment, or exploitation of a child or adult, unless the Florida Department of Children and Families is a party or otherwise participates in the collaborative law process.

Only the portion of the communication needed for proof or disproof may be disclosed or admitted.

There are other limited circumstances where a privilege does not apply that requires the approval of the court. A party seeking discovery or a proponent of certain evidence may show that the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the communication is either in a court proceeding involving a felony or a proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or where a defense is asserted to avoid liability on the contract. Only the portion of the communication needed for evidence may be disclosed or admitted.

**Effective Date (Section 8)**

The framework created by the bill will become effective 30 days after the Florida Supreme Court adopts rules of procedure and professional responsibility consistent with the collaborative law process. The Legislature may not create rules or procedures relating to litigation, as this would violate the separation of powers and the Supreme Court's exclusive right to "adopt rules for the practice and procedure in all courts . . ."[16] See the *Constitutional Issues* section below for a more detailed discussion.

B. SECTION DIRECTORY:

Section 1 provides a short title.

Section 2 directs the Division of Law Revision and Information to create part III of ch. 61, Florida Statutes, entitled the "Collaborative Law Process Act."

Section 3 provides legislative declarations as to the purpose of the Act.

Section 4 creates s. 61.55, F.S., relating to the purpose of the Act.

Section 5 creates s. 61.56, F.S., relating to definitions.

Section 6 creates s. 61.57, F.S., relating to beginning, concluding, and terminating a collaborative law process.

Section 7 creates s. 61.58, F.S., relating to confidentiality of a collaborative law communication.

Section 8 directs that the Act is not effective until 30 days after the adoption of rules of procedure and professional responsibility by the Florida Supreme Court.

[16] Art. V, s. 2, FLA. CONST.

Section 9 contains an effective date of July 1, 2016, except as otherwise expressly provided in the Act.

## 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 Office of the State Courts Administrator (OSCA) indicates that the bill could potentially decrease judicial workload due to fewer filings, hearings, and contested issues. Increased judicial workload, however, could result from *in camera* hearings regarding privilege determinations. Due to the unavailability of data needed to quantifiably establish the impact on judicial or court workload, fiscal impact is indeterminate. [17]

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:

Although some family law attorneys currently practice collaborative law in the state, the bill could theoretically expand the use of collaborative law as an alternative to traditional litigation in dissolution of marriage and paternity actions. To the extent that collaborative law reduces costs of litigation, parties in such actions may benefit financially from electing to proceed in a collaborative manner.

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:

   Article V, s. 2 of the Florida Constitution provides the Supreme Court with exclusive rulemaking authority for practice and procedure in all courts. This bill appears to present the Court with the opportunity to make rules to carry out the purpose of the bill. However, the bill does not direct the Court to make rules.

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[17] Office of the State Courts Administrator, Agency Analysis of 2016 Senate Bill 972, p. 2 (December 21, 2015)(on file with the Civil Justice Subcommittee).

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

Although the bill conforms to the UCLR/A and existing local rules in most respects, the bill does not provide for mandatory disqualification of collaborative attorneys if the process does not result in a settlement. The absence of a mandatory disqualification provision is a significant departure from the UCLR/A and local court rules. The Supreme Court could include the disqualification requirement in its implementing rules.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
2 An act relating to family law; providing a short
3 title; providing a directive to the Division of Law
4 Revision and Information; providing legislative
5 findings; creating s. 61.55, F.S.; providing a
6 purpose; creating s. 61.56, F.S.; defining terms;
7 creating s. 61.57, F.S.; providing that a
8 collaborative law process begins when the parties
9 enter into a collaborative law participation
10 agreement; prohibiting a tribunal from ordering a
11 party to participate in a collaborative law process
12 over the party's objection; providing the conditions
13 under which a collaborative law process concludes,
14 terminates, or continues; creating s. 61.58, F.S.;
15 providing for confidentiality of communications made
16 during the collaborative law process; providing
17 exceptions; providing that specified provisions do not
18 take effect until 30 days after the Florida Supreme
19 Court adopts rules of procedure and professional
20 responsibility; providing a contingent effective date;
21 providing effective dates.
22
23 Be It Enacted by the Legislature of the State of Florida:
24
25 Section 1. This act may be cited as the "Collaborative Law
26 Process Act."

27 Section 2. The Division of Law Revision and Information is
28 directed to create part III of chapter 61, Florida Statutes,
29 consisting of ss. 61.55-61.58, Florida Statutes, to be entitled
30 the "Collaborative Law Process Act."
31 Section 3. The Legislature finds and declares that the
32 purpose of part III of chapter 61, Florida Statutes, is to:
33 (1) Create a uniform system of practice for a
34 collaborative law process for proceedings under chapters 61 and
35 742, Florida Statutes.
36 (2) Encourage the peaceful resolution of disputes and the
37 early settlement of pending litigation through voluntary
38 settlement procedures.
39 (3) Preserve the working relationship between parties to a
40 dispute through a nonadversarial method that reduces the
41 emotional and financial toll of litigation.
42 Section 4. Section 61.55, Florida Statutes, is created to
43 read:
44 61.55 Purpose.—The purpose of this part is to create a
45 uniform system of practice for the collaborative law process in
46 this state. It is the policy of this state to encourage the
47 peaceful resolution of disputes and the early resolution of
48 pending litigation through a voluntary settlement process. The
49 collaborative law process is a unique nonadversarial process
50 that preserves a working relationship between the parties and
51 reduces the emotional and financial toll of litigation.
52 Section 5. Section 61.56, Florida Statutes, is created to



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

53 read:
54 61.56 Definitions.—As used in this part, the term:
55 (1) "Collaborative attorney" means an attorney who
56 represents a party in a collaborative law process.
57 (2) "Collaborative law communication" means an oral or
58 written statement, including a statement made in a record, or
59 nonverbal conduct that:
60 (a) Is made in the conduct of or in the course of
61 participating in, continuing, or reconvening for a collaborative
62 law process; and
63 (b) Occurs after the parties sign a collaborative law
64 participation agreement and before the collaborative law process
65 is concluded or terminated.
66 (3) "Collaborative law participation agreement" means an
67 agreement between persons to participate in a collaborative law
68 process.
69 (4) "Collaborative law process" means a process intended
70 to resolve a collaborative matter without intervention by a
71 tribunal and in which persons sign a collaborative law
72 participation agreement and are represented by collaborative
73 attorneys.
74 (5) "Collaborative matter" means a dispute, a transaction,
75 a claim, a problem, or an issue for resolution, including a
76 dispute, a claim, or an issue in a proceeding which is described
77 in a collaborative law participation agreement and arises under
78 chapter 61 or chapter 742, including, but not limited to:

79 (a) Marriage, divorce, dissolution, annulment, and marital
80 property distribution.
81 (b) Child custody, visitation, parenting plan, and
82 parenting time.
83 (c) Alimony, maintenance, and child support.
84 (d) Parental relocation with a child.
85 (e) Parentage and paternity.
86 (f) Premarital, marital, and postmarital agreements.
87 (6) "Law firm" means:
88 (a) One or more attorneys who practice law in a
89 partnership, professional corporation, sole proprietorship,
90 limited liability company, or association; or
91 (b) One or more attorneys employed in a legal services
92 organization, the legal department of a corporation or other
93 organization, or the legal department of a governmental entity,
94 subdivision, agency, or instrumentality.
95 (7) "Nonparty participant" means a person, other than a
96 party and the party's collaborative attorney, who participates
97 in a collaborative law process.
98 (8) "Party" means a person who signs a collaborative law
99 participation agreement and whose consent is necessary to
100 resolve a collaborative matter.
101 (9) "Person" means an individual; a corporation; a
102 business trust; an estate; a trust; a partnership; a limited
103 liability company; an association; a joint venture; a public
104 corporation; a government or governmental subdivision, agency,

105 or instrumentality; or any other legal or commercial entity.
106 (10) "Proceeding" means a judicial, an administrative, an
107 arbitral, or any other adjudicative process before a tribunal,
108 including related prehearing and posthearing motions,
109 conferences, and discovery.
110 (11) "Prospective party" means a person who discusses with
111 a prospective collaborative attorney the possibility of signing
112 a collaborative law participation agreement.
113 (12) "Record" means information that is inscribed on a
114 tangible medium or that is stored in an electronic or other
115 medium and is retrievable in perceivable form.
116 (13) "Related to a collaborative matter" means involving
117 the same parties, transaction or occurrence, nucleus of
118 operative fact, dispute, claim, or issue as the collaborative
119 matter.
120 (14) "Sign" means, with present intent to authenticate or
121 adopt a record, to:
122 (a) Execute or adopt a tangible symbol; or
123 (b) Attach to or logically associate with the record an
124 electronic symbol, sound, or process.
125 (15) "Tribunal" means a court, an arbitrator, an
126 administrative agency, or other body acting in an adjudicative
127 capacity which, after presentation of evidence or legal
128 argument, has jurisdiction to render a decision affecting a
129 party's interests in a matter.
130 Section 6. Section 61.57, Florida Statutes, is created to

131 read:
132 61.57 Beginning, concluding, and terminating a
133 collaborative law process.—
134 (1) The collaborative law process begins, regardless of
135 whether a legal proceeding is pending, when the parties enter
136 into a collaborative law participation agreement.
137 (2) A tribunal may not order a party to participate in a
138 collaborative law process over that party's objection.
139 (3) A collaborative law process is concluded by any of the
140 following:
141 (a) Resolution of a collaborative matter as evidenced by a
142 signed record;
143 (b) Resolution of a part of the collaborative matter,
144 evidenced by a signed record, in which the parties agree that
145 the remaining parts of the collaborative matter will not be
146 resolved in the collaborative law process; or
147 (c) Termination of the collaborative law process.
148 (4) A collaborative law process terminates when a party:
149 (a) Gives notice to the other parties in a record that the
150 collaborative law process is concluded;
151 (b) Begins a proceeding related to a collaborative matter
152 without the consent of all parties;
153 (c) Initiates a pleading, a motion, an order to show
154 cause, or a request for a conference with a tribunal in a
155 pending proceeding related to a collaborative matter;
156 (d) Requests that the proceeding be put on the tribunal's

157 active calendar in a pending proceeding related to a
158 collaborative matter;
159 (e) Takes similar action requiring notice to be sent to
160 the parties in a pending proceeding related to a collaborative
161 matter; or
162 (f) Discharges a collaborative attorney or a collaborative
163 attorney withdraws from further representation of a party,
164 except as otherwise provided in subsection (7).
165 (5) A party's collaborative attorney shall give prompt
166 notice to all other parties in a record of a discharge or
167 withdrawal.
168 (6) A party may terminate a collaborative law process with
169 or without cause.
170 (7) Notwithstanding the discharge or withdrawal of a
171 collaborative attorney, the collaborative law process continues
172 if, not later than 30 days after the date that the notice of the
173 discharge or withdrawal of a collaborative attorney required by
174 subsection (5) is sent to the parties:
175 (a) The unrepresented party engages a successor
176 collaborative attorney;
177 (b) The parties consent to continue the collaborative law
178 process by reaffirming the collaborative law participation
179 agreement in a signed record;
180 (c) The collaborative law participation agreement is
181 amended to identify the successor collaborative attorney in a
182 signed record; and

183 (d) The successor collaborative attorney confirms his or
184 her representation of a party in the collaborative law
185 participation agreement in a signed record.
186 (8) A collaborative law process does not conclude if, with
187 the consent of the parties, a party requests a tribunal to
188 approve a resolution of a collaborative matter or any part
189 thereof as evidenced by a signed record.
190 (9) A collaborative law participation agreement may
191 provide additional methods for concluding a collaborative law
192 process.
193 Section 7. Section 61.58, Florida Statutes, is created to
194 read:
195 61.58 Confidentiality of a collaborative law
196 communication.—Except as provided in this section, a
197 collaborative law communication is confidential to the extent
198 agreed by the parties in a signed record or as otherwise
199 provided by law.
200 (1) PRIVILEGE AGAINST DISCLOSURE FOR COLLABORATIVE LAW
201 COMMUNICATION; ADMISSIBILITY; DISCOVERY.—
202 (a) Subject to subsections (2) and (3), a collaborative
203 law communication is privileged as provided under paragraph (b),
204 is not subject to discovery, and is not admissible into
205 evidence.
206 (b) In a proceeding, the following privileges apply:
207 1. A party may refuse to disclose, and may prevent another
208 person from disclosing, a collaborative law communication.



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

209 2. A nonparty participant may refuse to disclose, and may
210 prevent another person from disclosing, a collaborative law
211 communication of a nonparty participant.
212 (c) Evidence or information that is otherwise admissible
213 or subject to discovery does not become inadmissible or
214 protected from discovery solely because of its disclosure or use
215 in a collaborative law process.
216 (2) WAIVER AND PRECLUSION OF PRIVILEGE.—
217 (a) A privilege under subsection (1) may be waived orally
218 or in a record during a proceeding if it is expressly waived by
219 all parties and, in the case of the privilege of a nonparty
220 participant, if it is expressly waived by the nonparty
221 participant.
222 (b) A person who makes a disclosure or representation
223 about a collaborative law communication that prejudices another
224 person in a proceeding may not assert a privilege under
225 subsection (1). This preclusion applies only to the extent
226 necessary for the person prejudiced to respond to the disclosure
227 or representation.
228 (3) LIMITS OF PRIVILEGE.—
229 (a) A privilege under subsection (1) does not apply to a
230 collaborative law communication that is:
231 1. Available to the public under chapter 119 or made
232 during a session of a collaborative law process that is open, or
233 is required by law to be open, to the public;
234 2. A threat, or statement of a plan, to inflict bodily

235 injury or commit a crime of violence;
236 3. Intentionally used to plan a crime, commit or attempt
237 to commit a crime, or conceal an ongoing crime or ongoing
238 criminal activity; or
239 4. In an agreement resulting from the collaborative law
240 process, as evidenced by a record signed by all parties to the
241 agreement.
242 (b) The privilege under subsection (1) for a collaborative
243 law communication does not apply to the extent that such
244 collaborative law communication is:
245 1. Sought or offered to prove or disprove a claim or
246 complaint of professional misconduct or malpractice arising from
247 or relating to a collaborative law process; or
248 2. Sought or offered to prove or disprove abuse, neglect,
249 abandonment, or exploitation of a child or an adult unless the
250 Department of Children and Families is a party to or otherwise
251 participates in the process.
252 (c) A privilege under subsection (1) does not apply if a
253 tribunal finds, after a hearing in camera, that the party
254 seeking discovery or the proponent of the evidence has shown
255 that the evidence is not otherwise available, the need for the
256 evidence substantially outweighs the interest in protecting
257 confidentiality, and the collaborative law communication is
258 sought or offered in:
259 1. A proceeding involving a felony; or
260 2. A proceeding seeking rescission or reformation of a

261 contract arising out of the collaborative law process or in
262 which a defense is asserted to avoid liability on the contract.
263 (d) If a collaborative law communication is subject to an
264 exception under paragraph (b) or paragraph (c), only the part of
265 the collaborative law communication necessary for the
266 application of the exception may be disclosed or admitted.
267 (e) Disclosure or admission of evidence excepted from the
268 privilege under paragraph (b) or paragraph (c) does not make the
269 evidence or any other collaborative law communication
270 discoverable or admissible for any other purpose.
271 (f) The privilege under subsection (1) does not apply if
272 the parties agree in advance in a signed record, or if a record
273 of a proceeding reflects agreement by the parties, that all or
274 part of a collaborative law process is not privileged. This
275 paragraph does not apply to a collaborative law communication
276 made by a person who did not receive actual notice of the
277 collaborative law participation agreement before the
278 communication was made.
279 Section 8. Sections 61.55-61.58, Florida Statutes, as
280 created by this act, shall not take effect until 30 days after
281 the Florida Supreme Court adopts rules of procedure and
282 professional responsibility consistent with this act.
283 Section 9. Except as otherwise expressly provided in this
284 act, this act shall take effect July 1, 2016.

HB 1077

# HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1077 Convenience Business Security
**SPONSOR(S):** Stone
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1302

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Civil Justice Subcommittee | | Malcolm | Bond |
| 2) Justice Appropriations Subcommittee | | | |
| 3) Judiciary Committee | | | |

## SUMMARY ANALYSIS


The Convenience Business Security Act (Act) requires a convenience business open between 11 p.m. and 5 a.m. to comply with minimum security standards. If a specified crime has occurred at the business, the business must also implement enhanced security measures between 11 p.m. and 5 a.m.

The Act also requires all employees of a convenience business to receive robbery deterrence and safety training within 60 days of employment. A training provider must submit a proposed training curriculum to the Department of Legal Affairs for review and approval. The training curriculum must be resubmitted biennially. The Department of Legal Affairs may charge up to $100 for review of a curriculum, but currently the department does not charge the fee.

Currently, the term “convenience business” is defined to exclude any business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m. An excluded business is exempt from minimum security standards, enhanced security standards, and employee training requirements.

The bill:

- requires all employees of an exempt convenience business to attend the robbery deterrence and safety training course;
- changes the dollar value on the required sign at the entrance of a convenience business from $50 to $100; and
- eliminates the training curriculum review fees (initial and renewal) that the Department of Legal Affairs may charge.

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

The effective date of the bill is May 1, 2016.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**The Convenience Business Security Act**

In 1990, the Legislature passed the Convenience Business Security Act (Act) [1] to prevent violent crime and provide uniform statewide security standards for late night convenience businesses.[2] The provisions of the Act are enforced by the Department of Legal Affairs (Department).[3]

Definition of a "Convenience Business"

The term "convenience business" is defined as any place of business that is primarily engaged in the retail sale of groceries, or both groceries and gasoline, and that is open for business at any time between the hours of 11 p.m. and 5 a.m.[4] The term does not include:

- A business that is solely or primarily a restaurant;
- A business that always has at least five employees on the premises after 11 p.m. and before 5 a.m.; or
- A business that has at least 10,000 square feet of retail floor space.[5]

The term also does not include any business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.[6]

Minimum Security Standards

The Act requires a convenience business to have the following security devices and standards:

- A security camera system that is capable of recording and retrieving an image to assist in offender identification and apprehension;
- A drop safe or cash management device for restricted access to cash receipts;
- A lighted parking lot illuminated at a specified intensity;
- A conspicuous notice at the entrance stating that the cash register contains $50 or less;
- Window signage that allows a clear and unobstructed view from outside the building and in a normal line of sight of the cash register and sales transaction area;
- Height markers at the entrance of the convenience business that display height measures;
- A cash management policy that limits cash on hand after 11 p.m.;
- Windows that are not tinted in a way that reduces exterior or interior view; and
- A silent alarm to law enforcement or a private security agency.[7]

Enhanced Security Standards

The Act requires any convenience business at which a murder, robbery, sexual battery, aggravated assault, aggravated battery, kidnapping, or false imprisonment has occurred, to implement additional security measures. These additional security measures must be in place at all times between 11 p.m. and 5 a.m., and include:

- Providing at least two employees on the premises;
- Installing a transparent secured safety enclosure for use by the employees;
- Providing a security guard on the premises;

[1] ch. 90-346, L.O.F.
[2] s. 812.172, F.S.
[3] s. 812.175, F.S. The Department may also enter into agreements with local governments to assist in enforcement. s. 812.175(4), F.S.
[4] s. 812.171, F.S.
[5] *Id.*
[6] *Id.*
[7] ss. 812.173(1), (2), and (3), F.S.

- Locking the premises and transacting business through an indirect pass-through window; or
- Closing the business.[8]

After complying with these provisions for 24 months with no additional occurrences of the above-described crimes, a convenience business may file a notice of exemption from the enhanced security measures with the Department.[9]

Training Requirements
The Act requires all employees of a convenience business to complete a robbery deterrence and safety training within 60 days of employment.[10] Convenience businesses must submit a proposed training curriculum to the Department, along with an administrative fee not to exceed $100, for review and approval.[11] The training curriculum must be submitted to the Department biennially, along with the appropriate administrative fee, for reapproval.[12]

Enforcement
The statute provides for enforcement of the Act by the Department. Upon learning of a violation, the Department must provide the convenience business a notice of violation which the business has 30 days to correct.[13] If the convenience business fails to correct the violation within 30 days, the Department may impose a civil fine of up to $5,000.[14] If the violation is determined to be a threat to health, safety, and public welfare, the Department is authorized to pursue an injunction against the convenience business.[15]

**Effect of the Bill**
The bill amends the definition of "convenience business" to repeal the exemption of a business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m. By itself, this change in definitions would require compliance with the minimum security measures, enhanced security measures, and training requirements. However, the bill adds an exemption for such business from the minimum security measures and enhanced security measures. Thus, the impact of this bill on a convenience business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m. is only to require the employees of such businesses to complete a training course.

As to a convenience business subject to the minimum safety standards, the bill changes the requirement regarding a conspicuous notice at the entrance stating that the cash register contains $50, changing the sum to $100.

The bill also repeals the requirement that a convenience business pay a $100 fee to submit a safety training curriculum to the Department for approval, and repeals the biennial re-review requirement.

B. SECTION DIRECTORY:

Section 1 amends s. 812.171, F.S., relating to definitions.

Section 2 amends s. 812.193, F.S., relating to convenience business security.

Section 3 amends s. 812.174, F.S., relating to training of employees.

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[8] s. 812.173(4), F.S.
[9] s. 812.173(5), F.S.
[10] s. 812.174, F.S.
[11] *Id.*
[12] *Id.*
[13] s. 812.175(1), F.S.
[14] *Id.*
[15] s. 812.175(3), F.S.

Section 4 provides an effective date of May 1, 2016.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill removes the requirement that convenience businesses must submit a fee to the Department for review of training curriculum. However, the Department reports that they are not currently collecting the fee, and that accordingly the bill will not have a revenue impact.[16]

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 appears to have a direct economic impact on the private sector. Affected convenience business operators will be required to send all employees to a robbery deterrence and safety training course.

D. FISCAL COMMENTS:

The Department of Legal Affairs does not currently fully enforce the Convenience Business Security Act as insufficient funds are appropriated for such enforcement. The department estimates that it would require approximately $1.2 million annually to fully implement the Act.[17]

## 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.

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[16] Conversation with Andrew Fay, Florida Department of Legal Affairs, January 22, 2015.

[17] Correspondence from Dept. of Legal Affairs dated January 7, 2016 (on file with the Civil Justice Subcommittee).

C. DRAFTING ISSUES OR OTHER COMMENTS:

A similar bill passed in the 2015 legislative session, but was vetoed by the Governor. The significant difference between this bill and the vetoed bill is that the vetoed bill would have required a convenience business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m. to comply with the minimum security standards.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

1 A bill to be entitled
2 An act relating to convenience business security;
3 amending s. 812.171, F.S.; deleting an exclusion from
4 the definition of the term "convenience business" for
5 businesses in which the owner or members of his or her
6 family work between specified hours; amending s.
7 812.173, F.S.; revising the contents of a notice
8 concerning the amount of cash available; exempting
9 businesses in which the owner or members of his or her
10 family work between specified hours from specified
11 requirements; amending s. 812.174, F.S.; deleting
12 obsolete provisions relating to the training of
13 convenience business employees; deleting an
14 administrative fee for approval and reapproval for
15 robbery deterrence and safety training curricula;
16 providing an effective date.
17
18 Be It Enacted by the Legislature of the State of Florida:
19
20 Section 1. Section 812.171, Florida Statutes, is amended
21 to read:
22 812.171 Definition.—As used in this act, the term
23 "convenience business" means any place of business that is
24 primarily engaged in the retail sale of groceries, or both
25 groceries and gasoline, and that is open for business at any
26 time between the hours of 11 p.m. and 5 a.m. The term

"convenience business" does not include:

(1) A business that is solely or primarily a restaurant.

(2) A business that always has at least five employees on the premises after 11 p.m. and before 5 a.m.

(3) A business that has at least 10,000 square feet of retail floor space.

~~The term "convenience business" does not include any business in which the owner or members of his or her family work between the hours of 11 p.m. and 5 a.m.~~

Section 2. Paragraph (d) of subsection (1) of section 812.173, Florida Statutes, is amended, subsection (5) is renumbered as subsection (6), and a new subsection (5) is added to that section, to read:

812.173 Convenience business security.—

(1) Every convenience business shall be equipped with the following security devices and standards:

(d) A conspicuous notice at the entrance which states that the cash register contains $100 ~~$50~~ or less.

(5) The security devices, standards, and measures required by subsections (1)-(4) are not required for a convenience business in which the owner or members of the owner's immediate family work on the premises of the convenience business between the hours of 11 p.m. and 5 a.m.

Section 3. Section 812.174, Florida Statutes, is amended to read:

53 812.174 Training of employees.—
54 <u>(1)</u> The owner or principal operator of a convenience
55 business or convenience businesses shall provide proper robbery
56 deterrence and safety training by an approved curriculum to its
57 retail employees within 60 days <u>after</u> ~~of~~ employment. ~~Existing~~
58 ~~retail employees shall receive training within 6 months of April~~
59 ~~8, 1992.~~
60 <u>(2)</u> A proposed curriculum shall be submitted in writing
61 to the Attorney General ~~with an administrative fee not to exceed~~
62 ~~$100~~. The Attorney General shall review and approve or
63 disapprove the curriculum in writing within 60 days after
64 receipt. The state shall have no liability for approving or
65 disapproving a training curriculum under this section. Approval
66 shall be given to a curriculum <u>that</u> ~~which~~ trains and
67 familiarizes retail employees with the security principles,
68 devices, and measures required by s. 812.173. Disapproval of a
69 curriculum shall be subject to ~~the provisions of~~ chapter 120.
70 <u>(3) A</u> ~~No~~ person <u>is not</u> ~~shall be~~ liable for ordinary
71 negligence due to implementing an approved curriculum if the
72 training was actually provided. ~~A curriculum shall be submitted~~
73 ~~for reapproval biennially with an administrative fee not to~~
74 ~~exceed $100. Any curriculum approved by the Attorney General~~
75 ~~since September 1990 shall be subject to reapproval 2 years from~~
76 ~~the anniversary of initial approval and biennially thereafter.~~
77 Section 4. This act shall take effect May 1, 2016.



CODING: Words ~~stricken~~ are deletions; words <u>underlined</u> are additions.

HB 1181

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1181 Bad Faith Assertions of Patent Infringement
**SPONSOR(S):** Grant
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 1298

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Civil Justice Subcommittee | | Malcolm | Bond |
| 2) Judiciary Committee | | | |

### SUMMARY ANALYSIS


In 2015, the Legislature enacted the "Patent Troll Prevention Act" (Act) to provide a private right of action for a person who has received a bad faith patent infringement claim. The bill amends the Act by:

- removing the private right of action for a person who has received a bad faith assertion of patent infringement;
- authorizing the Attorney General to bring an action to enjoin a violation of the Act; and
- revising the criteria by which a demand letter is deemed to be a bad faith assertion of patent infringement in violation of the Act.

The bill also repeals the exemption in the Act for universities and technology transfer companies affiliated with a university.

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

The bill provides an effective date of July 1, 2016.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Current Situation**

**Patent Law**

A patent is the grant of a property right in an invention to its inventor, issued by the United States Patent and Trademark Office generally for a term of 20 years.[1] A patent confers the right to exclude others from making, using, or selling the invention in the United States or importing the invention into the United States.[2]

Article I, s. 8, cl 8, of the United States Constitution gives Congress the power to enact laws relating to patents.[3] Based on this grant of power, Congress enacted a number of patent statutes, most significantly, the Patent Act of 1952.[4] Congress, in turn, has vested the federal courts with exclusive jurisdiction to determine patent validity and infringement.[5]

**Enforcement of Patents**

A patent holder may enforce its rights by filing infringement suits in federal court.[6] The patent holder bears the burden of establishing infringement by each alleged infringer.[7] Patent litigation is generally very expensive: the average suit in which $1 million to $25 million is at stake costs $1.6 million through discovery and $2.8 million through trial.[8]

Although Congress has not expressly preempted state law in all areas of patent law, federal courts have generally held that most patent litigation is implicitly preempted by Congress.[9] Accordingly, the Federal Circuit, which has exclusive appellate jurisdiction over patent cases, has held that state law claims against abusive patent infringement practices are mostly preempted by the federal Patent Act because

> [a] patentee that has a good faith belief that its patents are being infringed violates no protected right when it so notifies infringers. Accordingly, a patentee must be allowed to make its rights known to a potential infringer so that the latter can determine whether to cease its allegedly infringing activities, negotiate a license if one is offered, or decide to run the risk of liability and/or the imposition of an injunction.[10]

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[1] United States Patent and Trademark Office, *General Information Concerning Patents* (Oct. 2014) http://www.uspto.gov/patents-getting-started/general-information-concerning-patents#heading-2 (last visited Jan. 23, 2016).
[2] 35 U.S.C. §154 (2012).
[3] "To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." Art. I, §8, cl. 8, U.S. Const.
[4] P.L. 82-593, 66 Stat. 792 (codified at 35 U.S.C.).
[5] 28 U.S.C. §1338(a) ("No State court shall have jurisdiction over any claim for relief arising under any Act of Congress relating to patents . . . .").
[6] *See id*; 35 U.S.C. §271 (2012).
[7] 35 U.S.C. §101 (2012).
[8] Brian Yeh, *An Overview of the "Patent Trolls" Debate*, Congressional Research Service (April 16, 2013).
[9] *See Globetrotter Software, Inc. v. Elan Computer Grp., Inc.*, 362 F.3d 1367, 1374 (Fed. Cir. 2004).
[10] *Id.* at 1374 (quoting *Va. Panel Corp. v. MAC Panel Co.*, 133 F.3d 860, 869 (Fed.Cir.1997)).

To avoid preemption, a person that raises a state law cause of action based on abusive patent infringement practices must prove that the infringement allegations were "objectively baseless," meaning that no reasonable litigant could have expected to succeed.[11]

**Patent Trolls**

"Patent assertion entities," commonly referred to as "patent trolls," describes a business that focuses on purchasing and asserting patents against companies that already use the patented technology in their business operations (after infringement and lock-in have occurred), rather than developing and transferring technology to licensees.[12] Patent trolls frequently operate by sending notices of alleged patent infringement to large numbers of businesses to threaten litigation if the business does not pay a licensing fee.[13] Often defendants, especially smaller companies and startups, will choose to settle to avoid expending time and resources on costly litigation. Patent trolls simply transfer a legal right not to be sued for the transfer of money.[14]

**State Attempts to Limit Bad Faith Patent Infringement Claims**

As of the beginning of 2016, 27 states, including Florida, have passed statutes outlawing certain acts of bad faith patent enforcement;[15] the majority of statutes, including Florida's, are modeled after a Vermont statute, which prohibits "bad faith" assertions of patent infringement.[16] Other states have outlawed assertions that "contain false, misleading, or deceptive information"[17] or have defined specific acts as illegal, such as threatening litigation and not filing suit or making infringement assertions that "lack a reasonable basis in fact or law."[18] Most of the new statutes create a private right of action for the targets of unlawful infringement assertions, and all of the statutes provide for enforcement by state officials, such as the state attorney general.[19] However, whether such state law attempts to curb bad faith patent claims are preempted by federal law is unknown.[20]

**Florida's Patent Troll Prevention Act**

In 2015, the Florida legislature passed the Patent Troll Prevention Act (Act), Part VII of ch. 501, F.S.[21] The Act creates a private right of action for a person who has received a bad faith assertion of patent infringement. In determining whether an assertion of patent infringement violates the Act, a court may consider a number of factors, including whether:

- the demand letter contained basic information regarding the patent, the patent owner, and the specific infringing conduct, or whether such information was provided when requested;
- the demand letter requested payment of a license fee or a response within an unreasonable period of time or requested an unreasonable license fee;

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[11] *Id.*at 1377; *Dominant Semiconductors Sdn. Bhd. v. OSRAM GmbH,* 524 F.3d 1254, 1260 (Fed. Cir. 2008).
[12] Thomas A. Hemphill, *The Paradox of Patent Assertion Entities*, American Enterprise Institute (Aug. 12, 2013) http://www.aei.org/publication/the-paradox-of-patent-assertion-entities/ (last visited Jan. 23, 2016).
[13] *See* Paul R. Gugliuzza, *Patent Trolls and Preemption*, Boston University School of Law Public Law & Legal Theory Paper No. 15-03, 1-4 (Jan. 20, 2015), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2539280 (last visited Jan. 23, 2016).
[14] Hemphill, *supra* Note 12.
[15] Gugliuzza, *supra* Note 13 at 4-5; Patent Progress's Guide to State Patent Legislation (Jan. 4, 2016) http://www.patentprogress.org/patent-progress-legislation-guides/patent-progresss-guide-state-patent-legislation/ (last visited Jan. 23, 2016).
[16] VT. STAT. ANN., tit. 9, § 4197(a) (2014).
[17] WIS. STAT. § 100.197(2)(b) (2014).
[18] *E.g.*, 815 ILL. COMP. STAT. 505/2RRR(b)(1), (3) (2014).
[19] *E.g.,* VT. STAT. ANN., tit. 9, § 4199(a); WIS. STAT. § 100.197(3)(b); TENN. CODE ANN. § 29-40-103 to -104; 815 ILL. COMP. STAT. 505/7, 505/10a.
[20] *See* Gugliuzza, *supra* Note 13.
[21] ss. 7-13, ch. 2015-92, Laws of Fla.

- the assertion of patent infringement is deceptive or unenforceable, and the person knew, or should have known, that the claim or assertion was unenforceable; and
- the person has previously sued or threatened to sue to enforce the claim and a court found the claim to be meritless.

Alternatively, a court may consider a number of factors as evidence that a person has not made a bad faith assertion of patent infringement, including whether:

- The demand letter contained the required identifying and contact information;
- The person engaged in a good faith effort to establish that the target has infringed the patent and negotiated an appropriate remedy;
- The person made a substantial investment in the patent;
- The person is the inventor of the patented product or is the original assignee;
- The person has demonstrated good faith business practices in previous efforts to enforce.

A target of a patent infringement claim that violates the Act may seek a protective order or court order requiring the plaintiff to a post a bond equal to the lesser of $250,000 or the defendant's estimated litigation expenses.

A person who prevails on a claim of bad faith assertion of patent infringement pursuant to the Act may be awarded equitable relief, damages, costs and fees, including attorney fees, and punitive damages in an amount equal to $50,000 or three times the total damages, costs, and fees, whichever is greater.

Universities, technology transfer companies affiliated with universities, and certain patent infringement assertions related to pharmaceutical and biologic licensing and patents are exempt from liability under the Act.

**Effect of the Bill**

The bill amends Patent Troll Prevention Act (Act) to remove the private right of action for a person who has received a bad faith assertion of patent infringement. In place of a private right of action, the bill authorizes the Attorney General, when he or she has reasonable cause to believe that a person is in violation of the Act, to bring an action to enjoin the person from engaging in the violation, continuing the violation, or committing any act in furtherance of the violation. The Attorney General may also seek other relief, such as:

- The imposition of a civil penalty of up to $50,000 for each violation;
- Court costs, attorney fees, and costs of investigation; and
- Restitution for damages, court costs, attorney fees, and other reasonable expenses related to a person defending against the bad faith assertion of patent infringement.

The bill deletes those portions of the Act that provide the factors that a court uses in determining whether an assertion of patent infringement violates the Act and replaces those portions with a description of attributes that qualify a demand letter as a bad faith assertion of patent infringement.

Pursuant to the bill, a demand letter constitutes a bad faith assertion of patent infringement if it includes a claim that the target, or a person affiliated with the target, has infringed a patent and that the target is legally liable for the infringement, and one or more of the following is met:

- The demand letter falsely asserts that the sender has filed a lawsuit in connection with the claim.
- The demand letter asserts a claim that is objectively baseless because:
  - The sender, or a person the sender represents, lacks the right to license or enforce the patent against the target;
  - The patent is unenforceable pursuant to a final judgment or an administrative order; or
  - The infringing activity alleged in the letter occurred after the expiration of the patent.

- The demand letter is likely to materially mislead a reasonable person because it does not contain sufficient information to inform the target of:
  - the identity of the person asserting the claim;
  - the patent alleged to have been infringed; and
  - at least one product, service, or technology of the target alleged to infringe the patent, or at least one activity of the end user which is alleged to infringe the patent.

The bill repeals the provision in the Act that authorized a target of a bad faith assertion of patent infringement that violates the Act to seek a protective order or court order requiring the plaintiff to a post a bond. It also repeals the exemption for universities, technology transfer companies affiliated with universities, and patent infringement assertions related to pharmaceutical and biologic licensing and patents.

The bill also provides that the Act may not be construed: to limit the rights and remedies available to the state or a person under any other law; to alter or restrict the Attorney General's authority under any other law regarding patent infringement claims; or, to prohibit a person who owns a patent from notifying other parties of his or her ownership, offering to sell or license the patent, notifying other parties of such parties' infringement of the patent, or seeking compensation for infringement of, or license to, the patent.

B. SECTION DIRECTORY:

Section 1 amends s. 501.991, F.S., relating to legislative intent; construction.

Section 2 amends s. 501.992, F.S., relating to definitions.

Section 3 amends s. 501.993, F.S., relating to bad faith assertions of patent infringement.

Section 4 repeals s. 501.994, F.S., relating to bond.

Section 5 amends s. 510.995, F.S., relating to no private right of action.

Section 6 amends s. 501.996, F.S., relating to enforcement by Attorney General; injunction; civil penalty.

Section 7 repeals s. 501.997, F.S., relating to exemptions.

Section 8 provides an effective date of July 1, 2016.

## 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.

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:

As explained above, Congress has not expressly preempted state law in all areas of patent law; however, federal courts have generally held that most patent litigation has been implicitly preempted by Congress.[22] Accordingly, state law claims against abusive patent infringement practices are mostly preempted by the federal Patent Act.[23] To avoid preemption, an accused infringer that raises a state law cause of action based on abusive patent infringement practices must prove that the infringement allegations were "objectively baseless," meaning that no reasonable litigant could have expected to succeed.[24] Because the bill provides that a demand letter that, among other things, asserts a claim that is objectively baseless, it appears the bill may avoid preemption.

Additionally, for a Florida court to exercise personal jurisdiction over a non-resident defendant, it must comply with the two-step analysis articulated by the Florida Supreme Court:[25] First, the court must determine whether the complaint satisfies the requirements of Florida's long-arm statute[26], and second, it must determine "whether the complaint alleges sufficient minimum contacts to satisfy [constitutional] due process requirements."[27]

The Federal Circuit has consistently held that the act of sending a cease and desist letter into a state is not sufficient to justify an exercise of personal jurisdiction over the non-resident patent owner. The Federal Circuit has stated,

> Principles of fair play and substantial justice afford a patentee sufficient latitude to inform others of its patent rights without subjecting itself to jurisdiction in a foreign forum. A patentee should not subject itself to personal jurisdiction in a forum solely by informing a party who happens to

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[22] *See Globetrotter*, 362 F.3d at 1374.
[23] *Id.* at 1377.
[24] *Id.*; *Dominant Semiconductors,* 524 F.3d at 1260.
[25] *Venetian Salami Co. v. Parthenais*, 554 So. 2d 499, 502 (Fla. 1989).
[26] s. 48.193, F.S.
[27] 554 So. 2d at 502.

be located there of suspected infringement. Grounding personal jurisdiction on such contacts alone would not comport with principles of fairness.[28]

Based on this precedent, to the extent the bill would apply to a non-patent owner whose sole contacts with the state are sending cease and desist notices or letters offering to license a patent, a Florida court may lack personal jurisdiction over such a person.[29]

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

[28] *Red Wing Shoe Co. v. Hockerson-Halberstadt, Inc.*, 148 F.3d 1355, 1360-61 (Fed. Cir. 1998); *see also Genetic Implant Sys., Inc. v. Core-Vent Corp.*, 123 F.3d 1455, 1458 (Fed. Cir. 1997)("sending infringement letters, without more activity in a forum state, is not sufficient to satisfy the requirements of due process. Other activities are required in order for a patentee to be subject to personal jurisdiction in the forum.").

[29] Memorandum from The Patent Troll Prevention Task Force, Re: Technical Input Memorandum to The Patent Troll Prevention Act, HB 1103, Senate Amendment to SB 1362 (April 15, 2015) (on file with the Civil Justice Subcommittee).

1 A bill to be entitled
2 An act relating to bad faith assertions of patent
3 infringement; amending s. 501.991, F.S.; providing for
4 construction; amending s. 501.992, F.S; deleting and
5 revising definitions; amending s. 501.993, F.S.;
6 prohibiting a person from sending a demand letter to a
7 target which makes a bad faith assertion of patent
8 infringement; specifying what constitutes such a
9 demand letter; repealing s. 501.994, F.S., relating to
10 the requirement that a plaintiff post a specified bond
11 in certain circumstances; amending s. 501.995, F.S.;
12 specifying that the Patent Troll Prevention Act does
13 not create a private right of action; deleting
14 provisions authorizing the bringing of actions and
15 specified remedies; amending s. 501.996, F.S.;
16 providing for enforcement by the Attorney General;
17 specifying that the Attorney General may seek certain
18 civil relief; deleting a provision stating that a
19 violation is an unfair or deceptive trade practice
20 under ch. 501, F.S.; repealing s. 501.997, F.S.,
21 relating to an exemption for institutions of higher
22 learning; providing an effective date.
23
24 Be It Enacted by the Legislature of the State of Florida:
25
26 Section 1. Section 501.991, Florida Statutes, is amended

27 to read:
28 501.991 Legislative intent; construction.—
29 (1) The Legislature recognizes that it is preempted from
30 passing any law that conflicts with federal patent law. However,
31 the Legislature recognizes that the state is dedicated to
32 building an entrepreneurial and business-friendly economy where
33 businesses and consumers alike are protected from abuse and
34 fraud. This includes protection from abusive and bad faith
35 demands and litigation.
36 (2) Patents encourage research, development, and
37 innovation. Patent holders have a legitimate right to enforce
38 their patents. The Legislature does not wish to interfere with
39 good faith patent litigation or the good faith enforcement of
40 patents. However, the Legislature recognizes a growing issue:
41 the frivolous filing of bad faith patent claims that have led to
42 technical, complex, and especially expensive litigation.
43 (3) The expense of patent litigation, which may cost
44 millions of dollars, can be a significant burden on companies
45 and small businesses. Not only do bad faith patent infringement
46 claims impose undue burdens on individual businesses, they
47 undermine the state's effort to attract and nurture
48 technological innovations. Funds spent to help avoid the threat
49 of bad faith litigation are no longer available for serving
50 communities through investing in producing new products, helping
51 businesses expand, or hiring new workers. The Legislature wishes
52 to help businesses avoid these costs by encouraging good faith

53 assertions of patent infringement and the expeditious and
54 efficient resolution of patent claims.
55 (4) This part may not be construed to:
56 (a) Limit the rights and remedies available to the state
57 or a person under any other law;
58 (b) Alter or restrict the Attorney General's authority
59 under any other law regarding claims of patent infringement; or
60 (c) Prohibit a person who owns, or has a right to license
61 or enforce, a patent from:
62 1. Notifying other parties of such person's ownership of,
63 or rights under, the patent;
64 2. Offering the patent to other parties for license or
65 sale;
66 3. Notifying other parties of such parties' infringement
67 of the patent as provided by 35 U.S.C. s. 287; or
68 4. Seeking compensation for past or present infringement
69 of, or license to, the patent.
70 Section 2. Subsections (2) and (3) of section 501.992,
71 Florida Statutes, are amended to read:
72 501.992 Definitions.—As used in this part, the term:
73 ~~(2) "Institution of higher education" means an educational~~
74 ~~institution as defined in 20 U.S.C. s. 1001(a).~~
75 (2)~~(3)~~ "Target" means a person residing in, incorporated
76 in, or organized under the laws of this state who purchases,
77 rents, leases, or otherwise obtains a product or service in the
78 commercial market which is not for resale in the commercial

79 market ~~and who:~~
80 ~~(a) Has received a demand letter or against whom a written~~
81 ~~assertion or allegation of patent infringement has been made; or~~
82 ~~(b) Has been threatened in writing with litigation or~~
83 ~~against whom a lawsuit has been filed alleging patent~~
84 ~~infringement~~.
85 Section 3. Section 501.993, Florida Statutes, is amended
86 to read:
87 501.993 Bad faith assertions of patent infringement.—A
88 person may not send a demand letter to a target which makes ~~make~~
89 a bad faith assertion of patent infringement. A demand letter
90 makes a bad faith assertion of patent infringement if it:
91 (1) Includes a claim that the target, or a person
92 affiliated with the target, has infringed a patent and that the
93 target is legally liable for such infringement; and ~~A court may~~
94 ~~consider the following factors as evidence that a person has~~
95 ~~made a bad faith assertion of patent infringement:~~
96 ~~(a) The demand letter does not contain the following~~
97 ~~information:~~
98 ~~1. The patent number;~~
99 ~~2. The name and address of the patent owner and assignee,~~
100 ~~if any; and~~
101 ~~3. Factual allegations concerning the specific areas in~~
102 ~~which the target's products, services, or technology infringe or~~
103 ~~are covered by the claims in the patent.~~
104 ~~(b) Before sending the demand letter, the person failed~~

105 ~~to conduct an analysis comparing the claims in the patent to the~~
106 ~~target's products, services, or technology, or the analysis did~~
107 ~~not identify specific areas in which the target's products,~~
108 ~~services, and technology were covered by the claims of the~~
109 ~~patent.~~
110 ~~(c) The demand letter lacked the information listed under~~
111 ~~paragraph (a), the target requested the information, and the~~
112 ~~person failed to provide the information within a reasonable~~
113 ~~period~~.
114 ~~(d) The demand letter requested payment of a license fee~~
115 ~~or response within an unreasonable period.~~
116 ~~(e) The person offered to license the patent for an amount~~
117 ~~that is not based on a reasonable estimate of the value of the~~
118 ~~license.~~
119 ~~(f) The claim or assertion of patent infringement is~~
120 ~~unenforceable, and the person knew, or should have known, that~~
121 ~~the claim or assertion was unenforceable.~~
122 ~~(g) The claim or assertion of patent infringement is~~
123 ~~deceptive.~~
124 ~~(h) The person, including its subsidiaries or affiliates,~~
125 ~~has previously filed or threatened to file one or more lawsuits~~
126 ~~based on the same or a similar claim of patent infringement and:~~
127 ~~1. The threats or lawsuits lacked the information listed~~
128 ~~under paragraph (a); or~~
129 ~~2. The person sued to enforce the claim of patent~~
130 ~~infringement and a court found the claim to be meritless.~~



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

131 ~~(i) Any other factor the court finds relevant.~~
132 (2) Meets one or more of the following criteria ~~A court~~
133 ~~may consider the following factors as evidence that a person has~~
134 ~~not made a bad faith assertion of patent infringement~~:
135 (a) The demand letter falsely asserts that the sender has
136 filed a lawsuit in connection with the claim ~~contained the~~
137 ~~information listed under paragraph (1)(a)~~.
138 (b) The demand letter asserts a claim that is objectively
139 baseless due to any of the following:
140 1. The sender, or a person whom the sender represents,
141 lacks a current right to license the patent to, or enforce the
142 patent against, the target.
143 2. The patent is invalid or unenforceable pursuant to a
144 final judgment or an administrative order.
145 3. The infringing activity alleged in the demand letter
146 occurred after the expiration of the patent ~~The demand letter~~
147 ~~did not contain the information listed under paragraph (1)(a),~~
148 ~~the target requested the information, and the person provided~~
149 ~~the information within a reasonable period~~.
150 (c) The demand letter is likely to materially mislead a
151 reasonable person because it does not contain sufficient
152 information to inform the target of all of the following:
153 1. The identity of the person asserting the claim.
154 2. The patent alleged to have been infringed.
155 3. At least one product, service, or technology of the
156 target alleged to infringe the patent, or at least one activity

157 of the end user which is alleged to infringe the patent ~~The~~
158 ~~person engaged in a good faith effort to establish that the~~
159 ~~target has infringed the patent and negotiated an appropriate~~
160 ~~remedy~~.
161 ~~(d) The person made a substantial investment in the use of~~
162 ~~the patented invention or discovery or in a product or sale of a~~
163 ~~product or item covered by the patent.~~
164 ~~(e) The person is the inventor or joint inventor of the~~
165 ~~patented invention or discovery, or in the case of a patent~~
166 ~~filed by and awarded to an assignee of the original inventor or~~
167 ~~joint inventors, is the original assignee.~~
168 ~~(f) The person has:~~
169 ~~1. Demonstrated good faith business practices in previous~~
170 ~~efforts to enforce the patent, or a substantially similar~~
171 ~~patent; or~~
172 ~~2. Successfully enforced the patent, or a substantially~~
173 ~~similar patent, through litigation.~~
174 ~~(g) Any other factor the court finds relevant.~~
175 Section 4. Section 501.994, Florida Statutes, is repealed.
176 Section 5. Section 501.995, Florida Statutes, is amended
177 to read:
178 501.995 No private right of action.—This part does not
179 create a private right of action. ~~A person aggrieved by a~~
180 ~~violation of this part may bring an action in a court of~~
181 ~~competent jurisdiction. A court may award the following remedies~~
182 ~~to a prevailing plaintiff in an action brought pursuant to this~~



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

183 ~~section:~~

184 ~~(1) Equitable relief;~~

185 ~~(2) Damages;~~

186 ~~(3) Costs and fees, including reasonable attorney fees;~~

187 ~~and~~

188 ~~(4) Punitive damages in an amount equal to $50,000 or~~

189 ~~three times the total damages, costs, and fees, whichever is~~

190 ~~greater.~~

191 Section 6. Section 501.996, Florida Statutes, is amended

192 to read:

193 501.996 Enforcement by Attorney General; injunction; civil

194 penalty.—Notwithstanding any other provisions of this chapter,

195 if the Attorney General has reasonable cause to believe that a

196 person is in violation of s. 501.993, he or she may bring an

197 action to enjoin the person from engaging in the violation,

198 continuing the violation, or committing any act in furtherance

199 of the violation. The Attorney General may also seek other

200 appropriate civil relief, including, but not limited to:

201 (1) The imposition of a civil penalty of up to $50,000 for

202 each violation of s. 501.993;

203 (2) Court costs, reasonable attorney fees, and reasonable

204 costs of investigation; and

205 (3) Restitution to a target for damages, court costs,

206 attorney fees, and other reasonable expenses related to

207 defending against the bad faith assertion of patent infringement

208 ~~A violation of this part is an unfair or deceptive trade~~

209 ~~practice under part II of this chapter~~.
210 Section 7. Section 501.997, Florida Statutes, is repealed.
211 Section 8. This act shall take effect July 1, 2016.



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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 | ___ | |

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Grant offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 70-75 and insert:
6 Section 2. Subsection (1) and (3) of section 501.992,
7 Florida Statutes, are amended to read:
8 501.992 Definitions.—As used in this part, the term:
9 (1) "Demand letter" means a ~~letter, email, or other~~
10 written communication, including e-mail, asserting or claiming
11 that a person has engaged in patent infringement.
12 (2) "Institution of higher education" means an educational
13 institution as defined in 20 U.S.C. s. 1001(a).
14 (3) "Target" means a person residing in, incorporated
15
16 -----------------------------------------------------
17 **T I T L E A M E N D M E N T**

18 Remove lines 4-5 and insert:

19 construction; amending s. 501.992, F.S; revising

20 definitions; amending s. 501.993, F.S.;

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1181 (2016)

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 | ___ | |

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Grant offered the following:
3
4 **Amendment**
5 Remove lines 153-161 and insert:
6 1. The identity of the person asserting the claim,
7 including the name and address of such person.
8 2. The patent alleged to have been infringed, including
9 the patent number of such patent.
10 3. At least one product, service, or technology of the
11 target alleged to infringe the patent, or at least one activity
12 of the target which is alleged to infringe the patent ~~The person~~
13 ~~engaged in a good faith effort to establish that the target has~~
14 ~~infringed the patent and negotiated an appropriate remedy~~.
15 (d) The demand letter fails to respond to a request from
16 the target for the information in paragraph (c).~~The person made~~
17 ~~a substantial investment in the use of~~

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 | ____ | |

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee

2 Representative Grant offered the following:

3

4 **Amendment (with title amendment)**

5 Remove lines 178-211 and insert:

6 501.995 Private right of action.—A person aggrieved by a

7 violation of this part may bring an action in a court of

8 competent jurisdiction. A court may award the following remedies

9 to a prevailing plaintiff in an action brought pursuant to this

10 section:

11 (1) Equitable relief;

12 (2) Actual Damages; and

13 (3) Costs and fees, including reasonable attorney fees~~;~~

14 ~~and~~

15 ~~(4) Punitive damages in an amount equal to $50,000 or~~

16 ~~three times the total damages, costs, and fees, whichever is~~

17 ~~greater~~.

18 Section 6. This act shall take effect July 1, 2016.

19

20 -----------------------------------------------------

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

22 Remove lines 12-22 and insert:

23 deleting punitive damages; providing an effective

24 date.

PCS for HB 1231

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCS for HB 1231 Service of Process
**SPONSOR(S):** Civil Justice Subcommittee
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1432

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| Orig. Comm.: Civil Justice Subcommittee | | Bond | Bond |

### SUMMARY ANALYSIS


Service of process is the formal delivery of a writ, summons, or other legal process or notice to a person affected by that document. Substitute service of process (process on an alternative person) is allowed in certain circumstances.

This bill provides that if the only address for a person to be served is a virtual office or an executive or mini office suite, substitute service may be made by leaving a copy of the process with the person in charge of the virtual office or executive or mini office suite, provided the process server determines that the person to be served maintains a virtual office or an executive or mini office suite at that location.

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

The effective date of this bill is July 1, 2016.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Service of original process and of many witness subpoenas is made by delivering a copy of the process or subpoena to the person to be served with a copy of the complaint, petition, or other initial pleading or paper.[1] The process server must document the service of process by placing the date and time of service and the process server's identification number and initials on the copy served.[2] The person serving the process or subpoena is obligated to file a return of service form with the court to show that service was made.[3]

While direct service upon the person to be served is preferred, it is not always practicable. Some people are busy, and some hide. Accordingly, the law allows for substituted service in certain circumstances, such as:

- Service at the person's residence if delivered to another person residing in the home who is at least 15 years of age;[4]
- Service upon the spouse of the person to be served, which can be served anywhere in the county with the consent of the spouse;[5]
- Service upon a sole proprietor can be made upon the person in charge of the business during business hours, provided there have been 2 prior attempts;[6]

Another circumstance in which substitute service is provided for is found in s. 48.031(6), F.S., which provides:

> (6) If the only address for a person to be served, which is discoverable through public records, is a private mailbox, substitute service may be made by leaving a copy of the process with the person in charge of the private mailbox, but only if the process server determines that the person to be served maintains a mailbox at that location.

Laws on service of process are strictly construed against the party attempting to prove proper service of process.[7] As to this particular statute, the courts have ruled that it may not be used unless the private mailbox is the <u>only</u> address that can be discovered.[8]

**Effect of the Bill**

The bill amends s. 48.031(6), F.S., to provide that if the only address discoverable for a person to be served is a virtual office, substitute service may be made by leaving a copy of the process with the person in charge of the virtual office, provided that the process server determines that the person to be served maintains a virtual office at that location. The bill defines a virtual office as an office that provides communication and address services without providing any dedicated office space and in which all communication is routed through a common receptionist.

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[1] s. 48.031, F.S.
[2] ss. 48.29(6) and 48.031(5), F.S.
[3] s. 48.031(5), F.S.
[4] s. 48.031(1), F.S.
[5] s. 48.031(2)(a), F.S.
[6] s. 48.031(2)(b), F.S.
[7] *Carlini v. State Dept. of Legal Affairs*, 521 So.2d 254 (Fla. 4th DCA 1988)("Statutes dealing with service of process are to be strictly construed. . . . The burden of proof to sustain the validity of service of process is upon the person who seeks to invoke the jurisdiction of the court, and to achieve proper service of process, there must be a strict compliance with the applicable statute." [internal citations omitted]).
[8] *Beckley v. Best Restorations, Inc.*, 13 So.3d 125 (Fla. 4th DCA 2009).

The bill also amends s. 48.031(6), F.S., to provide that if the only address discoverable for a person to be served is an executive or mini office suite, substitute service may be made by leaving a copy of the process with the person in charge of the an executive or mini office suite, provided that the process server determines that the person to be served maintains an executive or mini office suite at that location. The bill defines an executive or mini office suite as an office that provides communication, dedicated office space, and other support services in which all communication is routed through a common receptionist.

B. SECTION DIRECTORY:

Section 1 amends s. 48.031, F.S., regarding service of process.

Section 2 provides an effective date of July 1, 2016.

## 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.

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 service of process; amending s.
3 48.031, F.S.; providing for service of process when
4 the only address discoverable through public records
5 for a person to be served is a virtual office or an
6 executive or mini office suite; providing definitions;
7 providing an effective date.
8
9 Be It Enacted by the Legislature of the State of Florida:
10
11 Section 1. Subsection (6) of section 48.031, Florida
12 Statutes, is amended to read:
13 48.031 Service of process generally; service of witness
14 subpoenas.—
15 (6)(a) If the only address for a person to be served,
16 which is discoverable through public records, is a private
17 mailbox, a virtual office, or an executive or mini office suite,
18 substitute service may be made by leaving a copy of the process
19 with the person in charge of the private mailbox, virtual
20 office, or executive or mini office suite, but only if the
21 process server determines that the person to be served maintains
22 a mailbox, a virtual office, or an executive or mini office
23 suite at that location.
24 (b) As used in this subsection, the term "virtual office"
25 means an office that provides communication and address services
26 without providing any dedicated office space, and the term

27 "executive or mini office suite" means an office that provides
28 communication, dedicated office space, and other support
29 services. In both types of offices, all communication is routed
30 through a common receptionist.
31 Section 2. This act shall take effect July 1, 2016.

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 | ___ |

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Burton offered the following:
3
4 **Amendment (with title amendment)**
5 Between lines 30 and 31, insert:
6 Section 2. Paragraph (b) of subsection (1) of section
7 48.193, Florida Statutes, is amended to read:
8 48.193 Acts subjecting person to jurisdiction of courts of
9 state.—
10 (1)
11 (b) Notwithstanding any provision of this subsection, an
12 order, ~~a~~ penalty or fine imposed or issued by an agency of any
13 other state shall not be enforceable against any person or
14 entity incorporated or having its principal place of business in
15 this state where such other state does not provide a mandatory
16 right of review of such agency decision in a state court of
17 competent jurisdiction.

18
19
20 -----------------------------------------------------
21 **T I T L E A M E N D M E N T**
22 Between lines 6 and 7, insert:
23 amending s. 48.193, F.S.; providing that orders imposed or
24 issued by agencies of other states are not enforceable in
25 certain circumstances;

HB 1263

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1263 Real Property
**SPONSOR(S):** Wood
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1618

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Civil Justice Subcommittee | | Robinson | Bond |
| 2) Business & Professions Subcommittee | | | |
| 3) Judiciary Committee | | | |

### SUMMARY ANALYSIS


Local governments may impose liens on real property for improvements, services, utilities, or fines and penalties related to code violations. Under current law, only a small class of such liens must be recorded in the official records of the county in which the property is located, thereby giving notice of the lien to other creditors and subsequent purchasers of the property. Specifically, liens for taxes, non-ad valorem or special assessments, and utilities are exempt from the recording requirement. The bill:

- Requires that a governmental entity or quasi-governmental entity record a notice in the official records in order to create a lien against real property for non-ad valorem or special assessments.
- Directs counties and certain municipalities to provide an internet based procedure for furnishing estoppel certificates certifying the amount of a lien for unpaid gas, water, or sewer service and to record notice of the procedure in the official records.
- Specifies requirements for the form and delivery of the estoppel certificate.
- Provides that failure to record notice of the internet based procedure or to provide the estoppel certificate before the property is transferred to another owner waives any lien imposed.

The bill also provides for the renewal of building permits issued by local governments and revises and creates statutory forms related to the issuance of such building permits.

The bill does not appear to have a fiscal impact on state government, but may have an indeterminate, minimal fiscal impact on local governments.

The bill has an effective date of July 1, 2016.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Local Government Liens (Sections 1-3)**

A lien is a charge on property for payment of some debt, obligation or duty.[1] Liens include mortgages, construction liens, and other liens authorized judicially, statutorily or consensually. In general, a lien or other encumbrance against real property is legally binding against the owner of the property from the time the lien is created.[2] However, because Florida is a "notice" state, a lien against property normally is not effective against the rights of another lienholder or subsequent purchaser for value unless such person has notice of the lien.[3]

Section 695.01(1), F.S., provides in pertinent part:

> No conveyance, transfer, or mortgage of real property, or of any interest therein, nor any lease for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law.

Notice can be either actual or constructive unless statutes specifically require the filing of certain liens.[4] Recording the lien in the official records, which are retained by the clerk of court in the county where the property is located, constitutes constructive notice of a prior encumbrance on the property which is the subject of the instrument.[5] The law recognizes the date a lien is recorded as the presumptive date the lien becomes effective against other parties, determining priority of the lien, i.e., "first in time, first in line."[6]

The primary function of Florida's "notice" recording statute is to protect subsequent purchasers against claims arising from prior unrecorded instruments.

"Hidden Liens"

Local governments may impose liens on real property for improvements, services, utilities, or fines and penalties related to code violations.[7] Liens for improvements or services are generally known as "non-ad valorem" or "special assessments." Unlike taxes, these assessments are directly linked to a particular service or benefit. Examples of special assessments include fees for garbage disposal, sewer improvement, fire protection, and rescue services.[8] Counties and municipalities have the authority to

---

[1] *Black's Law Dictionary*, 5th Ed.
[2] *Id.*
[3] *Argent Mortg. Co., LLC v. Wachovia Bank, N.A.*, 52. So. 3d 796, 799 (Fla. 5th DCA 2010).
[4] "Actual notice" is defined as "notice expressly and actually given, and brought home to the party directly," while "constructive notice" is defined by as "information or knowledge of a fact imputed by law to a person (although he may not actually have it), because he could have discovered the fact by proper diligence, and his situation was such as to cast upon him the duty of inquiring into it." *Black's Law Dictionary*, 5th Ed.
[5] *City of Palm Bay v. Wells Fargo Bank*, 57 So. 3d 226 (Fla. 5th DCA 2011); Argent *Mortg. Co., LLC v. Wachovia Bank, N.A.*, 52 So. 3d 796, 799 (Fla. 5th DCA 2010); s. 695.11, F.S.; s. 28.222, F.S.
[6] *City of Palm Bay v. Wells Fargo Bank*, 57 So. 3d 226 *(Fla. 5th DCA 2011).*
[7] *See*, s. 162.09(3), F.S., which allows local governments to file a lien in the public records upon valid order imposing a code enforcement fine; and *see* s. 893.138(11), F.S., which allows local recorded orders on public nuisances to become liens against the real property subject to the order.
[8] *See Harris v. Wilson*, 693 So. 2d 945 (Fla. 1997); *City of Hallandale v. Meekins*, 237 So. 2d 318 (Fla. 4th DCA 1970); *South Trail Fire Control Dist., Sarasota County v. State*, 273 So. 2d 380 (Fla. 1973); and *Sarasota County v. Sarasota Church of Christ*, 641 So. 2d 900 (Fla. 2d DCA 1994).

levy special assessments based on their home rule powers and general law. Special districts derive their authority to levy these assessments through general law or special act.

Sections 153.67 and 159.17, F.S. also provide counties and certain municipalities[9] that construct and provide water, sewer, and gas systems with a lien on properties served for the unpaid balance of service charges. Liens for water, sewer, and gas service charges under ss. 153.67 and 159.17, F.S., are "super priority liens" on par with tax liens. If the lien is delinquent for more than 30 days, the lien may be foreclosed in the manner for the foreclosure of mortgages.

Historically, such local government liens were known as "hidden liens" because, although legally enforceable, the liens were not required to be recorded in the public records of the county in which the property was located. When liens are unrecorded, a general title or public records search will not reveal that a lien is attached to the tile of the property. In 2013, the Legislature amended s. 695.01, F.S., to require governmental entities and quasi-governmental entities to record most "hidden liens." Section 695.01(3), F.S. provides in pertinent part:

> A lien by a governmental entity or quasi-governmental entity that attaches to real property for an improvement, service, fine, or penalty, other than a lien for taxes, non-ad valorem or special assessments, or utilities, is valid and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration only if the lien is recorded in the official records of the county in which the property is located.

The exemption to the recording requirement for non-ad valorem or special assessment liens[10] and utility liens has led to ongoing issues with "hidden liens." The accessibility of unrecorded lien information varies from jurisdiction to jurisdiction and can be difficult to discover for property owners, title insurance companies, and real estate attorneys.[11] The result is that such liens often go unpaid for extended periods, and through successive mortgages and transfers of ownership, with the burden of the liens falling on innocent purchasers. Non-record liens are not covered by Florida title insurance policies, except in rare instances.[12]

**Effect of the Bill – Local Government Liens**

The bill requires that a governmental entity or quasi-governmental entity record a notice in the county official records in order to create a lien against real property for a non-ad valorem or special assessment. The notice must contain sufficient information to identify the applicability of the non-ad valorem or special assessment to the real property.

The bill also amends ss. 153.67 and 159.17, F.S. to require that a district or municipality imposing a lien for gas, water, or sewer service provide an internet based procedure for furnishing an estoppel certificate[13] to the owner of the property subject to the lien certifying the total amount due. Notice of the internet based procedure must be recorded in the official records of the county. If the district or municipality fails to record the notice, the district or municipality waives any lien imposed. The lien for

[9] The municipality must have issued revenue bonds pursuant to ch. 159, F.S. to construct the system.
[10] Although not required to be recorded in the official records, non-ad valorem or special assessments are generally collected on the annual ad valorem tax bill under the uniform method in ch. 197, F.S. Thus, such assessments may be identified through a search of the property records maintained by the property appraiser or tax collector. However, the "uniform method" of collection is optional and local governments may bill property owners directly for special assessments for which no public record is created.
[11] The Real Property, Probate, and Trust Law Section of the Florida Bar, *White Paper: Fair Notice of Governmental Liens* (on file with the Civil Justice Subcommittee).
[12] *Id.*
[13] An estoppel certificate is a signed statement by a party certifying for another's benefit that certain facts are correct. A party's delivery of this statement estops that party from later claiming a different state of facts. *Black's Law Dictionary*, 10th Ed. Estoppel certificates are necessary in real estate closings to ensure transfer of title free of encumbrances.

all amounts due from the property as of the date of delivery is the lesser of the actual amount owed or the amount of the lien in the estoppel certificate. The estoppel certificate shall be processed and provided as follows:

Estoppel Certificate Request Received Prior to Foreclosure of Lien:

- Certificate must be furnished within 5 business days after the request.
- Fees for preparation and delivery of the certificate may not exceed $25.
- The certificate must be dated as of the date of delivery.
- The certificate must list all fees, rates, and charges due as of the delivery date.

Estoppel Certificate Request Received After Foreclosure of Lien:

- Certificate must be furnished within 20 days after the request.
- Fees for preparation and delivery of the certificate may not exceed $250.
- The certificate must be dated as of the date of delivery.
- The certificate must list all fees, rates, charges, interest, attorney fees, and foreclosure cots due as of the delivery date.

If a district or municipality fails to timely provide the estoppel certificate and the property is transferred to a buyer within 30 days after the request, the district or municipality waives its right to a lien for sums due before the transfer. However, the district or municipality may pursue the sums owed in a civil action against the former parcel owner.

**Local Government Permitting (Sections 4-6)**

Part IV of ch. 553, F.S., is known as the "Florida Building Codes Act (Act)." The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single, unified state building code known as the Florida Building Code (code). Although the Legislature intends that the code be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction, flexibility is provided so that local governments may adopt amendments to the administrative provisions.[14]

Building Permits

Section 553.79, F.S., requires that a person, firm, corporation, or governmental entity obtain a permit from a local enforcing agency,[15] or such persons delegated the authority to issue permits, before constructing, altering, modifying, repairing, or demolishing any building within this state. To obtain a permit, the applicant must file a written application on a form furnished by the local enforcing agency. The forms may be in a format prescribed by a local administrative board, but at a minimum, must comply with statutory forms in s. 713.135, F.S.[16] If issued, the permit is construed as a license to proceed with the work.[17] A building permit expires:[18]

---

[14] s. 553.73(4)(a), F.S.
[15] "Local enforcement agency" means an agency of local government, a local school board, a community college board of trustees, or a university board of trustees in the State University System with jurisdiction to make inspections of buildings and to enforce the codes which establish standards for design, construction, erection, alteration, repair, modification, or demolition of public or private buildings, structures, or facilities. s. 553.71(5), F.S.
[16] Section 105.3, of the Florida Building Code 5th Edition (2014), Building.
[17] Section 105.4.1 of the Florida Building Code 5th Edition (2014), Building.
[18] *Id.*

- Six months after issuance if the work authorized by the permit has not commenced.
- Six months after work authorized by the permit is suspended or abandoned[19] after work has commenced.

Notice of Commencement

In addition to obtaining a building permit, an owner or the owner's agent must record a Notice of Commencement (NOC) before actually commencing to improve real property, or before recommencing completion of any improvement after default or abandonment.[20] A NOC gives actual and constructive notice to contractors and subcontractors that a construction lien may be recorded and will have priority over any conveyance, encumbrance or demand not recorded against the real property prior to the time the notice is recorded. A construction lien is a statutory lien that secures payment for labor or materials supplied in improving, repairing, or maintaining real property.

A certified copy of the recorded notice or a notarized statement of filing and a copy must also be posted at the jobsite. The NOC must include the legal description of the property, the street address and the tax folio number, if available. It must also include a general description of the improvement, the name and address of the owner, the name and address of the contractor, the name and address of any person designated to receive notices, and the anticipated expiration date if different from one year. The statutory form for the NOC is provided in s. 713.13(1)(d), F.S.

**Effect of the Bill – Local Government Permitting**

The bill revises the conditions under which a building permit, including site-specific permits under s. 553.794, F.S.,[21] expire. The bill provides that a building permit expires:

- One year after the date of issue if the permit has not been renewed by filing a notice of renewal before the expiration date. The bill provides a statutory form for the notice of renewal which is attached hereto as **Appendix A.** The owner or the owner's authorized agent, before the expiration of the permit and before continuing work, must record the notice of renewal in the clerk's office and post a certified copy of such notice or a notarized statement indicating the notice of renewal was filed for recording. At the time a notice of renewal is filed, the permit holder must also amend the notice of commencement for consistency.
- Six months after the application date if a permit has not been issued and an extension of time has not been granted.
- Six months after the date of issue if work has not commenced; has been suspended or abandoned for 6 months; or has not had the required inspection in 6 months.
- On the date a certificate of completion or certificate of occupancy is issued.
- On the expiration date of the notice of commencement if the notice of commencement expires less than 1 year after the date of recording.

The bill also:

- Requires that a person, firm, corporation, or governmental entity that applies for a building permit for the construction of improvements or for the alteration or repair of improvements on or to real property apply for the permit using the current statutory form required under s. 713.135 for all other permit applications.[22]

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[19] Work is considered to be in active progress when the permit has received an approved inspection within 180 days. This provision is not applicable in case of civil commotion or strike or when the building work is halted due directly to judicial injunction, order or similar process. Section 105.4.1.3., of the Florida Building Code 5th Edition (2014), Building.
[20] s. 713.13(1)(a), F.S.
[21] A builder is required to obtain a site-specific building permit for each individual site-specific building intended to be constructed, even if the builder expects to build multiple identical structures on a repetitive basis.
[22] This provision appears to be a re-statement of current law. Section 713.135(7), F.S., provides: "This section applies to every municipality and county in the state which now has or hereafter may have a system of issuing building permits for

- Revises the statutory form of a notice of commencement to include the building permit number, applicable local enforcement agency, and the issuance date and expiration date of the building permit.

B. SECTION DIRECTORY:

Section 1 amends s. 153.67, F.S., relating to unpaid fees to constitute lien.

Section 2 amends s. 159.17, F.S., relating to lien of service charges.

Section 3 creates an unnumbered section that requires a governmental entity or quasi-governmental entity to record a property lien for non-ad valorem or special assessments in the official records.

Section 4 amends s. 553.79, F.S., relating to permits; applications; issuance; inspections.

Section 5 amends s. 713.13, F.S., relating to notice of commencement.

Section 6 amends s. 713.135, F.S., relating to notice of commencement and applicability of lien.

Section 7 provides an effective date of July 1, 2016.

## 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:

   Some local governments may experience an increase in revenues as a result of increased collection on recorded liens, which are more easily detected by property owners and title insurance companies. However, the fiscal impact is indeterminate.

2. Expenditures:

   Districts and municipalities may require an initial expenditure of funds to revise or create a website for the purpose of furnishing estoppel certificates.

   Governmental entities and quasi-governmental entities that do not currently record all liens for non-ad valorem or special assessments may experience a small increase in expenditures for recording costs. The fee to record most single page liens is $10.[23] Any required expenditure relating to recording fees, however, is likely to be offset by collecting on costs incurred in recording or satisfying the lien.

---

the construction of improvements or for the alteration or repair of improvements on or to real property located within the geographic limits of the issuing authority."

[23] s. 28.24, 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:

Section 3 of the bill is currently an unnumbered section of law. The language is substantially similar to s. 695.01(3), F.S., and may be more appropriately placed in that section which specifies information considered "sufficient" to create a lien. Section 695.01(3), F.S., should also be amended to remove the recording exemption for non-ad valorem and special assessments.

Lines 259-260 of the bill may be a partial codification of the expiration date of an application for a permit, rather than the permit itself as reflected in Section 105.3.2, of the Florida Building Code 5th Edition (2014), Building.

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

**Appendix A**

Tax Folio No.____

BUILDING PERMIT NOTICE OF RENEWAL

Permit Number:____
Local Enforcement Agency:____
Issuance Date of Building Permit:____
Date of Last Inspection:____

Notice is hereby given of the renewal of the building permit listed above. I certify that all work will be performed to meet the standard of all laws regulating construction in this jurisdiction. I understand that a separate notice of renewal must be recorded for a permit for electrical work, plumbing, signs, wells, pools, furnaces, boilers, heaters, tanks, and air conditioners, etc.

OWNER'S AFFIDAVIT: I certify that all of the foregoing information is accurate and that all work will be done in compliance with all applicable laws regulating construction and zoning.

WARNING TO OWNER: YOUR FAILURE TO RECORD A CURRENT NOTICE OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED AT THE JOB SITE BEFORE CONTINUING WORK. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE CONTINUING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT OR NOTICE OF RENEWAL.

___(Signature of Owner or Agent)___
___(including contractor)___

STATE OF FLORIDA
COUNTY OF___

Sworn to (or affirmed) and subscribed before me this ___ day of ___, ___(year)___, by ___(name of person making statement)___.

___(Signature of Notary Public-State of Florida)___

___(Print, Type, or Stamp Commissioned Name of Notary Public)___
Personally Known___OR Produced Identification___
Type of Identification Produced____

___(Signature of Contractor)___

STATE OF FLORIDA
COUNTY OF___

Sworn to (or affirmed) and subscribed before me this ___ day of ___, ___(year)___, by ___(name of person making statement)___.

___(Signature of Notary Public-State of Florida)___

___(Print, Type, or Stamp Commissioned Name of Notary Public)___
Personally Known___OR Produced Identification___
Type of Identification Produced____

(Certificate of Competency Holder)

Contractor's State Certification or Registration No.___
Contractor's Certificate of Competency No.___

NOTICE OF RENEWAL APPROVED BY
___Permit Officer

1 A bill to be entitled
2 An act relating to real property; amending s. 153.67,
3 F.S.; requiring a district water or sewer system that
4 imposes a lien to provide an Internet-based procedure
5 for furnishing an estoppel certificate to a property
6 owner; providing criteria for the certificate based on
7 whether foreclosure of a lien has been filed;
8 providing fees; providing for waiver of right to a
9 lien under certain circumstances; amending s. 159.17,
10 F.S.; requiring a municipality that imposes a lien to
11 provide an Internet-based procedure for furnishing an
12 estoppel certificate to a property owner; providing
13 criteria for the certificate based on whether
14 foreclosure of a lien has been filed; providing for
15 waiver of right to a lien under certain circumstances;
16 requiring a governmental entity or quasi-governmental
17 entity that wishes to create a lien against real
18 property pursuant to a non-ad valorem or special
19 assessment to record a notice with certain
20 information; amending s. 553.79, F.S.; requiring an
21 application for a building permit for the
22 construction, alteration, or repair of improvements to
23 be in a specified form; amending s. 713.13, F.S.;
24 revising requirements for the form of a notice of
25 commencement for improving real property; amending s.
26 713.135, F.S.; providing for expiration and renewal of

27 a building permit; providing the application form for
28 renewal; providing an effective date.
29
30 Be It Enacted by the Legislature of the State of Florida:
31
32 Section 1. Section 153.67, Florida Statutes, is amended to
33 read:
34 153.67 Unpaid fees to constitute lien.—
35 (1) In the event that the fees, rates, or charges for the
36 services and facilities of any district water or sewer system
37 shall not be paid as and when due, any unpaid balance thereof
38 and all interest accruing thereon shall be a lien on any parcel
39 or property affected thereby. Such lien ~~liens~~ shall be superior
40 and paramount to the interest on such parcel or property of any
41 owner, lessee, tenant, mortgagee or other person except the lien
42 of county taxes and shall be on a parity with the lien of any
43 such county taxes. In the event that any such sum ~~service charge~~
44 shall not be paid as and when due and shall be in default for 30
45 ~~thirty~~ days or more, the unpaid balance thereof and all interest
46 accrued thereon, together with attorneys fees and costs, may be
47 recovered by the district in a civil action, and any such lien
48 and accrued interest may be foreclosed or otherwise enforced by
49 the district by action or suit in equity as for the foreclosure
50 of a mortgage on real property.
51 (2) A district water or sewer system that imposes a lien
52 pursuant to this section must provide an Internet-based

53 procedure for furnishing to an owner of real property subject to
54 the lien an estoppel certificate listing the total amount due
55 from the owner of a parcel. Notice of the Internet-based
56 procedure shall be recorded in the official records of the
57 county in which the district is located. Failure to record the
58 notice constitutes a waiver of any lien imposed pursuant to this
59 section. The lien for all amounts due from the property as of
60 the date of delivery shall be the lesser of the actual amount
61 owed or the amount of the lien in the certificate.
62 (a) If the district has not filed for foreclosure of the
63 lien:
64 1. The certificate must be dated as of the date of
65 delivery.
66 2. The certificate must list all fees, rates, and charges
67 due as of that date.
68 3. The certificate must be furnished within 5 business
69 days after the request.
70 4. The fee for preparation and delivery of the certificate
71 must not exceed $25.
72 (b) If the district has filed for foreclosure of the lien:
73 1. The certificate must be dated as of the date of
74 delivery.
75 2. The certificate must list all fees, rates, charges,
76 interest, attorney fees, costs, and foreclosure costs due as of
77 that date.
78 3. The certificate must be furnished within 20 days after



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

79 the request.
80 4. The fee for preparation and delivery of the certificate
81 must not exceed $250.
82 (c) If a district fails to timely provide the certificate
83 required by this subsection and the property is transferred to a
84 buyer within 30 days after the request, the district waives its
85 right to a lien for sums due before the transfer but may still
86 pursue the sums owed in a civil action against the former parcel
87 owner.
88 Section 2. Section 159.17, Florida Statutes, is amended to
89 read:
90 159.17 Lien of service charges.—
91 (1) Any municipality issuing revenue bonds hereunder shall
92 have a lien on all lands or premises served by any water system,
93 sewer system, or gas system for all service charges for such
94 facilities until paid, which liens shall be prior to all other
95 liens on such lands or premises except the lien of state,
96 county, and municipal taxes and shall be on a parity with the
97 lien of such state, county, and municipal taxes. Such liens,
98 together with interest, attorney fees, and costs, when
99 delinquent for more than 30 days, may be foreclosed by such
100 municipality in the manner provided by the laws of Florida for
101 the foreclosure of mortgages on real property.
102 (2) A municipality that imposes a lien pursuant to this
103 section must provide an Internet-based procedure for furnishing
104 to an owner of real property subject to the lien an estoppel

105 certificate listing the total amount due from the owner of a
106 parcel. Notice of the Internet-based procedure shall be recorded
107 in the official records of the county in which the municipality
108 is located. Failure to record the notice constitutes a waiver of
109 any lien imposed pursuant to this section. The lien for all
110 amounts due from the property as of the date of delivery shall
111 be the lesser of the actual amount owed or the amount of the
112 lien in the certificate.
113 (a) If the municipality has not filed for foreclosure of
114 the lien:
115 1. The certificate must be dated as of the date of
116 delivery.
117 2. The certificate must list all fees, rates, and charges
118 due as of that date.
119 3. The certificate must be furnished within 5 business
120 days after the request.
121 4. The fee for preparation and delivery of the certificate
122 must not exceed $25.
123 (b) If the municipality has filed for foreclosure of the
124 lien:
125 1. The certificate must be dated as of the date of
126 delivery.
127 2. The certificate must list all fees, rates, charges,
128 interest, attorney fees, costs, and foreclosure costs due as of
129 that date.
130 3. The certificate must be furnished within 20 days after

131 the request.
132 4. The fee for preparation and delivery of the certificate
133 must not exceed $250.
134 (c) If a municipality fails to timely provide the
135 certificate required by this subsection and the property is
136 transferred to a buyer within 30 days after the request, the
137 municipality waives its right to a lien for sums due before the
138 transfer but may still pursue the sums owed in a civil action
139 against the former parcel owner.
140 Section 3. A governmental entity or quasi-governmental
141 entity that desires to create a lien against real property
142 pursuant to a non-ad valorem or special assessment shall record
143 a notice in the official records of the county in which the
144 applicable real property is located. The notice shall contain
145 sufficient information to identify the applicability of the non-
146 ad valorem or special assessment to real property.
147 Section 4. Subsection (1) of section 553.79, Florida
148 Statutes, is amended to read:
149 553.79 Permits; applications; issuance; inspections.—
150 (1)(a) After the effective date of the Florida Building
151 Code adopted as herein provided, it shall be unlawful for any
152 person, firm, corporation, or governmental entity to construct,
153 erect, alter, modify, repair, or demolish any building within
154 this state without first obtaining a permit therefor from the
155 appropriate enforcing agency or from such persons as may, by
156 appropriate resolution or regulation of the authorized state or

157 local enforcing agency, be delegated authority to issue such
158 permits, upon the payment of such reasonable fees adopted by the
159 enforcing agency. The enforcing agency is empowered to revoke
160 any such permit upon a determination by the agency that the
161 construction, erection, alteration, modification, repair, or
162 demolition of the building for which the permit was issued is in
163 violation of, or not in conformity with, the provisions of the
164 Florida Building Code. Whenever a permit required under this
165 section is denied or revoked because the plan, or the
166 construction, erection, alteration, modification, repair, or
167 demolition of a building, is found by the local enforcing agency
168 to be not in compliance with the Florida Building Code, the
169 local enforcing agency shall identify the specific plan or
170 project features that do not comply with the applicable codes,
171 identify the specific code chapters and sections upon which the
172 finding is based, and provide this information to the permit
173 applicant. Installation, replacement, removal, or metering of
174 any load management control device is exempt from and shall not
175 be subject to the permit process and fees otherwise required by
176 this section.
177 (b) A person, firm, corporation, or governmental entity
178 that applies for a building permit for the construction of
179 improvements or for the alteration or repair of improvements on
180 or to real property shall apply for such permit in the form
181 required under s. 713.135.
182 Section 5. Paragraph (d) of subsection (1) of section

183 713.13, Florida Statutes, is amended to read:
184 713.13 Notice of commencement.—
185 (1)
186 (d) A notice of commencement must be in substantially the
187 following form:
188 Permit No..... Tax Folio No.....
189 NOTICE OF COMMENCEMENT
190 State of....
191 County of....
192 The undersigned hereby gives notice that improvement will be
193 made to certain real property, and in accordance with Chapter
194 713, Florida Statutes, the following information is provided in
195 this Notice of Commencement.
196 1. Description of property: ...(legal description of the
197 property, and street address if available)....
198 2. General description of improvement:.....
199 3. Owner information or Lessee information if the Lessee
200 contracted for the improvement:
201 a. Name and address:.....
202 b. Interest in property:.....
203 c. Name and address of fee simple titleholder (if
204 different from Owner listed above):.....
205 4.a. Contractor: ...(name and address)....
206 b. Contractor's phone number:.....
207 5. Surety (if applicable, a copy of the payment bond is
208 attached):

209 a. Name and address:.....
210 b. Phone number:.....
211 c. Amount of bond: $.....
212 6.a. Lender: ...(name and address)....
213 b. Lender's phone number:.....
214 7. Persons within the State of Florida designated by Owner
215 upon whom notices or other documents may be served as provided
216 by Section 713.13(1)(a)7., Florida Statutes:
217 a. Name and address:.....
218 b. Phone numbers of designated persons:.....
219 8.a. In addition to himself or herself, Owner designates
220 ............ of ............ to receive a copy of the Lienor's
221 Notice as provided in Section 713.13(1)(b), Florida Statutes.
222 b. Phone number of person or entity designated by
223 owner:.....
224 9. Expiration date of notice of commencement (the
225 expiration date will be 1 year from the date of recording unless
226 a different date is specified).....
227 <u>10. Permit number, applicable local enforcement agency,</u>
228 <u>and issuance date of building permit, which shall expire in</u>
229 <u>accordance with Section 713.135(7), Florida Statutes:.....</u>
230 WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE
231 EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER
232 PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA
233 STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
234 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND

235 POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU
236 INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN
237 ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF
238 COMMENCEMENT.
239 ...(Signature of Owner or Lessee, or Owner's or Lessee's
240 Authorized Officer/Director/Partner/Manager)...
241 ...(Signatory's Title/Office)...
242 The foregoing instrument was acknowledged before me this ....
243 day of ...., ...(year)..., by ...(name of person)... as ...(type
244 of authority, . . . e.g. officer, trustee, attorney in
245 fact)... for ...(name of party on behalf of whom instrument was
246 executed)....
247 ...(Signature of Notary Public - State of Florida)...
248 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...
249 Personally Known .... OR Produced Identification ....
250 Type of Identification Produced...........
251 Section 6. Subsection (7) of section 713.135, Florida
252 Statutes, is renumbered as subsection (9), and new subsections
253 (7) and (8) are added to that section, to read:
254 713.135 Notice of commencement and applicability of lien.—
255 (7) A building permit, including a site-specific building
256 permit under s. 553.794, shall expire:
257 (a) One year after the date of issue if the permit has not
258 been renewed pursuant to subsection (8);
259 (b) Six months after the application date if a permit has
260 not been issued and an extension of time has not been granted;



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

261 (c) Six months after the date of issue if work:
262 1. Has not been commenced;
263 2. Has been suspended or abandoned for 6 months; or
264 3. Has not had the required inspection within 6 months;
265 (d) On the date of issue of a certificate of completion or
266 certificate of occupancy; or
267 (e) On the expiration date of a notice of commencement if
268 the notice of commencement indicates that the expiration date is
269 less than 1 year after the date of recording.
270 (8)(a) A building permit is deemed automatically renewed
271 if a permitholder files a notice of renewal before the
272 expiration date of the permit. Upon renewal, the building permit
273 is subject to expiration as provided in subsection (7).
274 (b) An owner or an owner's authorized agent, before the
275 expiration of the permit and before continuing work, shall
276 record a notice of renewal in the clerk's office and post at the
277 construction site a certified copy of such notice or a notarized
278 statement indicating the notice of renewal was filed for
279 recording. The notice of renewal must be in substantially the
280 following form:
281
282 Tax Folio No. ...
283 BUILDING PERMIT NOTICE OF RENEWAL
284 Permit Number: ...
285 Local Enforcement Agency: ...
286 Issuance Date of Building Permit: ...

287 Date of Last Inspection: ...
288 Notice is hereby given of the renewal of the building
289 permit listed above. I certify that all work will be performed
290 to meet the standard of all laws regulating construction in this
291 jurisdiction. I understand that a separate notice of renewal
292 must be recorded for a permit for electrical work, plumbing,
293 signs, wells, pools, furnaces, boilers, heaters, tanks, and air
294 conditioners, etc.
295 OWNER'S AFFIDAVIT: I certify that all the foregoing
296 information is accurate and that all work will be done in
297 compliance with all applicable laws regulating construction and
298 zoning.
299 WARNING TO OWNER: YOUR FAILURE TO RECORD A CURRENT NOTICE
300 OF COMMENCEMENT MAY RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS
301 TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND
302 POSTED AT THE JOB SITE BEFORE CONTINUING WORK.
303 IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER
304 OR AN ATTORNEY BEFORE CONTINUING WORK OR RECORDING YOUR NOTICE
305 OF COMMENCEMENT OR NOTICE OF RENEWAL.
306 ...(Signature of Owner or Agent)...
307 ...(including contractor)...
308 STATE OF FLORIDA
309 COUNTY OF ...
310 Sworn to (or affirmed) and subscribed before me this ...
311 day of ..., ...(year)..., by ...(name of person making
312 statement)....



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

313 ...(Signature of Notary Public-State of Florida)...
314 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...
315 Personally Known ... OR Produced Identification ...
316 Type of Identification Produced ...
317 ...(Signature of Contractor)...
318 STATE OF FLORIDA
319 COUNTY OF ...
320 Sworn to (or affirmed) and subscribed before me this ...
321 day of ..., ...(year)..., by ...(name of person making
322 statement)....
323 ...(Signature of Notary Public-State of Florida)...
324 ...(Print, Type, or Stamp Commissioned Name of Notary Public)...
325 Personally Known ... OR Produced Identification ...
326 Type of Identification Produced ...
327 (Certificate of Competency Holder)
328 Contractor's State Certification or Registration No. ...
329 Contractor's Certificate of Competency No. ...
330 NOTICE OF RENEWAL APPROVED BY
331 ... Permit Officer
332 (c) At the time a notice of renewal is filed, a
333 permitholder shall also amend the notice of commencement as
334 provided in s. 713.13(5).
335 Section 7. This act shall take effect July 1, 2016.

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 | ______ | |

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative Wood offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 140-146 and insert:
6 Section 3. Subsection (3) of section 695.01, Florida
7 Statutes, is amended to read:
8 695.01 Conveyances and liens to be recorded.—
9 (3)(a) A lien by a governmental entity or quasi-
10 governmental entity that attaches to real property for an
11 improvement, a service, a fine, ~~or~~ a penalty, a ~~other than a~~
12 ~~lien for taxes,~~ non-ad valorem or special assessment
13 ~~assessments~~, or utilities, is valid and effectual in law or
14 equity against creditors or subsequent purchasers for a valuable
15 consideration only if the lien is recorded in the official
16 records of the county in which the property is located. The
17 recorded notice of lien must contain the name of the owner of

18 record, a description or address of the property, and the tax or
19 parcel identification number applicable to the property as of
20 the date of recording.
21 (b) This subsection does not apply to a lien for taxes or
22 a lien for non-ad valorem or special assessments collected
23 pursuant to chapter 197.
24
25 -----------------------------------------------------
26 **T I T L E A M E N D M E N T**
27 Remove lines 16-20 and insert:
28 amending s. 695.01, F.S.; providing that certain liens against
29 real property by a governmental entity or quasi-governmental
30 entity are invalid unless recorded; providing exceptions;
31 amending s. 553.79, F.S.; requiring an

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1263 (2016)

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: Civil Justice Subcommittee
2 Representative Wood offered the following:
3
4 **Amendment**
5 Remove lines 259-269 and insert:
6 (b) Six months after the date of issue if work:
7 1. Has not been commenced;
8 2. Has been suspended or abandoned for 6 months; or
9 3. Has not had the required inspection within 6 months;
10 (c) On the date of issue of a certificate of completion or
11 certificate of occupancy; or
12 (d) On the expiration date of a notice of commencement.

HB 1357

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 1357 Community Associations
**SPONSOR(S):** La Rosa and Cortes, J.
**TIED BILLS:** None. **IDEN./SIM. BILLS:** SB 1716

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|---|---|---|---|
| 1) Civil Justice Subcommittee | | Malcolm | Bond |
| 2) Business & Professions Subcommittee | | | |
| 3) Judiciary Committee | | | |

### SUMMARY ANALYSIS


The bill amends current law relating to condominiums and homeowners' associations. Specifically, the bill:

- revises the types of official records an association must retain;
- requires a condominium or homeowners' association with 7,500 or more units or parcels to provide a secure website for association members to view certain official records and meeting notices;
- requires an outgoing board member to turn over the administrative rights or controls of the association's website to the incoming board;
- requires the directors and officers of the board of an association to disclose any activity that may reasonably be construed as a conflict of interest and establishes procedures for providing notice of a vote on a conflict-of-interest transaction;
- prohibits a homeowners' association from enforcing traffic laws and criminal laws;
- creates style and form requirements for amendments to a homeowners' association's governing documents and provides that nonmaterial errors in the amendment process do not invalidate an otherwise properly adopted amendment;
- provides that an amendment to a declaration or governing document is effective when properly recorded in the same public records where the declaration or governing document is recorded;
- prohibits certain restrictions in a deed, covenant, or other agreement related to a property owner's ability to offer the home for rent;
- provides that if a homeowners' association does not file a claim for a lien or a foreclosure action on any assessment that is 24 months past due, the association may not proceed against the member for such past due assessments.
- requires that before a homeowners' association transfers the right to collect past due assessments to a third party, transfers a lien to a third party, or files a foreclosure action, the association must offer the past due member a payment plan that complies with certain requirements; and
- provides that if a homeowners' association transfers a lien or the right to collect past due assessments to a third party, it must provide notice to the member at least 30 days before the transfer.

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

The bill provides an effective date of July 1, 2016.

## FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

**Background**

***Condominiums***

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., which 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 as it governs the relationship among unit owners and the 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]

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.[4] The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration."[5] The association enacts condominium association bylaws, which govern the administration of the association, including quorum, voting rights, and election and removal of board members.[6]

***Homeowners' Associations***

A homeowners' association is a corporation responsible for the operation of a community subdivision in which the membership is made up of parcel owners, whose membership is a mandatory condition of parcel ownership. A homeowners' association is authorized to impose assessments that, if unpaid, may become a lien on the parcel. Only homeowners' associations whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S.[7]

A homeowners' association is administered by an elected board of directors. The powers and duties of a homeowners' association includes 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.

No state agency has direct oversight of homeowners' associations. Florida law provides procedures and minimum requirements for operating a homeowners' association and provides for a mandatory binding arbitration program, administered by the Division of Florida Condominiums, Timeshares, and Mobile Homes (Division) in the Department of Business and Professional Regulation, only for certain election disputes.

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[1] s. 718.103(11), F.S.
[2] s. 718.104(2), F.S.
[3] *Id.* at (5).
[4] s. 718.103(2), F.S.
[5] *Id.* at (4).
[6] s. 718.112, F.S.
[7] s. 720.301(9), F.S.

## Effect of the Bill

### Condominiums and Homeowners' Associations - Association Records

Condominium and homeowners' associations are currently required to maintain official records, which include:

- a copy of the articles of incorporation, declaration, bylaws of and rules of the association;
- meeting minutes;
- a roster of all unit owners or members, including the electronic mailing addresses and fax numbers of unit owners consenting to receive notice by electronic transmission;
- a copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation;
- accounting records for the association;
- all contracts for work to be performed; and
- all other written records which are related to the operation of the association.[8]

The bill makes the following changes to the official records that a condominium association is required to maintain:

- The association must retain plans, permits, and warranties related to improvements to the common areas or other property that the association is obligated to maintain, repair, or replace.
- The association must remove from its official records the e-mail address and fax number of a unit owner who revokes his or her consent to receive notice by electronic transmission.
- The association must retain bids for materials, equipment, or services for a period of one year.
- Financial records, tax returns, and any records that identify, measure, record, or communicate financial information must be retained.
- Physical copies of the association's official records must be open to inspection by a member or his or her authorized representative.

The bill makes the following changes to the official records that a homeowners' association is required to maintain:

- The association must retain the documents and items provided by the developer when control of the association transfers to members of the association.[9]
- The association must retain a certified copy of its articles of incorporation as well as audits and reviews.
- Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by members, must be maintained for 1 year after the date of the election, vote, or meeting.

### Condominiums and Homeowners' Associations – Website

Currently law does not require a condominium or homeowners' association to maintain a website. The bill requires a condominium or homeowners' association with 7,500 or more units or parcels to provide certain specified documents on the association's website. The website must:

- be independently owned and operated by the association or operated by a third-party provider with whom the association has the right to operate a web page dedicated to the association's activities, notices and records; and
- contain a protected location that is accessible only to the unit owners and employees of the association.

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[8] ss. 718.111(12)(a) and 720.303(4), F.S.

[9] *See* s. 720.307(4), F.S.

The association must provide each member access to the protected sections of the website that contain any required notices, records, or documents. The following documents must be placed on the website:

- Copies of the association's official records.
- The annual budget and financial report, and any proposed budget and financial reports to be considered at the annual meeting.
- Any document created by the association or a board member relating to the recall of a director.
- Documentation reporting the compensation of directors, officers, or members.
- A list of all contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium or homeowners' association, or other entity in which an association director is also a director or officer is financially interested.
- Any fidelity bond entered into by the association.
- Any contract or document regarding a conflict of interest or possible conflict of interest.[10]
- Notice of any board meeting and the agenda for the meeting, placed online no later than 14 days before the meeting posted in plain view on the front page, or on a separate subpage labeled "Notices" which is conspicuously visible and linked from the front page of the association's website. The association must post on the website any documents to be considered during the meeting or listed on the agenda no later than 7 days before the meeting.

A homeowners' association website required by the bill must also contain:

- a copy of the information submitted to the division to comply with the reporting requirement in s. 720.303(14), F.S.;[11] and
- the certification of each director required by s. 720.3033(1).[12]

A condominium or homeowners' association must ensure that information and records that members are not permitted to access are not placed on its website. If protected information is included in documents that are required to be placed on the website, the association must redact such information before placing the documents online.

The current roster of all members with their mailing addresses and parcel identifications may not be placed on the website. The website must include the following statement: "A current roster of all members and their mailing addresses and parcel identifications is available at the request of any association member." The notice must include the e-mail address of the person to contact for a copy of the roster.

An association with fewer than 7,500 parcels located within the physical boundaries of an affiliated association that has 7,500 or more parcels must provide digital copies of the specified documents on the larger affiliated association's website. An association with fewer than 7,500 parcels located within the physical boundaries of an association with 7,500 or more parcels, but that is not affiliated with the larger association, may provide digital copies of certain documents on its website if the association so chooses.

**Condominiums and Homeowners' Associations – Turn Over of Association Records**

Current law requires an outgoing board member of a condominium association to turn over all official records and property of the association in his or her possession or control to the incoming board within

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[10] *See* "Condominiums and Homeowners' Associations – Conflict-of-Interest Transactions" section below.

[11] See "Homeowners' Association - Reporting Requirement" section below.

[12] s. 720.3033(1), F.S., requires each director of a homeowners' association to certify "that he or she has read the association's declaration of covenants, articles of incorporation, bylaws, and current written rules and policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members." In lieu of such written certification, the director may submit a certificate of having satisfactorily completed a certified educational curriculum.

five days after the election.[13] While there is no similar requirement in current law for a homeowners' association board member who has lost his or her seat on due to an election, current law does provide that when a director of the homeowners' association's board of directors has been recalled and is in possession of records and property of the association, he or she must turn over such records to the board within five business days.[14]

The bill requires an outgoing board member of a condominium association to turn over the administrative rights or controls of an association's website or other digital or electronic asset to the incoming board. Additionally, the bill requires a board member of a homeowners' association who lost his or her seat due to an election to turn over all official records and property of the association, including administrative rights or controls of an association's website or other digital or electronic asset, to the incoming board within five days after the election. The bill also requires a developer, at the time that control of the board of directors of a homeowners' association can be elected by the members of the association, to turn over to the association any administrative rights or controls of the association's website or other digital or electronic asset.

**Condominiums - Association Contracts**

Current law requires that certain condominium association contracts that are not intended to be fully performed within a year and contracts for services must be in writing. Additionally, the association is required to obtain competitive bids if a contract for goods or services requires payment that exceeds 5% of the association's total annual budget. However, contracts with employees of the association, and contracts for attorney, accountant, architect, community association manager, timeshare management firm, engineering, and landscape architect services are not subject to these provisions.[15]

The bill removes the exemption in current law that provides that contracts with employees of the association, and contracts for attorney, accountant, architect, community association manager, timeshare management firm, engineering, and landscape architect services are not subject to the provisions regulating contracts entered into by a condominium association. Consequently, those contracts would be subject to the provisions regulating association contracts.

**Condominiums and Homeowners' Associations – Conflict-of-Interest Transactions**

If a condominium or homeowners' association enters into a contract or transaction with a director or any business in which one of the association's directors is also a director, officer, or is financially interested, current law requires that the board disclose the financial interest or that the contract or transaction be fair or reasonable. Additionally, the board must:

- enter a disclosure of the financial interest in the minutes of the meeting in which the contract or transaction was approved;
- approve the contract or transaction by two-thirds of the directors present at the meeting; and
- disclose the contract or transaction at the meeting of the members. At the meeting, the contract may be canceled by a majority vote of the members present.[16]

The bill requires the directors and officers of a board of a condominium or homeowners' association to disclose any activity that may reasonably be construed as a conflict of interest. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice, as described below, or board approval taken at a properly noticed member meeting:

- The director or officer, or a relative residing in the same household as him or her, enters into a contract for goods or services with the association.

[13] s. 718.111(12)(f), F.S.
[14] s. 720.303(10), F.S.
[15] s. 718.3026(2), F.S.
[16] ss. 718.3026(3); 720.3033(2), F.S.

- The director or officer, or a relative residing in the same household as him or her, holds an interest of more than 35 percent in any corporation or other business entity that conducts, or proposes to conduct, business with the association.
- A corporation or other business entity that, directly or indirectly, owns or controls the director or officer, or otherwise influences any decisions made by the director or officer, intends to conduct business with the association.

If a director or officer intends to engage in an activity that may reasonably be construed as a conflict of interest he or she must provide prior notice to the board by placing the issue on a meeting agenda and submitting the issue to the board for a vote. If the board votes against the action, the director or officer must notify the board of his or her intention not to pursue the action or withdraw from the position as director or officer. If the board finds that an officer or director has violated the conflicts-of-interest provisions, the board must immediately remove the officer or director from office.

The board must provide notice of any possible conflict of interest and any related proposed contracts or documents related to the conflict at least 7 days before the meeting at which the possible conflict of interest will be considered or voted upon by the board. A director or officer has an interest in the transaction involving the possible conflict of interest may attend the meeting at which the transaction is considered by the board and must be allowed to make a presentation regarding the transaction. After the presentation, the director or officer must leave the meeting during the discussion and must recuse him or herself from the vote.

A condominium or homeowners' association with 7,500 or more parcels must place the required pre-meeting notice of a possible conflict of interest on the front page of its website at least 7 days before the meeting. Any related proposed contracts or documents must be attached to the agenda provided on the website.

The bill also provides that for a homeowners' association with 7,500 or more parcels, the board must consist of at least five members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee of the association.

**Homeowners' Association - Reporting Requirement**

Under current law, by November 22, 2013, a community association manager or management firm, or the association when there is no community association manager or management firm, must have reported to the Division the association's legal name, federal employer identification number, mailing and physical addresses, total number of parcels, and total amount of revenues and expenses from the association's annual budget. This reporting requirement is set to expire on July 1, 2016. [17]

The bill deletes the July 1, 2016 expiration of the reporting requirement and requires a community association manager or management firm to submit its report by October 1 of each year. An association that does not use a community association manager or management firm is exempt from the reporting requirement. The bill also requires the report to identify the community association manager or management firm, and the report must be updated when any of the reported information changes.

**Homeowners' Association - Fines and Suspensions**

Currently law authorizes a homeowners' association to levy fines and suspend the right of a member to use certain common areas and facilities if a member fails to comply with the association's rules and governing documents.[18] The association must provide the member with a notice and a hearing.[19] Fines

[17] s. 720.303(14), F.S.
[18] s. 720.305(1), (2), F.S.

may exceed $100 per violation, but may be levied for each day of a continuing violation.[20] The fines levied may not exceed $1,000 in the aggregate unless otherwise provided for in the governing documents. A fine of less than $1,000 may not become a lien against a parcel.[21] If a fine or suspension is imposed, the homeowners' association must provide written notice of the fine or suspension by mail or hand delivery to the parcel owner and any tenant, licensee, or invitee of the parcel owner.[22]

Current law does not limit what type of conduct or actions that a homeowners' association may include in its governing documents that would make a member liable for a fine or suspension of use rights.

The bill prohibits a homeowners' association from enforcing traffic laws and state and federal criminal laws or from levying fines or suspending a member's right to use common areas and facilities for violations of such laws. Additionally, the bill prohibits an association from placing any requirements in its governing documents regarding compliance with traffic laws or state and federal criminal laws.

**Homeowners' Associations - Amendments to Governing Documents**

Current law provides that a homeowners' association may amend its governing documents. The process for amendment and the vote required are generally found in the governing documents. Once adopted, an amendment to the governing documents must be recorded in the public records. Generally, a homeowners' association must furnish each member with a copy of an amendment within 30 days of recording; however, in certain circumstances, in lieu of providing a copy of the recorded amendment, the association may provide notice to members that the amendment was adopted and identify the book and page number or instrument number of the recorded amendment.[23]

The bill requires that a proposal to amend an existing provision of a homeowners' association declaration must contain the full text of the provision to be amended and may not be revised or amended by reference only to the declaration title or number. Words to be added must be inserted in the text and underlined, and words to be deleted must be stricken with hyphens. However, if the proposed change is so extensive that this procedure would hinder the understanding of the proposed amendment, it is not necessary to use underlined and stricken text. Instead, a notation must be inserted before the proposed amendment stating: "Substantial rewording of declaration. See provision for present text."

The bill provides that any nonmaterial errors or omissions in the amendment process do not invalidate an otherwise properly adopted amendment. Additionally, an amendment to a declaration or any recorded governing document is effective when properly recorded in the same public records where the declaration or governing document is recorded.

The bill also prohibits a deed restriction, covenant, declaration, or similar binding agreement from the following without the consent of the current homeowner:

- prohibiting a homeowner from renting his or her home;
- altering the duration of a rental term;
- limiting the number of times a homeowner may rent his or her home during a specified period; or
- limiting the number of occupants in a home.

[19] *Id.* at (3).
[20] s. 720.305(2), F.S.
[21] *Id.* at (1).
[22] *Id.* at (3).
[23] s. 720.306(1), F.S.

**Homeowners' Associations - Election of Directors**

Current law provides that the procedure for electing directors of a homeowners' association board must be in accordance with those provided in the governing documents.[24] Currently, there are no requirements as to manner or location in which an election must take place.

The bill requires an association with 7,500 parcels or more to allow association members to vote in the election of directors at a designated location from 7 a.m. to 7 p.m. on the day of the election.

**Homeowners' Associations - Past Due Assessments and Liens**

Current law provides that the governing documents for any homeowners' association created after October 1, 1995, must describe the manner in which expenses are shared and must specify each member's proportional share of the expenses, more generally referred to as "assessments."[25] An unpaid assessment may result in a lien against the parcel.[26] An association lienor may pursue foreclosure, or transfer the lien or the right to collect past due assessments to a third party.

The bill provides that if an association is owed past due assessments by a member, the association may seek collection of the past due assessments, file a claim for a lien on the property, proceed to foreclosure, or waive the assessments and not proceed in any action against the member. If the association does not file a claim of lien or a foreclosure action and the past due assessment remains outstanding 24 months after the date it was due, the association may not proceed against the member for such past due assessments or related fees.

*Payment Plans*

The bill requires that before an association transfers a lien or the right to collect past due assessments to a third party or files a foreclosure action, the association must offer payment plans for members to pay any past due assessments and related fees. A payment plan must allow a member to pay past due assessments and any related fees levied by the association within the past 24 months. In addition to payments made pursuant to a payment plan, members are responsible for paying any current assessments that arise during the payment plan. A service charge may be assessed and included in the fees collected in the payment plan if additional fees were not charged in addition to the original total of the past due assessments.

A payment plan must:

- Consist of at least 12 monthly payments, if the past due assessments and related fines total $500 or less;
- Consist of at least 18 monthly payments, if the past due assessments and related fines total more than $500;
- Require the member to pay in full any current assessments that arise during the payment plan
- Divide the total past due assessments and related fees into equal payments to be paid on a monthly basis; and
- Not provide any additional terms or requirements other than to comply with the existing governing documents of the association.

If a member agrees to participate in the payment plan, the 24-month limit on pursuing past due assessments is tolled until the past due assessments, related fees, and any assessments that arise during the payment plan are paid. If the member does not comply with the terms of the payment plan, the association is no longer subject to the 24-month time limit.

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[24] s. 720.306(9), F.S.
[25] s. 720.308(1), F.S.
[26] s. 720.301(1), F.S.

*Notice of Transfer to Third Parties*

The bill provides that if an association transfers a lien or the right to collect past due assessments to a third party, the association must provide notice to the member at least 30 days before the transfer. The notice must state that the transfer includes the right to place a lien. The notice must be served on the member by registered or certified mail, return receipt requested, by personal service, or by electronic delivery with evidence of delivery in the form of a receipt or other paper or electronic acknowledgment by the member or his or her representative. If service does not provide the association with an acknowledgment by the member or his or her representative, the association may provide notice to the member by posting a notice of transfer on a subpage, web portal, or other protected electronic location through the association's website. If the association does not have a website, it must send notice by e-mail to the member, delivery receipt requested.

**Other Effects of the Bill**

The bill provides that "community association management services" has the same definition as "community association management" in ch. 468, F.S., which regulates community association managers.

The bill provides that the terms "community association management " or "community association management services" have the same meaning as provided in s. 468.431.

The bill makes technical, drafting, and conforming changes to chs. 718 and 720, F.S.

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

B. SECTION DIRECTORY:

Section 1 amends s. 468.431, F.S., related to definitions.

Section 2 amends s. 718.103, F.S., related to definitions.

Section 3 amends s. 718.111, F.S., related to the association.

Section 4 amends s. 718.3026, F.S., related to contracts for products and services; in writing; bids; exceptions.

Section 5 amends s. 720.303, F.S., related to association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.

Section 6 amends s. 720.3033, F.S., related to officers and directors.

Section 7 amends s. 720.305, F.S., related to obligations of members; remedies at law or in equity; levy of fines and suspension of use rights.

Section 8 amends s. 720.306, F.S., related to meetings of members; voting and election procedures; amendments.

Section 9 amends s. 720.307, F.S., related to transition of association control in a community.

Section 10 amends s. 720.308, F.S., related to assessments and charges.

Section 11 amends s. 720.3085, F.S., related to payment for assessments; lien claims.

Section 10 amends s. 720.311, F.S., related to dispute resolution.

Section 11 provides an effective date of July 1, 2016.

## 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 requires a condominium or homeowners' association with 7,500 or more units or parcels to provide a secure website so that association members can view certain official records notices of the association. Associations that are required to comply with this requirement may incur indeterminate costs in creating, operating, and maintaining the website.

D. FISCAL COMMENTS:

None.

## III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   The bill prohibits a deed restriction, covenant, declaration, or similar agreement prohibiting a homeowner from renting his or her home, altering the duration of a rental term, limiting the number of times a homeowner may rent his or her home during a specified period, or limiting the number of occupants in a home without the consent of the current homeowner. To the extent this provision encompasses any agreement entered into before the effective date of the bill, it may implicate art. I, s. 10 of the Florida Constitution and art. I, s. 10 of the United States Constitution, which generally proscribe any law that impairs "the obligation of contracts."

As a threshold matter, a law must "substantially impair" a contractual right for it be constitutionally problematic.[27] The Florida Supreme Court has held that "[a]n impairment may be constitutional if it is reasonable and necessary to serve an important public purpose."[28]

Where a party objects to a law believing that the law impairs the obligation of a contract, the courts have adopted a balancing test to "determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the state's objective, or whether it unreasonably intrudes into the parties' bargain to a degree greater than is necessary to achieve that objective."[29] Factors considered in the balancing test include:

- Was the law enacted to deal with a broad, generalized economic or social problem?[30]
- Does the law operate in an area which was already subject to state regulation at the time the parties' contractual obligations were originally undertaken, or does it invade an area never before subject to regulation by the state?
- Does the law effect a temporary alteration of the contractual relationships of those within its coverage, or does it work a severe, permanent, and immediate change in those relationships irrevocably and retroactively?[31]

B. RULE-MAKING AUTHORITY:

The extension in the bill of the reporting requirement in s. 720.303(14), F.S., for homeowners' association community managers and management firms may create a need for rulemaking by the division.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It appears that the word "board" at lines 471 and 754 should be replaced with "association."

The portion of lines 664-665 that states "if the association has contracted for such services", appears to be unnecessary because the bill does not require a homeowners' association that does not have a contract with community association manager or management firm to comply with the reporting requirement.

Although the bill requires an outgoing board member of a condominium or homeowners' association who lost his or her seat in an election to turn over to the incoming board the administrative rights or controls of the association's website or other digital or electronic asset, the bill does not contain a similar requirement for a board member who has been recalled.

The bill imposes a number of requirements upon a condominium association with 7,500 or more units. The largest condominium association in Florida has 1,980 units.[32]

## IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

n/a

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[27] *Pomponio v. Claridge of Pompano Condo., Inc.*, 378 So. 2d 774, 779 (Fla.1979) (citing *Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 244-45 (1978)).
[28] *Id.* at 778–79 (*citing United States Trust Co.*, 431 U.S. at 25 (1977)).
[29] *Id.* at 780.
[30] In determining the purpose of a statute, courts frequently look to the legislature's express statements of intent in the statute. *See Pomponio*, 378 So. 2d at 781 (noting in its analysis of the public purpose of the statute that the specific objectives for the statute are "neither expressly articulated nor plainly evident" in the statute).
[31] *Id.* at 779.
[32] *See* Florida Department of Business and Professional Regulation, *Condominiums, Timeshares, and Mobile Homes Public Records*, http://www.myfloridalicense.com/dbpr/sto/file_download/public-records-CTMH.html (last visited Jan. 23, 2016).

1 A bill to be entitled
2 An act relating to community associations; amending s.
3 468.431, F.S.; revising a definition; amending s.
4 718.103, F.S.; providing a definition for purposes of
5 the Condominium Act; amending s. 718.111, F.S.;
6 revising records required to be maintained by a
7 condominium association; providing requirements
8 relating to the provision of specified documents on an
9 association's website; revising duties of an outgoing
10 board or committee member; amending s. 718.3026, F.S.;
11 revising applicability of certain provisions relating
12 to association contracts; providing requirements
13 relating to director and officer conflicts of
14 interest; amending s. 720.303, F.S.; revising records
15 required to be maintained by a homeowners'
16 association; providing requirements relating to the
17 provision of specified documents on an association's
18 website; revising reporting requirements; deleting a
19 provision relating the future expiration of the
20 reporting requirements; amending s. 720.3033, F.S.;
21 providing requirements relating to director and
22 officer conflicts of interest; providing requirements
23 for board membership; amending s. 720.305, F.S.;
24 prohibiting an association from enforcing certain
25 traffic and criminal laws; amending s. 720.306, F.S.;
26 providing requirements for amendment of the

27 association declaration; providing meeting notice
28 requirements; providing election requirements;
29 providing duties of an outgoing board member; amending
30 s. 720.307, F.S.; requiring a developer to deliver
31 certain information to the association; amending s.
32 720.308, F.S.; providing powers of the association
33 related to past due assessments owed by a member;
34 providing requirements for an association transferring
35 the right to collect past due assessments to a third
36 party; amending s. 720.3085, F.S.; providing
37 requirements for an association transferring a lien to
38 a third party; amending s. 720.311, F.S.; conforming a
39 cross-reference; providing an effective date.
40
41 Be It Enacted by the Legislature of the State of Florida:
42
43 Section 1. Subsection (2) of section 468.431, Florida
44 Statutes, is amended to read:
45 468.431 Definitions.—As used in this part:
46 (2) "Community association management" or "community
47 association management services" means any of the following
48 practices requiring substantial specialized knowledge, judgment,
49 and managerial skill when done for remuneration and when the
50 association or associations served contain more than 10 units or
51 have an annual budget or budgets in excess of $100,000:
52 controlling or disbursing funds of a community association,

53 preparing budgets or other financial documents for a community
54 association, assisting in the noticing or conduct of community
55 association meetings, determining the number of days required
56 for statutory notices, determining amounts due to the
57 association, collecting amounts due to the association before
58 the filing of a civil action, calculating the votes required for
59 a quorum or to approve a proposition or amendment, completing
60 forms related to the management of a community association that
61 have been created by statute or by a state agency, drafting
62 meeting notices and agendas, calculating and preparing
63 certificates of assessment and estoppel certificates, responding
64 to requests for certificates of assessment and estoppel
65 certificates, negotiating monetary or performance terms of a
66 contract subject to approval by an association, drafting
67 prearbitration demands, coordinating or performing maintenance
68 for real or personal property and other related routine services
69 involved in the operation of a community association, and
70 complying with the association's governing documents and the
71 requirements of law as necessary to perform such practices. A
72 person who performs clerical or ministerial functions under the
73 direct supervision and control of a licensed manager or who is
74 charged only with performing the maintenance of a community
75 association and who does not assist in any of the management
76 services described in this subsection is not required to be
77 licensed under this part.
78 Section 2. Subsections (11) through (30) of section

79 718.103, Florida Statutes, are renumbered as subsections (12)
80 through (31), respectively, and a new subsection (11) is added
81 to that section, to read:
82 718.103 Definitions.—As used in this chapter, the term:
83 (11) "Community association management" or "community
84 association management services" has the same meaning as
85 provided in s. 468.431.
86 Section 3. Subsection (12) of section 718.111, Florida
87 Statutes, is amended to read:
88 718.111 The association.—
89 (12) OFFICIAL RECORDS.—
90 (a) From the inception of the association, the association
91 shall maintain each of the following items, if applicable, which
92 constitutes the official records of the association:
93 1. A copy of the plans, specifications, permits, and
94 warranties related to improvements to the common areas or other
95 property that the association is obligated to maintain, repair,
96 or replace, and other items provided by the developer pursuant
97 to s. 718.301(4).
98 2. A photocopy of the recorded declaration of condominium
99 of each condominium operated by the association and each
100 amendment to each declaration.
101 3. A photocopy of the recorded bylaws of the association
102 and each amendment to the bylaws.
103 4. A certified copy of the articles of incorporation of
104 the association, or other documents creating the association,

105 and each amendment thereto.
106 5. A copy of the current rules of the association.
107 6. A book or books that contain the minutes of all
108 meetings of the association, the board of administration, and
109 the unit owners, which minutes must be retained for at least 7
110 years.
111 7. A current roster of all unit owners and their mailing
112 addresses, unit identifications, voting certifications, and, if
113 known, telephone numbers. The association shall also maintain
114 the e-mail ~~electronic mailing~~ addresses and facsimile numbers of
115 unit owners consenting to receive notice by electronic
116 transmission. The e-mail ~~electronic mailing~~ addresses and
117 facsimile numbers are not accessible to unit owners if consent
118 to receive notice by electronic transmission is not provided in
119 accordance with subparagraph (c)5. The e-mail addresses and
120 facsimile numbers provided by unit owners to receive notice by
121 electronic transmission must be removed from any association
122 records if the unit owner revokes his or her consent to receive
123 notice by electronic transmission. However, the association is
124 not liable for an inadvertent disclosure of the electronic mail
125 address or facsimile number for receiving electronic
126 transmission of notices.
127 8. All current insurance policies of the association and
128 condominiums operated by the association.
129 9. A current copy of any management agreement, lease, or
130 other contract to which the association is a party or under

131 which the association or the unit owners have an obligation or
132 responsibility. Bids for materials, equipment, or services are
133 official records and must be maintained by the association for a
134 period of 1 year.
135 10. Bills of sale or transfer for all property owned by
136 the association.
137 11. Financial and accounting records for the association
138 and separate accounting records for each condominium that the
139 association operates. All accounting records must be maintained
140 for at least 7 years. Any person who knowingly or intentionally
141 defaces or destroys such records, or who knowingly or
142 intentionally fails to create or maintain such records, with the
143 intent of causing harm to the association or one or more of its
144 members, is personally subject to a civil penalty pursuant to s.
145 718.501(1)(d). The financial and accounting records must
146 include, but are not limited to:
147 a. Accurate, itemized, and detailed records of all
148 receipts and expenditures.
149 b. A current account and a monthly, bimonthly, or
150 quarterly statement of the account for each unit designating the
151 name of the unit owner, the due date and amount of each
152 assessment, the amount paid on the account, and the balance due.
153 c. All tax returns, audits, reviews, accounting
154 statements, and financial reports of the association or
155 condominium.
156 d. Any records that identify, measure, record, or

157 <u>communicate financial information</u> ~~All contracts for work to be~~
158 ~~performed. Bids for work to be performed are also considered~~
159 ~~official records and must be maintained by the association~~.
160 12. Ballots, sign-in sheets, voting proxies, and all other
161 papers relating to voting by unit owners, which must be
162 maintained for 1 year from the date of the election, vote, or
163 meeting to which the document relates, notwithstanding paragraph
164 (b).
165 13. All rental records if the association is acting as
166 agent for the rental of condominium units.
167 14. A copy of the current question and answer sheet as
168 described in s. 718.504.
169 15. All other written records of the association not
170 specifically included in the foregoing which are related to the
171 operation of the association.
172 16. A copy of the inspection report as described in s.
173 718.301(4)(p).
174 (b) The official records of the association must be
175 maintained within the state for at least 7 years. The records of
176 the association shall be made available to a unit owner within
177 45 miles of the condominium property or within the county in
178 which the condominium property is located within 5 working days
179 after receipt of a written request by the board or its designee.
180 However, such distance requirement does not apply to an
181 association governing a timeshare condominium. This paragraph
182 may be complied with by having a copy of the official records of

183 the association available for inspection or copying on the
184 condominium property or association property, or the association
185 may offer the option of making the records available to a unit
186 owner electronically via the Internet or by allowing the records
187 to be viewed in electronic format on a computer screen and
188 printed upon request. The association is not responsible for the
189 use or misuse of the information provided to an association
190 member or his or her authorized representative pursuant to the
191 compliance requirements of this chapter unless the association
192 has an affirmative duty not to disclose such information
193 pursuant to this chapter.
194 (c)1. In addition to any other provision of law,
195 associations with 7,500 or more units must provide a digital
196 copy of specified documents on the association's website.
197 a. An association's website must be:
198 (I) An independent website or web portal, wholly owned and
199 operated by the association; or
200 (II) A website or web portal operated by a third party
201 provider with whom the association owns, leases, rents, or
202 otherwise obtains the right to operate a web page, subpage, web
203 portal, or collection of subpages or web portals dedicated to
204 the association's activities and where required notices,
205 records, and documents may be posted by the association.
206 b. The association's website must be accessible through
207 the Internet and must contain a subpage, web portal, or other
208 protected electronic location that is inaccessible to the

209 general public and that is accessible only to unit owners and
210 employees of the association.
211 c. The association must provide access to each unit owner
212 to the protected sections of the association's website that
213 contain any notices, records, or documents that must be
214 electronically provided.
215 2. The following documents must be placed in digital
216 format on the website:
217 a. Copies of the official records described in paragraph
218 (a). However, the current roster of all unit owners with their
219 mailing addresses and parcel identifications may not be placed
220 in digital format on the website. The website must include the
221 following statement: "A current roster of all unit owners and
222 their mailing addresses and parcel identifications is available
223 at the request of any unit owner or unit owner representative,
224 including the e-mail addresses of the unit owners who have
225 consented to receive notice by electronic transmission." The
226 notice shall include the e-mail address of the person to contact
227 for a copy of the roster.
228 b. The annual budget required by s. 718.112(2)(f) and any
229 proposed budget to be considered at the annual meeting.
230 c. The financial report required by subsection (13) and
231 any proposed financial report to be considered at a meeting.
232 d. Any document created by the association or a board
233 member relating to the recall of a director, pursuant to s.
234 718.112(2)(j), or any document created for or filed by the

235 association in an arbitration proceeding conducted by the
236 division regarding the recall of a director.
237 e. The certification of each director required by s.
238 718.112(2)(d)4.b.
239 f. A list of all contracts or transactions between the
240 association and any director, officer, corporation, firm, or
241 association that is not an affiliated condominium association,
242 or other entity in which an association director is also a
243 director or officer and financially interested.
244 g. Any fidelity bond entered into by the association.
245 h. Any contract or document regarding a conflict of
246 interest or possible conflict of interest as provided in ss.
247 468.436(2) and 718.3026(3).
248 i. Notice of any board meeting and the agenda for the
249 meeting, as required by s. 718.112(2)(d)3., placed online no
250 later than 14 days before the meeting posted in plain view on
251 the front page, or on a separate subpage labeled "Notices" which
252 is conspicuously visible and linked from the front page of the
253 association's website. The association must post on the
254 association's website any documents to be considered during the
255 meeting or listed on the agenda at least 7 days before the
256 meeting at which the document or the information within the
257 document will be considered, unless otherwise stated, including
258 the following documents:
259 (I) The proposed annual budget required by s.
260 718.112(2)(e), which must be provided at least 14 days before

261 the meeting.
262 (II) The proposed financial report required by subsection
263 (13).
264 (III) A list of persons seeking to be elected to the
265 board.
266 3. The association shall ensure that the information and
267 records described in paragraph (d), which are not permitted to
268 be accessible to unit owners, are not placed on the
269 association's website. If protected information, or information
270 restricted from being accessible to unit owners, is included in
271 documents that are required to be placed on the association's
272 website, the association shall ensure the information is
273 redacted before placing the documents online.
274 (d) ~~(c)~~ Physical copies of the official records of the
275 association are open to inspection by any association member or
276 the authorized representative of such member at all reasonable
277 times. The right to inspect the records includes the right to
278 make or obtain copies, at the reasonable expense, if any, of the
279 member. The association may adopt reasonable rules regarding the
280 frequency, time, location, notice, and manner of record
281 inspections and copying. The failure of an association to
282 provide the records within 10 working days after receipt of a
283 written request creates a rebuttable presumption that the
284 association willfully failed to comply with this paragraph. A
285 unit owner who is denied access to official records is entitled
286 to the actual damages or minimum damages for the association's

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

313 electronic copy of the official records in lieu of the
314 association's providing the member or his or her authorized
315 representative with a copy of such records. The association may
316 not charge a member or his or her authorized representative for
317 the use of a portable device. Notwithstanding this paragraph,
318 the following records are not accessible to unit owners:
319 1. Any record protected by the lawyer-client privilege as
320 described in s. 90.502 and any record protected by the work-
321 product privilege, including a record prepared by an association
322 attorney or prepared at the attorney's express direction, which
323 reflects a mental impression, conclusion, litigation strategy,
324 or legal theory of the attorney or the association, and which
325 was prepared exclusively for civil or criminal litigation or for
326 adversarial administrative proceedings, or which was prepared in
327 anticipation of such litigation or proceedings until the
328 conclusion of the litigation or proceedings.
329 2. Information obtained by an association in connection
330 with the approval of the lease, sale, or other transfer of a
331 unit.
332 3. Personnel records of association or management company
333 employees, including, but not limited to, disciplinary, payroll,
334 health, and insurance records. For purposes of this
335 subparagraph, the term "personnel records" does not include
336 written employment agreements with an association employee or
337 management company, or budgetary or financial records that
338 indicate the compensation paid to an association employee.

339 4. Medical records of unit owners.
340 5. Social security numbers, driver license numbers, credit
341 card numbers, e-mail addresses, telephone numbers, facsimile
342 numbers, emergency contact information, addresses of a unit
343 owner other than as provided to fulfill the association's notice
344 requirements, and other personal identifying information of any
345 person, excluding the person's name, unit designation, mailing
346 address, property address, and any address, e-mail address, or
347 facsimile number provided to the association to fulfill the
348 association's notice requirements. Notwithstanding the
349 restrictions in this subparagraph, an association may print and
350 distribute to parcel owners a directory containing the name,
351 parcel address, and all telephone numbers of each parcel owner.
352 However, an owner may exclude his or her telephone numbers from
353 the directory by so requesting in writing to the association. An
354 owner may consent in writing to the disclosure of other contact
355 information described in this subparagraph. The association is
356 not liable for the inadvertent disclosure of information that is
357 protected under this subparagraph if the information is included
358 in an official record of the association and is voluntarily
359 provided by an owner and not requested by the association.
360 6. Electronic security measures that are used by the
361 association to safeguard data, including passwords.
362 7. The software and operating system used by the
363 association which allow the manipulation of data, even if the
364 owner owns a copy of the same software used by the association.

365 The data is part of the official records of the association.
366 (e)~~(d)~~ The association shall prepare a question and answer
367 sheet as described in s. 718.504, and shall update it annually.
368 (f)~~(e)~~1. The association or its authorized agent is not
369 required to provide a prospective purchaser or lienholder with
370 information about the condominium or the association other than
371 information or documents required by this chapter to be made
372 available or disclosed. The association or its authorized agent
373 may charge a reasonable fee to the prospective purchaser,
374 lienholder, or the current unit owner for providing good faith
375 responses to requests for information by or on behalf of a
376 prospective purchaser or lienholder, other than that required by
377 law, if the fee does not exceed $150 plus the reasonable cost of
378 photocopying and any attorney's fees incurred by the association
379 in connection with the response.
380 2. An association and its authorized agent are not liable
381 for providing such information in good faith pursuant to a
382 written request if the person providing the information includes
383 a written statement in substantially the following form: "The
384 responses herein are made in good faith and to the best of my
385 ability as to their accuracy."
386 (g)~~(f)~~ An outgoing board or committee member must
387 relinquish all official records and property of the association
388 in his or her possession or under his or her control, including
389 administrative rights or controls of an association's website or
390 other digital or electronic asset of the association, to the

391 incoming board within 5 days after the election. The division
392 shall impose a civil penalty as set forth in s. 718.501(1)(d)6.
393 against an outgoing board or committee member who willfully and
394 knowingly fails to relinquish such records and property.
395 Section 4. Subsection (3) of section 718.3026, Florida
396 Statutes, is renumbered as subsection (4), subsection (2) is
397 amended, and a new subsection (3) is added to that section, to
398 read:
399 718.3026 Contracts for products and services; in writing;
400 bids; exceptions.—Associations with 10 or fewer units may opt
401 out of the provisions of this section if two-thirds of the unit
402 owners vote to do so, which opt-out may be accomplished by a
403 proxy specifically setting forth the exception from this
404 section.
405 (2)~~(a) Notwithstanding the foregoing, contracts with~~
406 ~~employees of the association, and contracts for attorney,~~
407 ~~accountant, architect, community association manager, timeshare~~
408 ~~management firm, engineering, and landscape architect services~~
409 ~~are not subject to the provisions of this section.~~
410 <u>(a)</u>~~(b)~~ Nothing contained herein is intended to limit the
411 ability of an association to obtain needed products and services
412 in an emergency.
413 <u>(b)</u>~~(c)~~ This section <u>does</u> ~~shall~~ not apply if the business
414 entity with which the association desires to enter into a
415 contract is the only source of supply within the county serving
416 the association.

417 (c) ~~(d)~~ Nothing contained herein shall excuse a party
418 contracting to provide maintenance or management services from
419 compliance with s. 718.3025.
420 (3)(a) Directors and officers of the board must disclose
421 to the board any activity that may reasonably be construed as a
422 conflict of interest. A rebuttable presumption of a conflict of
423 interest exists if any of the following occurs without prior
424 notice, as required in paragraph (b), or board approval taken at
425 a properly noticed meeting of the unit owners:
426 1. The director or officer, or a relative residing in the
427 same household as the director or officer, has entered into a
428 contract for goods or services with the association.
429 2. The director or officer, or a relative residing in the
430 same household as the director or officer, holds an interest of
431 35 percent or more in any corporation, limited liability
432 corporation, partnership, limited liability partnership, or
433 other business entity that conducts business with the
434 association or proposes to enter into a contract or other
435 transaction with the association.
436 (b) If a director or officer intends to engage in an
437 activity that may reasonably be construed as a conflict of
438 interest, as described in paragraph (a), the director or officer
439 must place the issue on a meeting agenda, including any proposed
440 contract or transactional documents, and submit the issue to the
441 board to be considered and voted upon. If the board votes
442 against the action, the director or officer shall notify the

443 board in writing of his or her intention not to pursue the
444 action or to withdraw from the position as director or officer.
445 If the board finds that an officer or director has violated this
446 subsection, the board shall immediately remove the officer or
447 director from office. The vacancy shall be filled according to
448 general law until expiration of the director's term of office.
449 (c) A director or officer who is party to, or has an
450 interest in, the transaction or arrangement involving the
451 possible conflict of interest may attend the meeting at which
452 the transaction or arrangement is considered by the board. The
453 director or officer who is party to, or has an interest in, the
454 transaction or arrangement shall be allowed to make a
455 presentation to the board or committee regarding the transaction
456 or arrangement. After the presentation, the director or officer
457 must leave the meeting during the discussion of, and the vote
458 upon, the transaction or arrangement involving the possible
459 conflict of interest. Any director or officer who is party to or
460 has an interest in such transaction or arrangement shall recuse
461 himself or herself from the vote.
462 (d)1. The board must provide notice to unit owners of any
463 possible conflict of interest described in paragraph (a). Any
464 related proposed contracts or proposed transactional documents
465 related to the conflict must be attached to the agenda and made
466 available with the meeting agenda. The notice and related
467 proposed contracts or proposed transactional documents must be
468 provided to unit owners at least 7 days before the meeting at

469 which the possible conflict of interest will be considered or
470 voted upon by the board.
471 2. A board with 7,500 or more units must place the notice
472 required in subparagraph 1. on the front page of the
473 association's website. Any related proposed contracts or
474 proposed transactional documents must be attached to the agenda
475 provided on the association's website. The notice and related
476 proposed contracts or proposed transactional documents related
477 to the conflict must be posted on the association's website at
478 least 7 days before the meeting at which the possible conflict
479 of interest will be considered or voted upon by the board.
480 Section 5. Subsections (6) through (13) of section
481 720.303, Florida Statutes, are renumbered as subsections (7)
482 through (14), respectively, subsection (4) and present
483 subsection (13) of that section are amended, and a new
484 subsection (6) is added to that section, to read:
485 720.303 Association powers and duties; meetings of board;
486 official records; budgets; financial reporting; association
487 funds; recalls.—
488 (4) OFFICIAL RECORDS.—The association shall maintain each
489 of the following items, when applicable, which constitute the
490 official records of the association:
491 (a) Copies of any plans, specifications, permits, and
492 warranties related to improvements constructed on the common
493 areas or other property that the association is obligated to
494 maintain, repair, or replace, and other items provided by the



CODING: Words stricken are deletions; words underlined are additions.

495 developer pursuant to s. 720.307(4).
496 (b) A copy of the bylaws of the association and of each
497 amendment to the bylaws.
498 (c) A certified copy of the articles of incorporation of
499 the association and of each amendment thereto.
500 (d) A copy of the declaration of covenants and a copy of
501 each amendment thereto.
502 (e) A copy of the current rules of the homeowners'
503 association.
504 (f) The minutes of all meetings of the board of directors
505 and of the members, which minutes must be retained for at least
506 7 years.
507 (g) A current roster of all members and their mailing
508 addresses and parcel identifications. The association shall also
509 maintain the electronic mailing addresses and the numbers
510 designated by members for receiving notice sent by electronic
511 transmission of those members consenting to receive notice by
512 electronic transmission. The electronic mailing addresses and
513 numbers provided by members ~~unit owners~~ to receive notice by
514 electronic transmission shall be removed from association
515 records when consent to receive notice by electronic
516 transmission is revoked. However, the association is not liable
517 for an erroneous disclosure of the electronic mail address or
518 the number for receiving electronic transmission of notices.
519 (h) All of the association's insurance policies or a copy
520 thereof, which policies must be retained for at least 7 years.



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

521 (i) A current copy of all contracts to which the
522 association is a party, including, without limitation, any
523 management agreement, lease, or other contract under which the
524 association has any obligation or responsibility. Bids received
525 by the association for materials, equipment, or services, ~~work~~
526 ~~to be performed~~ must also be considered official records and
527 must be maintained ~~kept~~ for a period of 1 year.
528 (j) The financial and accounting records of the
529 association, kept according to good accounting practices. All
530 financial and accounting records must be maintained for a period
531 of at least 7 years. The financial and accounting records must
532 include:
533 1. Accurate, itemized, and detailed records of all
534 receipts and expenditures.
535 2. A current account and a periodic statement of the
536 account for each member, designating the name and current
537 address of each member who is obligated to pay assessments, the
538 due date and amount of each assessment or other charge against
539 the member, the date and amount of each payment on the account,
540 and the balance due.
541 3. All tax returns, audits, reviews, financial statements,
542 and financial reports of the association.
543 4. Any other records that identify, measure, record, or
544 communicate financial information.
545 (k) A copy of the disclosure summary described in s.
546 720.401(1).

547 (l) Ballots, sign-in sheets, voting proxies, and all other
548 papers relating to voting by members, which must be maintained
549 for 1 year after the date of the election, vote, or meeting to
550 which the document relates.
551 (m) ~~(l)~~ All other written records of the association not
552 specifically included in the foregoing which are related to the
553 operation of the association.
554 (6) ACCESS TO ASSOCIATION DOCUMENTS AND RECORDS ON AN
555 ASSOCIATION WEBSITE.—
556 (a) In addition to any other provision of general law,
557 associations with 7,500 or more parcels must provide a digital
558 copy of specified documents on the association's website. An
559 association with fewer than 7,500 parcels located within the
560 physical boundaries of an affiliated association that has more
561 than 7,500 or more parcels must provide digital copies of
562 specified documents on the larger affiliated association's
563 website. An association with fewer than 7,500 parcels located
564 within the physical boundaries of an association with more than
565 7,500 or more parcels, but that is not affiliated with the
566 larger association, may provide digital copies of certain
567 documents on its website if the association chooses to do so.
568 1. An association's website must be:
569 a. An independent website or web portal, wholly owned and
570 operated by the association; or
571 b. A website or web portal that is operated by a third-
572 party provider with whom the association owns, leases, rents, or

573 otherwise obtains the right to operate a web page, subpage, web
574 portal, or collection of subpages or web portals dedicated to
575 the association's activities and where required notices,
576 records, and documents may be posted by the association.
577 2. The association's website must be accessible through
578 the Internet, and must contain a subpage, web portal, or other
579 protected electronic location that is accessible only to the
580 unit owners and employees of the association.
581 3. The association must provide access to each member to
582 the protected sections of the association's website that contain
583 any notices, records, or documents that must be electronically
584 provided.
585 (b) The following documents must be placed in digital
586 format on the website:
587 1. Copies of the official records in subsection (4). The
588 current roster of all members with their mailing addresses and
589 parcel identifications may not be placed in digital format on
590 the website. The website must include the following statement:
591 "A current roster of all members and their mailing addresses and
592 parcel identifications is available at the request of any
593 association member." The notice shall include the e-mail address
594 of the person to contact for a copy of the roster.
595 2. The annual budget required by subsection (7) and any
596 proposed budget to be considered at the annual meeting.
597 3. The financial report required by subsection (8) and any
598 proposed financial report to be considered at a meeting.

599 4. Any document created by the association or a board
600 member relating to the recall of a director, pursuant to
601 subsection (11), or any document created for or filed by the
602 association in an arbitration proceeding conducted by the
603 division regarding the recall of a director.
604 5. A copy of the information submitted to the division to
605 comply with the reporting requirement in subsection (14).
606 6. Documentation reporting the compensation of directors,
607 officers, or members authorized under subsection (13).
608 7. The certification of each director required by s.
609 720.3033(1).
610 8. A list of all contracts or transactions between the
611 association and any director, officer, corporation, firm, or
612 association that is not an affiliated homeowners' association,
613 or other entity in which an association director is also a
614 director or officer is financially interested.
615 9. Any fidelity bond entered into by the association.
616 10. A map of the association, including association
617 boundaries.
618 11. Any contract or document regarding a conflict of
619 interest or possible conflict of interest as provided in ss.
620 468.436(2) and 720.3033.
621 12. Notice of any board meeting and the agenda for the
622 meeting, as required by subsection (2), placed online no later
623 than 14 days before the meeting posted in plain view on the
624 front page, or on a separate subpage labeled "Notices" which is

625 conspicuously visible and linked from the front page of the
626 association's website. The association must post on the
627 association's website any documents to be considered during the
628 meeting or listed on the agenda no later than 7 days before the
629 meeting at which the document or the information within the
630 document will be considered, including the following documents:
631 a. The proposed annual budget required by subsection (7);
632 b. The proposed financial report required by subsection
633 (8).
634 c. A list of persons seeking to be elected to the board.
635 d. A copy of contracts or transactions listed in
636 subparagraph 8.
637 e. Any competitive bids for materials, equipment, or
638 services.
639 f. Any proposed contracts or proposed transactional
640 documents related to any possible conflict of interest set forth
641 in ss. 468.436(2) and 720.3033.
642 (c) The association shall ensure that the information and
643 records described in subparagraph (5)(c), which are not
644 permitted to be accessible to members or parcel owners, are not
645 placed on the association's website. If protected information,
646 or information restricted from being accessible to members or
647 parcel owners, is included in documents that are required to be
648 placed on the association's website, the association shall
649 ensure the information is redacted before placing the documents
650 online.

651 (14)~~(13)~~ REPORTING REQUIREMENT.—The community association
652 manager or management firm~~, or the association when there is no~~
653 ~~community association manager or management firm,~~ shall report
654 to the division on October 1, annually ~~by November 22, 2013~~, in
655 a manner and form prescribed by the division.
656 (a) The report shall include the association's:
657 1. Legal name.
658 2. Federal employer identification number.
659 3. Mailing and physical addresses.
660 4. Total number of parcels.
661 5. Total amount of revenues and expenses from the
662 association's annual budget.
663 6. Community association management firm or community
664 association manager, if the association has contracted for such
665 services.
666 (b) For associations in which control of the association
667 has not been transitioned to nondeveloper members, as set forth
668 in s. 720.307, the report shall also include the developer's:
669 1. Legal name.
670 2. Mailing address.
671 3. Total number of parcels owned on the date of reporting.
672 (c) The reporting requirement provided in this subsection
673 shall be a continuing obligation on each association until the
674 required information is reported to the division. Any change in
675 the reported information must be updated on the registration
676 system provided for in paragraph (d).

677 (d) ~~By October 1, 2013,~~ The department shall use ~~establish~~
678 ~~and implement~~ a registration system through an Internet website
679 that provides for the reporting requirements of paragraphs (a)
680 and (b).
681 (e) The department shall prepare an annual report of the
682 data reported pursuant to this subsection and present it to the
683 Governor, the President of the Senate, and the Speaker of the
684 House of Representatives by December 1, 2013, and each year
685 thereafter.
686 (f) The division shall adopt rules pursuant to ss.
687 120.536(1) and 120.54 to implement the provisions of this
688 subsection.
689 ~~(g) This subsection shall expire on July 1, 2016, unless~~
690 ~~reenacted by the Legislature.~~
691 Section 6. Subsections (2) through (5) of section
692 720.3033, Florida Statutes, are renumbered as subsections (3)
693 through (6), respectively, and subsections (2) and (7) are added
694 to that section, to read:
695 720.3033 Officers and directors.—
696 (2)(a) Directors and officers of the board must disclose
697 to the board any activity that may reasonably be construed as a
698 conflict of interest. A rebuttable presumption of a conflict of
699 interest exists if any of the following occurs without prior
700 notice, as required in paragraph (b), or board approval taken at
701 a properly noticed meeting of the members:
702 1. The director or officer, or a relative residing in the

703 same household as the director or officer, enters into a
704 contract for goods or services with the association.
705 2. The director or officer, or a relative residing in the
706 same household as the director or officer, holds an interest of
707 more than 35 percent in any corporation, limited liability
708 corporation, partnership, limited liability partnership, or
709 other business entity that conducts business with the
710 association or proposes to enter into a contract or other
711 transaction with the association.
712 3. A corporation, limited liability corporation,
713 partnership, limited liability partnership, or other business
714 entity that, directly or indirectly, owns or controls the
715 director or officer, or otherwise influences any decisions made
716 by the director or officer, intends to conduct business with the
717 association or proposes to enter into a contract or other
718 transaction with the association.
719 (b) If a director or officer intends to engage in an
720 activity that may reasonably be construed as a conflict of
721 interest, as described in paragraph (a), the director or officer
722 must place the issue on a meeting agenda, including any proposed
723 contract or transactional documents, and submit the issue to the
724 board to be considered and voted upon. If the board votes
725 against the action, the director or officer shall notify the
726 board in writing of his or her intention not to pursue the
727 action or withdraw from the position as director or officer. If
728 the board finds that an officer or director has violated this

729 subsection, the board shall immediately remove the officer or
730 director from office. The vacancy shall be filled according to
731 general law until expiration of the director's term of office.
732 (c) A director or officer who is party to or has an
733 interest in the transaction or arrangement involving the
734 possible conflict of interest may attend the meeting at which
735 the transaction or arrangement is considered by the board. The
736 director or officer who is party to or has an interest in the
737 transaction or arrangement shall be allowed to make a
738 presentation to the board or committee regarding the transaction
739 or arrangement. After the presentation, the director or officer
740 must leave the meeting during the discussion of, and the vote
741 upon, the transaction or arrangement involving the possible
742 conflict of interest. Any director or officer who is party to or
743 has an interest in such transaction or arrangement shall recuse
744 him or herself from the vote.
745 (d)1. The board must provide notice to members of any
746 possible conflict of interest described in paragraph (a). Any
747 related proposed contracts or proposed transactional documents
748 related to the conflict must be attached to the agenda and made
749 available with the meeting agenda. The notice and related
750 proposed contracts or proposed transactional documents must be
751 provided to members at least 7 days before the meeting at which
752 the possible conflict of interest will be considered or voted
753 upon by the board.
754 2. A board with 7,500 or more parcels must place the



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755 notice required in subparagraph 1. on the front page of the
756 association's website. Any related proposed contracts or
757 proposed transactional documents related to the conflict must be
758 attached to the agenda provided on the association's website.
759 The notice and related proposed contracts or proposed
760 transactional documents must be posted on the association's
761 website at least 7 days before the meeting at which the possible
762 conflict of interest will be considered or voted upon by the
763 board.
764 (7) If an association consists of 7,500 or more parcels,
765 the board of administration must consist of at least five
766 members appointed by the board who are not officers, directors,
767 or employees of the association, or the spouse, parent, child,
768 brother, or sister of an officer, director, or employee of the
769 association.
770 Section 7. Paragraphs (c) and (d) are added to subsection
771 (2) of section 720.305, Florida Statutes, to read:
772 720.305 Obligations of members; remedies at law or in
773 equity; levy of fines and suspension of use rights.—
774 (2) The association may levy reasonable fines. A fine may
775 not exceed $100 per violation against any member or any member's
776 tenant, guest, or invitee for the failure of the owner of the
777 parcel or its occupant, licensee, or invitee to comply with any
778 provision of the declaration, the association bylaws, or
779 reasonable rules of the association unless otherwise provided in
780 the governing documents. A fine may be levied by the board for

781 each day of a continuing violation, with a single notice and
782 opportunity for hearing, except that the fine may not exceed
783 $1,000 in the aggregate unless otherwise provided in the
784 governing documents. A fine of less than $1,000 may not become a
785 lien against a parcel. In any action to recover a fine, the
786 prevailing party is entitled to reasonable attorney fees and
787 costs from the nonprevailing party as determined by the court.
788 (c) An association may not enforce traffic laws provided
789 in chapter 316. An association may not place requirements in the
790 governing documents regarding compliance with traffic laws in
791 chapter 316. An association may not levy fines or assessments
792 for violations of traffic laws enforced under s. 316.640. An
793 association may not suspend the right of a member, or a member's
794 tenant, guest, or invitee, to use common areas and facilities
795 for failure to comply with traffic laws.
796 (d) An association may not enforce criminal laws provided
797 in chapters 775-896 or relevant federal law. An association may
798 not place requirements in the governing documents regarding
799 compliance with criminal laws in chapters 775-896 or relevant
800 federal law. An association may not levy fines or assessments
801 for violations of criminal laws provided in chapters 775-896 or
802 relevant federal law. An association may not suspend the right
803 of a member, or a member's tenant, guest, or invitee, to use
804 common areas and facilities for failure to comply with such
805 criminal laws.
806 Section 8. Paragraph (d) of subsection (1) of section

807 720.306, Florida Statutes, is redesignated as paragraph (h),
808 paragraphs (d) through (g) are added to that subsection, and
809 subsections (5) and (9) of that section are amended, to read:
810 720.306 Meetings of members; voting and election
811 procedures; amendments.—
812 (1) QUORUM; AMENDMENTS.—
813 (d) A proposal to amend an existing provision of the
814 declaration must contain the full text of the provision to be
815 amended and may not be revised or amended by reference only to
816 the declaration title or number. Words to be added must be
817 inserted in the text and underlined, and words to be deleted
818 must be stricken with hyphens. However, if the proposed change
819 is so extensive that this procedure would hinder, rather than
820 assist, the understanding of the proposed amendment, it is not
821 necessary to use underlined and stricken text as indicators of
822 words added or deleted. Instead, a notation must be inserted
823 immediately preceding the proposed amendment in substantially
824 the following language: "Substantial rewording of declaration.
825 See provision for present text." An amendment to a declaration
826 is effective when properly recorded in the public records of the
827 county where the declaration is recorded.
828 (e) Nonmaterial errors or omissions in the amendment
829 process do not invalidate an otherwise properly adopted
830 amendment.
831 (f) An amendment to any recorded governing document is
832 effective when properly recorded in the public records of the

833 county where the governing document is recorded.
834 (g) A deed restriction, covenant, declaration, or similar
835 binding agreement may not prohibit a homeowner from renting his
836 or her home, alter the duration of a rental term, limit the
837 number of times a homeowner may rent his or her home during a
838 specified period, or limit the number of occupants in a home,
839 without the consent of the current homeowner.
840 (5) NOTICE OF MEETINGS.—The bylaws shall provide for
841 giving notice to members of all member meetings, and if they do
842 not do so shall be deemed to provide the following: The
843 association shall give all parcel owners and members actual
844 notice of all membership meetings, which shall be mailed,
845 delivered, or electronically transmitted to the members not less
846 than 14 days prior to the meeting. Evidence of compliance with
847 this 14-day notice shall be made by an affidavit executed by the
848 person providing the notice and filed upon execution among the
849 official records of the association. In addition to mailing,
850 delivering, or electronically transmitting the notice of any
851 meeting, the association may, by reasonable rule, adopt a
852 procedure for conspicuously posting and repeatedly broadcasting
853 the notice and the agenda on a closed-circuit cable television
854 system serving the association. When broadcast notice is
855 provided, the notice and agenda must be broadcast in a manner
856 and for a sufficient continuous length of time so as to allow an
857 average reader to observe the notice and read and comprehend the
858 entire content of the notice and the agenda. Pursuant to s.

859 720.303, associations with 7,500 parcels or more must place a
860 copy of all notices of meetings on the association's website at
861 least 14 days before the hearing.
862 (9) ELECTIONS AND BOARD VACANCIES.—
863 (a) Elections of directors must be conducted in accordance
864 with the procedures set forth in the governing documents of the
865 association. An association with 7,500 parcels or more must
866 allow association members to vote in the election of directors
867 at a designated location from 7 a.m. to 7 p.m. on the day of the
868 election.
869 (b) Except as provided in paragraph (c) ~~(b)~~, all members
870 of the association are eligible to serve on the board of
871 directors, and a member may nominate himself or herself as a
872 candidate for the board at a meeting where the election is to be
873 held; provided, however, that if the election process allows
874 candidates to be nominated in advance of the meeting, the
875 association is not required to allow nominations at the meeting.
876 An election is not required unless more candidates are nominated
877 than vacancies exist. Except as otherwise provided in the
878 governing documents, boards of directors must be elected by a
879 plurality of the votes cast by eligible voters. Any challenge to
880 the election process must be commenced within 60 days after the
881 election results are announced.
882 (c) ~~(b)~~ A person who is delinquent in the payment of any
883 fee, fine, or other monetary obligation to the association on
884 the day that he or she could last nominate himself or herself or

885 be nominated for the board may not seek election to the board,
886 and his or her name shall not be listed on the ballot. A person
887 serving as a board member who becomes more than 90 days
888 delinquent in the payment of any fee, fine, or other monetary
889 obligation to the association shall be deemed to have abandoned
890 his or her seat on the board, creating a vacancy on the board to
891 be filled according to law. For purposes of this paragraph, the
892 term "any fee, fine, or other monetary obligation" means any
893 delinquency to the association with respect to any parcel. A
894 person who has been convicted of any felony in this state or in
895 a United States District or Territorial Court, or has been
896 convicted of any offense in another jurisdiction which would be
897 considered a felony if committed in this state, may not seek
898 election to the board and is not eligible for board membership
899 unless such felon's civil rights have been restored for at least
900 5 years as of the date on which such person seeks election to
901 the board. The validity of any action by the board is not
902 affected if it is later determined that a person was ineligible
903 to seek election to the board or that a member of the board is
904 ineligible for board membership.
905 (d) ~~(c)~~ Any election dispute between a member and an
906 association must be submitted to mandatory binding arbitration
907 with the division. Such proceedings must be conducted in the
908 manner provided by s. 718.1255 and the procedural rules adopted
909 by the division. Unless otherwise provided in the bylaws, any
910 vacancy occurring on the board before the expiration of a term



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911 may be filled by an affirmative vote of the majority of the
912 remaining directors, even if the remaining directors constitute
913 less than a quorum, or by the sole remaining director. In the
914 alternative, a board may hold an election to fill the vacancy,
915 in which case the election procedures must conform to the
916 requirements of the governing documents. Unless otherwise
917 provided in the bylaws, a board member appointed or elected
918 under this section is appointed for the unexpired term of the
919 seat being filled. Filling vacancies created by recall is
920 governed by s. 720.303(11) ~~720.303(10)~~ and rules adopted by the
921 division.
922 (e) An outgoing board member must relinquish all official
923 records and property of the association in his or her possession
924 or under his or her control, including administrative rights or
925 controls of an association's website or other digital or
926 electronic asset of the association, to the incoming board at
927 least 5 days after the election.
928 Section 9. Paragraph (u) is added to subsection (4) of
929 section 720.307, Florida Statutes, to read:
930 720.307 Transition of association control in a community.—
931 With respect to homeowners' associations:
932 (4) At the time the members are entitled to elect at least
933 a majority of the board of directors of the homeowners'
934 association, the developer shall, at the developer's expense,
935 within no more than 90 days deliver the following items
936 ~~documents~~ to the board:

937 (a) All deeds to common property owned by the association.
938 (b) The original of the association's declarations of
939 covenants and restrictions.
940 (c) A certified copy of the articles of incorporation of
941 the association.
942 (d) A copy of the bylaws.
943 (e) The minute books, including all minutes.
944 (f) The books and records of the association.
945 (g) Policies, rules, and regulations, if any, which have
946 been adopted.
947 (h) Resignations of directors who are required to resign
948 because the developer is required to relinquish control of the
949 association.
950 (i) The financial records of the association from the date
951 of incorporation through the date of turnover.
952 (j) All association funds and control thereof.
953 (k) All tangible property of the association.
954 (l) A copy of all contracts which may be in force with the
955 association as one of the parties.
956 (m) A list of the names and addresses and telephone
957 numbers of all contractors, subcontractors, or others in the
958 current employ of the association.
959 (n) Any and all insurance policies in effect.
960 (o) Any permits issued to the association by governmental
961 entities.
962 (p) Any and all warranties in effect.

963 (q) A roster of current homeowners and their addresses and
964 telephone numbers and section and lot numbers.
965 (r) Employment and service contracts in effect.
966 (s) All other contracts in effect to which the association
967 is a party.
968 (t) The financial records, including financial statements
969 of the association, and source documents from the incorporation
970 of the association through the date of turnover. The records
971 shall be audited by an independent certified public accountant
972 for the period from the incorporation of the association or from
973 the period covered by the last audit, if an audit has been
974 performed for each fiscal year since incorporation. All
975 financial statements shall be prepared in accordance with
976 generally accepted accounting principles and shall be audited in
977 accordance with generally accepted auditing standards, as
978 prescribed by the Board of Accountancy, pursuant to chapter 473.
979 The certified public accountant performing the audit shall
980 examine to the extent necessary supporting documents and
981 records, including the cash disbursements and related paid
982 invoices to determine if expenditures were for association
983 purposes and the billings, cash receipts, and related records of
984 the association to determine that the developer was charged and
985 paid the proper amounts of assessments. This paragraph applies
986 to associations with a date of incorporation after December 31,
987 2007.
988 <u>(u) Administrative rights or controls of the association's</u>

989 website or other digital or electronic asset of the association.
990 Section 10. Paragraphs (e) through (g) are added to
991 subsection (1) of section 720.308, Florida Statutes, subsections
992 (2) through (6) are renumbered as subsections (3) through (7),
993 respectively, and a new subsection (2) is added to that section,
994 to read:
995 720.308 Assessments and charges.—
996 (1) ASSESSMENTS.—For any community created after October
997 1, 1995, the governing documents must describe the manner in
998 which expenses are shared and specify the member's proportional
999 share thereof.
1000 (e) If an association is owed past due assessments by a
1001 member, the association may:
1002 1. Seek collection of the past due assessments;
1003 2. File a claim for a lien on the property;
1004 3. Proceed to foreclosure; or
1005 4. Waive the assessments and not proceed in any action
1006 against the member.
1007 (f) If an association does not file a claim for a lien or
1008 a complaint to obtain a judgment in foreclosure, and the past
1009 due assessment remains outstanding 24 months after the date the
1010 assessment becomes due, the association may not proceed against
1011 any member of the association for past due assessments or
1012 related fees due that are more than 24 months delinquent.
1013 (g)1. Before an association transfers the rights to
1014 collect past due assessments to a third party, transfer a lien

1015 to a third party, or file a complaint to obtain a judgment in
1016 foreclosure, the association must offer payment plans for
1017 members to pay any past due assessments and related fees. The
1018 payment plans must allow a member to pay past due assessments
1019 and any related fees levied by the association within the past
1020 24 months. In addition to payments made pursuant to the payment
1021 plan, members are responsible for paying any current assessments
1022 that arise during the payment plan at the time the assessments
1023 become due. A service charge may be assessed and included in the
1024 fees collected in the payment plan if additional fees are not
1025 charged in addition to the original total of the past due
1026 assessments.
1027 2. If a member agrees to participate in the payment plan,
1028 the time limit in paragraph (f) is tolled until the past due
1029 assessments, related fees, and any assessments that arise during
1030 the payment plan are paid. If the member does not comply with
1031 the terms of the payment plan, the association is no longer
1032 subject to the time limit in paragraph (f).
1033 3. The payment plan must:
1034 a. Consist of at least 12 monthly payments, if the past
1035 due assessments and related fines total $500 or less.
1036 b. Consist of at least 18 monthly payments, if the past
1037 due assessments and related fines total more than $500.
1038 c. Requiring the member to pay current assessments that
1039 arise during the payment plan in full at the time the
1040 assessments become due.

1041 d. Divide the total past due assessments and related fees
1042 into equal payments to be paid on a monthly basis.
1043 e. Not provide any additional terms or requirements other
1044 than to comply with the existing governing documents of the
1045 association.
1046 (2) TRANSFER OF PAST DUE ASSESSMENTS TO THIRD PARTY.-
1047 (a) If an association transfers the right to collect past
1048 due assessments to a third party, the association must provide
1049 notice to the member at least 30 days before transfer of the
1050 debt. The notice must state that the transfer includes the right
1051 to place a lien. The notice must be served on the member by
1052 registered or certified mail, return receipt requested, by
1053 personal service or electronic delivery with evidence of
1054 delivery in the form of a receipt or other paper or electronic
1055 acknowledgment by the member or his or her representative.
1056 (b) If the service does not provide the association with
1057 acknowledgment by the member or his or her representative, the
1058 association may obtain notice to the member by posting notice on
1059 a subpage or web portal, or other protected electronic location
1060 through the association's website, which is inaccessible to the
1061 general public and may be accessed only by members or employees
1062 of the association. If the association does not have a website,
1063 it shall send notice by e-mail to the member, delivery receipt
1064 requested.
1065 Section 11. Paragraphs (d) through (f) of subsection (1)
1066 of section 720.3085, Florida Statutes, are redesignated as



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1067 paragraphs (e) through (g), respectively, and a new paragraph
1068 (d) is added to that subsection, to read:
1069 720.3085 Payment for assessments; lien claims.—
1070 (1) When authorized by the governing documents, the
1071 association has a lien on each parcel to secure the payment of
1072 assessments and other amounts provided for by this section.
1073 Except as otherwise set forth in this section, the lien is
1074 effective from and shall relate back to the date on which the
1075 original declaration of the community was recorded. However, as
1076 to first mortgages of record, the lien is effective from and
1077 after recording of a claim of lien in the public records of the
1078 county in which the parcel is located. This subsection does not
1079 bestow upon any lien, mortgage, or certified judgment of record
1080 on July 1, 2008, including the lien for unpaid assessments
1081 created in this section, a priority that, by law, the lien,
1082 mortgage, or judgment did not have before July 1, 2008.
1083 (d)1. If an association transfers a lien to a third party,
1084 the association must provide notice to the member at least 30
1085 days before transfer of the lien. The notice must state that the
1086 transfer includes the right to foreclose on the property. The
1087 notice must be served on the member by registered or certified
1088 mail, return receipt requested, by personal service or
1089 electronic delivery with evidence of delivery in the form of a
1090 receipt or other paper or electronic acknowledgment by the
1091 member or his or her representative.
1092 2. If the service does not provide the association with

1093 acknowledgment by the member or his or her representative, the
1094 association may obtain notice to the member by posting notice on
1095 a subpage or web portal, or other protected electronic location
1096 through the association's website, which may be accessed only by
1097 association members and employees. If the association does not
1098 have a website, it shall send notice by e-mail to the member,
1099 delivery receipt requested.
1100 Section 12. Subsection (1) of section 720.311, Florida
1101 Statutes, is amended to read:
1102 720.311 Dispute resolution.—
1103 (1) The Legislature finds that alternative dispute
1104 resolution has made progress in reducing court dockets and
1105 trials and in offering a more efficient, cost-effective option
1106 to litigation. The filing of any petition for arbitration or the
1107 serving of a demand for presuit mediation as provided for in
1108 this section shall toll the applicable statute of limitations.
1109 Any recall dispute filed with the department pursuant to s.
1110 720.303(11) ~~720.303(10)~~ shall be conducted by the department in
1111 accordance with the provisions of ss. 718.112(2)(j) and 718.1255
1112 and the rules adopted by the division. In addition, the
1113 department shall conduct mandatory binding arbitration of
1114 election disputes between a member and an association pursuant
1115 to s. 718.1255 and rules adopted by the division. Neither
1116 election disputes nor recall disputes are eligible for presuit
1117 mediation; these disputes shall be arbitrated by the department.
1118 At the conclusion of the proceeding, the department shall charge

1119 the parties a fee in an amount adequate to cover all costs and
1120 expenses incurred by the department in conducting the
1121 proceeding. Initially, the petitioner shall remit a filing fee
1122 of at least $200 to the department. The fees paid to the
1123 department shall become a recoverable cost in the arbitration
1124 proceeding, and the prevailing party in an arbitration
1125 proceeding shall recover its reasonable costs and attorney's
1126 fees in an amount found reasonable by the arbitrator. The
1127 department shall adopt rules to effectuate the purposes of this
1128 section.
1129 Section 13. This act shall take effect July 1, 2016.

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 | ____ | |

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative La Rosa offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 386-471 and insert:
6 (g) ~~(f)~~ An outgoing board or committee member, or a board
7 member who has been recalled pursuant to s. 718.112(2)(j), must
8 relinquish all official records and property of the association
9 in his or her possession or under his or her control, including
10 administrative rights or controls of an association's website or
11 other digital or electronic asset of the association, to the
12 incoming board within 5 days after the election or, in the case
13 of a recall, within 5 days after the recall is effective as
14 provided in s. 718.112(2)(j). The division shall impose a civil
15 penalty as set forth in s. 718.501(1)(d)6. against an outgoing
16 board or committee member who willfully and knowingly fails to
17 relinquish such records and property.

18 Section 4. Subsection (3) of section 718.3026, Florida
19 Statutes, is renumbered as subsection (4), and a new subsection
20 (3) is added to that section, to read:
21 718.3026 Contracts for products and services; in writing;
22 bids; exceptions.—Associations with 10 or fewer units may opt
23 out of the provisions of this section if two-thirds of the unit
24 owners vote to do so, which opt-out may be accomplished by a
25 proxy specifically setting forth the exception from this
26 section.
27 (3)(a) Directors and officers of the board must disclose
28 to the board any activity that may reasonably be construed as a
29 conflict of interest. A rebuttable presumption of a conflict of
30 interest exists if any of the following occurs without prior
31 notice, as required in paragraph (b), or board approval taken at
32 a properly noticed meeting of the unit owners:
33 1. The director or officer, or a relative residing in the
34 same household as the director or officer, has entered into a
35 contract for goods or services with the association.
36 2. The director or officer, or a relative residing in the
37 same household as the director or officer, holds an interest of
38 35 percent or more in any corporation, limited liability
39 corporation, partnership, limited liability partnership, or
40 other business entity that conducts business with the
41 association or proposes to enter into a contract or other
42 transaction with the association.

43 (b) If a director or officer intends to engage in an
44 activity that may reasonably be construed as a conflict of
45 interest, as described in paragraph (a), the director or officer
46 must place the issue on a meeting agenda, including any proposed
47 contract or transactional documents, and submit the issue to the
48 board to be considered and voted upon. If the board votes
49 against the action, the director or officer shall notify the
50 board in writing of his or her intention not to pursue the
51 action or to withdraw from the position as director or officer.
52 If the board finds that an officer or director has violated this
53 subsection, the board shall immediately remove the officer or
54 director from office. The vacancy shall be filled according to
55 general law until expiration of the director's term of office.
56 (c) A director or officer who is party to, or has an
57 interest in, the transaction or arrangement involving the
58 possible conflict of interest may attend the meeting at which
59 the transaction or arrangement is considered by the board. The
60 director or officer who is party to, or has an interest in, the
61 transaction or arrangement shall be allowed to make a
62 presentation to the board or committee regarding the transaction
63 or arrangement. After the presentation, the director or officer
64 must leave the meeting during the discussion of, and the vote
65 upon, the transaction or arrangement involving the possible
66 conflict of interest. Any director or officer who is party to or
67 has an interest in such transaction or arrangement shall recuse
68 himself or herself from the vote.

69 (d)1. The board must provide notice to unit owners of any
70 possible conflict of interest described in paragraph (a). Any
71 related proposed contracts or proposed transactional documents
72 related to the conflict must be attached to the agenda and made
73 available with the meeting agenda. The notice and related
74 proposed contracts or proposed transactional documents must be
75 provided to unit owners at least 7 days before the meeting at
76 which the possible conflict of interest will be considered or
77 voted upon by the board.
78 2. An association with 7,500 or more units must place the
79 notice
80
81 -----------------------------------------------------
82 **T I T L E A M E N D M E N T**
83 Remove lines 9-12 and insert:
84 association's website; revising duties of an outgoing
85 or recalled board or committee member; amending s.
86 718.3026, F.S.; providing requirements

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: Civil Justice Subcommittee
2 Representative La Rosa offered the following:
3
4 **Amendment**
5 Remove lines 664-754 and insert:
6 association manager.
7 (b) For associations in which control of the association
8 has not been transitioned to nondeveloper members, as set forth
9 in s. 720.307, the report shall also include the developer's:
10 1. Legal name.
11 2. Mailing address.
12 3. Total number of parcels owned on the date of reporting.
13 (c) The reporting requirement provided in this subsection
14 shall be a continuing obligation on each association until the
15 required information is reported to the division. Any change in
16 the reported information must be updated on the registration
17 system provided for in paragraph (d).

18 (d) ~~By October 1, 2013,~~ The department shall use ~~establish~~
19 ~~and implement~~ a registration system through an Internet website
20 that provides for the reporting requirements of paragraphs (a)
21 and (b).
22 (e) The department shall prepare an annual report of the
23 data reported pursuant to this subsection and present it to the
24 Governor, the President of the Senate, and the Speaker of the
25 House of Representatives by December 1, 2013, and each year
26 thereafter.
27 (f) The division shall adopt rules pursuant to ss.
28 120.536(1) and 120.54 to implement the provisions of this
29 subsection.
30 ~~(g) This subsection shall expire on July 1, 2016, unless~~
31 ~~reenacted by the Legislature.~~
32 Section 6. Subsections (2) through (5) of section
33 720.3033, Florida Statutes, are renumbered as subsections (3)
34 through (6), respectively, and subsections (2) and (7) are added
35 to that section, to read:
36 720.3033 Officers and directors.—
37 (2)(a) Directors and officers of the board must disclose
38 to the board any activity that may reasonably be construed as a
39 conflict of interest. A rebuttable presumption of a conflict of
40 interest exists if any of the following occurs without prior
41 notice, as required in paragraph (b), or board approval taken at
42 a properly noticed meeting of the members:

43 1. The director or officer, or a relative residing in the
44 same household as the director or officer, enters into a
45 contract for goods or services with the association.
46 2. The director or officer, or a relative residing in the
47 same household as the director or officer, holds an interest of
48 more than 35 percent in any corporation, limited liability
49 corporation, partnership, limited liability partnership, or
50 other business entity that conducts business with the
51 association or proposes to enter into a contract or other
52 transaction with the association.
53 3. A corporation, limited liability corporation,
54 partnership, limited liability partnership, or other business
55 entity that, directly or indirectly, owns or controls the
56 director or officer, or otherwise influences any decisions made
57 by the director or officer, intends to conduct business with the
58 association or proposes to enter into a contract or other
59 transaction with the association.
60 (b) If a director or officer intends to engage in an
61 activity that may reasonably be construed as a conflict of
62 interest, as described in paragraph (a), the director or officer
63 must place the issue on a meeting agenda, including any proposed
64 contract or transactional documents, and submit the issue to the
65 board to be considered and voted upon. If the board votes
66 against the action, the director or officer shall notify the
67 board in writing of his or her intention not to pursue the
68 action or withdraw from the position as director or officer. If

69 the board finds that an officer or director has violated this
70 subsection, the board shall immediately remove the officer or
71 director from office. The vacancy shall be filled according to
72 general law until expiration of the director's term of office.
73 (c) A director or officer who is party to or has an
74 interest in the transaction or arrangement involving the
75 possible conflict of interest may attend the meeting at which
76 the transaction or arrangement is considered by the board. The
77 director or officer who is party to or has an interest in the
78 transaction or arrangement shall be allowed to make a
79 presentation to the board or committee regarding the transaction
80 or arrangement. After the presentation, the director or officer
81 must leave the meeting during the discussion of, and the vote
82 upon, the transaction or arrangement involving the possible
83 conflict of interest. Any director or officer who is party to or
84 has an interest in such transaction or arrangement shall recuse
85 him or herself from the vote.
86 (d)1. The board must provide notice to members of any
87 possible conflict of interest described in paragraph (a). Any
88 related proposed contracts or proposed transactional documents
89 related to the conflict must be attached to the agenda and made
90 available with the meeting agenda. The notice and related
91 proposed contracts or proposed transactional documents must be
92 provided to members at least 7 days before the meeting at which
93 the possible conflict of interest will be considered or voted
94 upon by the board.

95 2. An association with 7,500 or more parcels must place

96 the

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 ______

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1 Committee/Subcommittee hearing bill: Civil Justice Subcommittee
2 Representative La Rosa offered the following:
3
4 **Amendment (with title amendment)**
5 Remove lines 834-927 and insert:
6 (g) An amendment prohibiting parcel owners from renting
7 their homes, altering the duration of the rental term, or
8 specifying or limiting the number of times parcel owners are
9 entitled to rent their homes during a specified period applies
10 only to parcel owners who consent individually or through their
11 representative to the amendment and parcel owners who acquire
12 title to their homes after the effective date of that amendment.
13 (5) NOTICE OF MEETINGS.—The bylaws shall provide for
14 giving notice to members of all member meetings, and if they do
15 not do so shall be deemed to provide the following: The
16 association shall give all parcel owners and members actual
17 notice of all membership meetings, which shall be mailed,

18 delivered, or electronically transmitted to the members not less
19 than 14 days prior to the meeting. Evidence of compliance with
20 this 14-day notice shall be made by an affidavit executed by the
21 person providing the notice and filed upon execution among the
22 official records of the association. In addition to mailing,
23 delivering, or electronically transmitting the notice of any
24 meeting, the association may, by reasonable rule, adopt a
25 procedure for conspicuously posting and repeatedly broadcasting
26 the notice and the agenda on a closed-circuit cable television
27 system serving the association. When broadcast notice is
28 provided, the notice and agenda must be broadcast in a manner
29 and for a sufficient continuous length of time so as to allow an
30 average reader to observe the notice and read and comprehend the
31 entire content of the notice and the agenda. Pursuant to s.
32 720.303, associations with 7,500 parcels or more must place a
33 copy of all notices of meetings on the association's website at
34 least 14 days before the hearing.
35 (9) ELECTIONS AND BOARD VACANCIES.—
36 (a) Elections of directors must be conducted in accordance
37 with the procedures set forth in the governing documents of the
38 association. An association with 7,500 parcels or more must
39 allow association members to vote in the election of directors
40 at a designated location from 7 a.m. to 7 p.m. on the day of the
41 election.
42 (b) Except as provided in paragraph (c) ~~(b)~~, all members
43 of the association are eligible to serve on the board of

44 directors, and a member may nominate himself or herself as a
45 candidate for the board at a meeting where the election is to be
46 held; provided, however, that if the election process allows
47 candidates to be nominated in advance of the meeting, the
48 association is not required to allow nominations at the meeting.
49 An election is not required unless more candidates are nominated
50 than vacancies exist. Except as otherwise provided in the
51 governing documents, boards of directors must be elected by a
52 plurality of the votes cast by eligible voters. Any challenge to
53 the election process must be commenced within 60 days after the
54 election results are announced.

55 (c) ~~(b)~~ A person who is delinquent in the payment of any
56 fee, fine, or other monetary obligation to the association on
57 the day that he or she could last nominate himself or herself or
58 be nominated for the board may not seek election to the board,
59 and his or her name shall not be listed on the ballot. A person
60 serving as a board member who becomes more than 90 days
61 delinquent in the payment of any fee, fine, or other monetary
62 obligation to the association shall be deemed to have abandoned
63 his or her seat on the board, creating a vacancy on the board to
64 be filled according to law. For purposes of this paragraph, the
65 term "any fee, fine, or other monetary obligation" means any
66 delinquency to the association with respect to any parcel. A
67 person who has been convicted of any felony in this state or in
68 a United States District or Territorial Court, or has been
69 convicted of any offense in another jurisdiction which would be

70 considered a felony if committed in this state, may not seek
71 election to the board and is not eligible for board membership
72 unless such felon's civil rights have been restored for at least
73 5 years as of the date on which such person seeks election to
74 the board. The validity of any action by the board is not
75 affected if it is later determined that a person was ineligible
76 to seek election to the board or that a member of the board is
77 ineligible for board membership.

78 (d) ~~(c)~~ Any election dispute between a member and an
79 association must be submitted to mandatory binding arbitration
80 with the division. Such proceedings must be conducted in the
81 manner provided by s. 718.1255 and the procedural rules adopted
82 by the division. Unless otherwise provided in the bylaws, any
83 vacancy occurring on the board before the expiration of a term
84 may be filled by an affirmative vote of the majority of the
85 remaining directors, even if the remaining directors constitute
86 less than a quorum, or by the sole remaining director. In the
87 alternative, a board may hold an election to fill the vacancy,
88 in which case the election procedures must conform to the
89 requirements of the governing documents. Unless otherwise
90 provided in the bylaws, a board member appointed or elected
91 under this section is appointed for the unexpired term of the
92 seat being filled. Filling vacancies created by recall is
93 governed by s. 720.303(11) ~~720.303(10)~~ and rules adopted by the
94 division.

95 (e) An outgoing board member, or a board member who has
96 been recalled pursuant to s. 720.303(11), must relinquish all
97 official records and property of the association in his or her
98 possession or under his or her control, including administrative
99 rights or controls of an association's website or other digital
100 or electronic asset of the association, to the incoming board at
101 within 5 days after the election or, in the case of a recall,
102 within 5 days after the recall is effective as provided in s.
103 718.303(11).
104
105 -----------------------------------------------------
106 **T I T L E A M E N D M E N T**
107 Remove line 29 and insert:
108 providing duties of an outgoing or recalled board
109 member; amending

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: Civil Justice Subcommittee
2 Representative La Rosa offered the following:
3
4 **Amendment**
5 Remove lines 1007-1099 and insert:
6 (f) If a member has assessments that are more than 24
7 months past due, the association may not file any claim of lien
8 or a foreclosure action against that member for such past due
9 assessments or fees charged related to such past due
10 assessments. The 24-month limit is automatically extended for
11 any length of time during which the association is prevented
12 from filing a foreclosure action by an automatic stay resulting
13 from a bankruptcy petition filed by the member or any other
14 person claiming an interest in the parcel.
15 (g)1. Before an association transfers the rights to
16 collect past due assessments to a third party, transfers a lien
17 to a third party, or files a complaint to obtain a judgment in

18 foreclosure, the association must offer payment plans for
19 members to pay any past due assessments and related fees. The
20 payment plans must allow a member to pay past due assessments
21 and any related fees levied by the association within the past
22 24 months. In addition to payments made pursuant to the payment
23 plan, members are responsible for paying any current assessments
24 that arise during the payment plan at the time the assessments
25 become due. A service charge may be assessed and included in the
26 fees collected in the payment plan if additional fees were not
27 charged in addition to the original total of the past due
28 assessments.
29 2. If a member agrees to participate in the payment plan,
30 the time limit in paragraph (f) is tolled until the past due
31 assessments, related fees, and any assessments that arise during
32 the payment plan are paid. If the member does not comply with
33 the terms of the payment plan, the association is no longer
34 subject to the time limit in paragraph (f).
35 3. The payment plan must:
36 a. Consist of at least 12 monthly payments, if the past
37 due assessments and related fines total $500 or less.
38 b. Consist of at least 18 monthly payments, if the past
39 due assessments and related fines total more than $500.
40 c. Require the member to pay current assessments that
41 arise during the payment plan in full at the time the
42 assessments become due.

43 d. Divide the total past due assessments and related fees
44 into equal payments to be paid on a monthly basis.
45 e. Not provide any additional terms or requirements other
46 than to comply with the existing governing documents of the
47 association.
48 (2) TRANSFER OF PAST DUE ASSESSMENTS TO THIRD PARTY.-If an
49 association transfers the right to collect past due assessments
50 to a third party, the association must provide notice to the
51 member at least 30 days before such transfer. The notice must
52 state that the transfer includes the right to place a lien. The
53 notice must be served on the member by certified mail, return
54 receipt requested, or by personal service.
55 Section 11. Paragraphs (d) through (f) of subsection (1)
56 of section 720.3085, Florida Statutes, are redesignated as
57 paragraphs (e) through (g), respectively, and a new paragraph
58 (d) is added to that subsection, to read:
59 720.3085 Payment for assessments; lien claims.—
60 (1) When authorized by the governing documents, the
61 association has a lien on each parcel to secure the payment of
62 assessments and other amounts provided for by this section.
63 Except as otherwise set forth in this section, the lien is
64 effective from and shall relate back to the date on which the
65 original declaration of the community was recorded. However, as
66 to first mortgages of record, the lien is effective from and
67 after recording of a claim of lien in the public records of the
68 county in which the parcel is located. This subsection does not

69 bestow upon any lien, mortgage, or certified judgment of record
70 on July 1, 2008, including the lien for unpaid assessments
71 created in this section, a priority that, by law, the lien,
72 mortgage, or judgment did not have before July 1, 2008.
73 (d) If an association transfers a lien to a third party,
74 the association must provide notice to the member at least 30
75 days before such transfer. The notice must state that the
76 transfer includes the right to foreclose on the property. The
77 notice must be served on the member by certified mail, return
78 receipt requested, or by personal service.