



Business & Professions Subcommittee

**Tuesday, January 26, 2016
12:00 PM
12 HOB**

MEETING PACKET

**Steve Crisafulli
Speaker**

**Halsey Beshears
Chair**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Business & Professions Subcommittee

Start Date and Time: Tuesday, January 26, 2016 12:00 pm
End Date and Time: Tuesday, January 26, 2016 02:00 pm
Location: 12 HOB
Duration: 2.00 hrs

Consideration of the following bill(s):

HB 623 Alcoholic Beverages by Tobia
HB 645 Alcoholic Beverage Permits by Peters
HB 1127 Resale of Tickets by Moskowitz
HB 1289 Elevators by Steube
HB 1405 Community Associations by Bracy

Pursuant to rule 7.12, the filing deadline for amendments to bills on the agenda by a member who is not a member of the committee or subcommittee considering the bill is 6:00 p.m., Monday, January 25, 2016.

By request of the Chair, all Business & Professions Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, January 25, 2016.

NOTICE FINALIZED on 01/22/2016 4:15PM by Ellinor.Martha



The Florida House of Representatives

Regulatory Affairs Committee

Business & Professions Subcommittee

Steve Crisafulli
Speaker

Halsey Beshears
Chair

AGENDA

January 26, 2016

12 HOB

12:00 PM – 2:00 PM

- I. **Call to Order & Roll Call**
- II. HB 623 by *Rep. Tobia*
Alcoholic Beverages
- III. HB 645 by *Rep. Peters*
Alcoholic Beverage Permits
- IV. HB 1127 by *Rep. Moskowitz*
Resale of Tickets
- V. HB 1289 by *Rep. Steube*
Elevators
- VI. HB 1405 by *Bracy*
Community Associations
- VII. **Adjournment**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 623 Alcoholic Beverages
SPONSOR(S): Tobia
TIED BILLS: **IDEN./SIM. BILLS:** HB 383, SB 814

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Brown-Blake <i>KB</i>	Anstead <i>Ja</i>
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law (Beverage Law). The Division of Alcoholic Beverages and Tobacco (Division), in the Department of Business and Professional Regulation (Department), is responsible for the regulation of the alcoholic beverage industry.¹

In general, the Beverage Law provides for a structured three-tiered distribution system consisting of the manufacturer, distributor, and vendor. The manufacturer creates the beverages. The distributor purchases the beverages from the manufacturer and delivers them to the vendor. The vendor makes the ultimate sale to the consumer.

The bill permits distributors that are licensed to sell wine or distilled spirits to purchase the wine or distilled spirits from a licensed vendor.

The bill permits licensed vendors to sell alcoholic beverages to distributors for further distribution to other vendors. However, the act of selling wine or distilled spirits to distributors for redistribution would not classify the vendor as a distributor.

The bill requires the distributors that purchase from vendors to maintain accurate records pursuant to s. 561.55, F.S., of all purchases from a licensed vendor, including detailed supporting receipts from the sale of wine and distilled spirits to the distributor.

The bill requires distributors to report the resale of wine and distilled spirits to vendors on monthly excise tax reports, but are not required to pay the excise taxes on the alcohol that the distributor has purchased from a vendor, as the excise tax on those specific alcoholic beverages has already been paid by the distributor that sold the alcoholic beverages to the vendor originally.

The bill exempts alcoholic beverages purchased from a vendor by a distributor from sales tax.

The bill is expected to have minimal to no financial impact on the Department.

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

¹ s. 561.02, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Chapters 561-565 and 567-568, F.S., comprise the Beverage Law. The Division, housed under the Department, is responsible for the regulation of the alcoholic beverage industry.²

In general, the Beverage Law provides for a structured three-tiered distribution system consisting of the manufacturer, distributor, and vendor. The manufacturer creates the beverages. The distributor purchases the beverages from the manufacturer and delivers them to the vendor. The vendor makes the ultimate sale to the consumer. In the three-tiered system, alcoholic beverage excise taxes generally are collected at the distribution level based on inventory depletions and the state sales tax is collected at the retail level.

The chapter provides that distributors are licensed to sell and distribute to persons or entities that are also licensed to sell alcoholic beverages.³ Distributors and vendors are both "licensed to sell" alcoholic beverages.⁴ Therefore, distributors are permitted to sell to other distributors.

Currently, nothing in the Beverage law explicitly permits or prohibits distributors from purchasing alcoholic beverages from vendors. However, the Beverage Law does provide that vendors may only sell alcoholic beverages "at retail."⁵ The term "retail" is defined as "[t]he sale of goods or commodities to ultimate consumers, as opposed to the sale for further distribution or processing."⁶

Therefore, the vendor may only sell to the ultimate consumers of the alcoholic beverages, not for further distribution or processing. Additionally, the distributor is not considered an "ultimate consumer" if the distributor is purchasing the alcoholic beverages to distribute other vendors. As such, the vendor may be in violation of the Beverage Law if he or she sold alcoholic beverages to a distributor for distribution to another vendor. The Department interprets the statute to mean that a distributor may not purchase alcoholic beverages from vendors.⁷

Excise taxes on alcoholic beverages are paid by the distributor prior to the distributor's delivery of the alcoholic beverages to the receiving vendor.⁸ The vendor is not responsible for the payment of excise taxes to the Department.

Distributors are required to maintain complete reports of alcoholic beverages purchased from manufacturers and sold to vendors for submission to the Department on the 10th day of every month.⁹ However, the Beverage Law does not require a distributor to maintain records of alcoholic beverages that the distributor has purchased from vendors.

² s. 561.02, F.S.

³ s. 561.14(2), F.S.

⁴ s. 561.14(2) and (3), F.S.

⁵ s. 561.14(3), F.S.

⁶ Blacks Law Dictionary, page 1089, (Abridged 8th Edition, 2005)

⁷ Florida Department of Business and Professional Regulation, 2016 Agency Legislative Bill Analysis House Bill 623, pg. 2, (December 22, 2015).

⁸ s. 561.50, F.S.

⁹ s. 561.55, F.S.

The Department conducts semiannual audits of distributors' principal offices "as provided in s. 561.41, F.S, whereat the division reviews product flow, accuracy of tax payments, actual inventory counts, and compliance with all applicable Florida statutes and administrative rules."¹⁰

Currently the Beverage Law does not require vendors to collect and maintain records regarding the sale of alcoholic beverages at retail and the Division is not required to conduct audits on vendor's records.

Effect of the Bill

The bill authorizes distributors to sell and distribute for resale to persons who are licensed or registered to sell alcoholic beverages.

Furthermore, the bill permits distributors that are licensed to sell wine or distilled spirits to purchase the wine or distilled spirits from a licensed vendor.

The bill permits licensed vendors to sell alcoholic beverages to distributors for further distribution to other vendors. However, the act of selling wine or distilled spirits to distributors for redistribution would not classify the vendor as a distributor.

The bill requires the distributors that purchase from vendors to maintain accurate records, pursuant to s. 561.55, F.S., of all purchases from a licensed vendor. These records should include supporting receipts from the sale of wine and distilled spirits to the distributor, which must include the vendor's license number, address, and business name. The bill does not amend s. 561.55, F.S., to require a distributor to keep a record of beverages purchased from vendors.

Distributors are required to report the resale of wine and distilled spirits to vendors on monthly excise tax reports, but are not required to pay the excise taxes on the alcohol that the distributor has purchased from a vendor, as the excise tax on those specific alcoholic beverages has already been paid by the distributor that sold the alcoholic beverages to the vendor originally.

The alcoholic beverages purchased from a vendor by a distributor are exempt from sales tax.

It is assumed that the distributor will present his or her license information to the vendor in order to purchase the alcoholic beverages and not be required to pay sales tax. There is no requirement for the vendors to document the sales that are sold to distributors. Additionally, there is no requirement for the vendors to present any records regarding the sale of alcoholic beverages to distributors and the exemption from the sales tax for those alcoholic beverages to the Department of Revenue or the Division.

B. SECTION DIRECTORY:

Section 1 amends s. 402.82, 2 F.S., revising a provision relating to the license classification of distributors licensed to sell and distribute alcoholic beverages for resale to specified persons.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Department indicates there will be an indeterminate increase in expenditures due to the necessary modifications to the Division's IT systems in order to ensure the taxes were charged at appropriate stages in the distribution of the alcoholic beverages.¹¹

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Distributors would be able to purchase alcohol from vendors that they otherwise would not be able to carry due to existing exclusivity contracts that many distributors hold with manufacturers.

Vendors may be required to update the information that is printed out on receipts to include their license number, address, and business name. It is unclear whether this would have a cost.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Yes. The Division is permitted to adopt rules governing transactions and reporting requirements provided under the section.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill contains a number of terms that are undefined and not used elsewhere in the Beverage Law, including:

- Registered distributors or vendors.
- Consumer.
- Resale.

The bill language is not clear as to whether it is the vendor's or the distributor's responsibility to ensure that the vendor's name, license number, and address are placed on the receipts. It is also unclear

¹¹ Florida Department of Business and Professional Regulation, 2016 Agency Legislative Bill Analysis House Bill 623, pg. 4, (December 22, 2015).

whether the vendor or distributor would be found in violation of the Beverage Law if the vendor's license and address information is not placed on the receipts.

It is possible that a vendor will not be aware that they are selling to a distributor rather than at retail, as there is no requirement for a distributor to tell the vendor that he or she is a distributor during the purchase of the alcoholic beverages.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to alcoholic beverages; amending s. 561.14, F.S.; revising a provision relating to license classification of distributors licensed to sell and distribute alcoholic beverages for resale to specified persons; authorizing distributors to purchase or acquire certain alcoholic beverages from licensed vendors; providing that such vendor may not be classified as a distributor under the Beverage Law; requiring distributors to maintain a record of purchases and acquisitions; requiring distributors to report certain information on a monthly excise tax report; authorizing the Division of Alcoholic Beverages and Tobacco to adopt rules governing transactions and reporting; revising a provision relating to license classification of vendors licensed to sell alcoholic beverages to specified persons; providing that sales by vendors to specified distributors are exempt from sales tax collection at the point of sale; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 561.14, Florida Statutes, are amended to read:

561.14 License and registration classification.—Licenses

27 and registrations referred to in the Beverage Law shall be
 28 classified as follows:

29 (2) Distributors licensed to sell and distribute alcoholic
 30 beverages for resale ~~at wholesale~~ to persons who are licensed or
 31 registered to sell alcoholic beverages. Distributors licensed to
 32 sell and distribute wine or distilled spirits may purchase or
 33 acquire wine or distilled spirits from a licensed vendor. Such
 34 licensed vendor may not be classified as a distributor under the
 35 Beverage Law. Distributors shall maintain a complete and
 36 accurate record, pursuant to s. 561.55, of all purchases or
 37 acquisitions from a licensed vendor, including supporting
 38 receipts from the licensed vendor, which must include the
 39 beverage vendor's license number, address, and business name.
 40 Distributors shall report the resale of wine and distilled
 41 spirits to vendors on their monthly excise tax reports. State
 42 excise taxes are presumed to have been paid when the vendor
 43 purchased or acquired the beverages pursuant to subsection (3).
 44 The division may adopt rules governing transactions and
 45 reporting required under this subsection.

46 (3) Vendors licensed to sell alcoholic beverages to
 47 consumers and licensed distributors ~~at retail only~~. All sales,
 48 at the point of sale between a vendor to a licensed distributor,
 49 are exempt from the sales tax under chapter 212. No vendor shall
 50 purchase or acquire in any manner for the purpose of resale any
 51 alcoholic beverages from any person not licensed as a vendor,
 52 manufacturer, bottler, or distributor under the Beverage Law.

53 Purchases of alcoholic beverages by vendors from vendors shall
54 be strictly limited to purchases between members of a pool
55 buying group for which the initial purchase of the alcoholic
56 beverages was ordered by a pool buying agent as a single
57 transaction. No vendor shall be a member of more than one
58 cooperative or pool buying group at any time. No vendor shall
59 import, or engage in the importation of, any alcoholic beverages
60 from places beyond the limits of the state.

61 Section 2. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 645 Alcoholic Beverage Permits
SPONSOR(S): Peters
TIED BILLS: IDEN./SIM. BILLS: SB 934

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Brown-Blake	Anstead <i>Le</i>
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law. The Division of Alcoholic Beverages and Tobacco (Division), in the Department of Business and Professional Regulation (Department), is responsible for the regulation of the alcoholic beverage industry.

The bill amends s. 561.422, F.S., permitting the Division to issue a temporary permit authorizing a municipality or county to sell alcoholic beverages for consumption on the premises of an event only, for a period not to exceed three days, if the municipality or county files an application, a local building and zoning permit, and a fee of \$25 per permit. The bill requires the local governmental entities to include all revenues derived from the sale of alcoholic beverages pursuant to the temporary permit in the financial report submitted to the Department of Financial Services.

The bill permits the Division to issue a vendor's license to operators of railroad transit stations, upon payment of an annual tax of \$2500. Such license permits the railroad transit station operator to sell alcoholic beverages within the property of the railroad transit station.

The bill provides that railroad transit stations are not required to comply with s. 562.14(1), F.S., which provides that alcoholic beverages may not be served, or permitted to be served or consumed at any place holding a license between the hours of midnight and 7 a.m.

Additionally, the bill provides that railroad transit stations and the licensed operators of restaurants, shops, or other facilities that are part of, or that serve railroad transit stations are exempt from the penalties for violations from the Beverage Law and municipal or county ordinances as provided for in s. 562.45, F.S.

The bill is expected to have no financial impact on the Department.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Municipality Temporary Permits

Background

Chapters 561-565 and 567-568, F.S., comprise Florida's Beverage Law. The Division is responsible for the regulation of the alcoholic beverage industry. In general, Florida's Beverage Law provides for a structured three-tiered distribution system consisting of the manufacturer, distributor, and vendor. The manufacturer creates the beverages. The distributor purchases the beverages from the manufacturer and delivers them to the vendor. The vendor makes the ultimate sale to the consumer. In the three-tiered system, alcoholic beverage excise taxes generally are collected at the distribution level based on inventory depletions and the state sales tax is collected at the retail level.

Currently, the Division may issue a permit authorizing a bona fide nonprofit civic organization to sell alcoholic beverages for consumption on the premises only, for a period not to exceed three days, if the organization files an application, a local building and zoning permit, and a fee of \$25 per permit.¹

The net profits from the sales of the alcoholic beverages collected during the permit period must be retained by the nonprofit civic organization. The nonprofit civic organization may only be issued three of these permits per calendar year. The nonprofit civic organization is permitted to purchase the alcoholic beverages from a distributor or a vendor licensed under the Beverage Law.²

Municipalities and counties are not eligible for this type of permit for events.

Local government entities are required to provide the state with annual financial reports. Section 218.32, F.S. requires each local government entity that is determined to be a reporting agency to submit a copy of its annual financial report for the previous fiscal year to the Department of Financial Services. The chair of the governing body must sign the report, attesting to the accuracy of the information included in the report.

Effect of the Bill

The bill amends s. 561.422, F.S., permitting the Division to issue a temporary permit authorizing a municipality or county to sell alcoholic beverages for consumption on the premises of an event only, for a period not to exceed three days, if the municipality or county files an application, a local building and zoning permit, and a fee of \$25 per permit.³

The net profits from the sales of the alcoholic beverages collected during the permit period must be retained by the municipality or county. The municipality or county may only be issued three of these permits per calendar year. The municipality or county is permitted to purchase the alcoholic beverages from a distributor or a vendor licensed under the Beverage Law.

The bill provides that all alcoholic beverages purchased for sale by a municipality or county that remain unconsumed after the event must be removed from the premises of the event and properly disposed of by the municipality or county.

¹ s. 561.422, F.S.

² *Id.*

³ s. 561.422, F.S.

Finally, the bill provides that the financial report submitted by the local governmental entity, including municipalities and counties, must include all revenues derived from the use of temporary permits obtained by a reporting entity pursuant to s. 561.422, F.S.

Railroad Stations

Background

Currently, a special license to serve or sell alcoholic beverages at railroad stations does not exist. However, the Division may issue special airport licenses to restaurants that are a part of, or serve, publicly owned or leased airports. The special airport license permits the general public to purchase alcoholic beverages for consumption within designated areas of the airport terminal in not more than four places or locations in control of the holder of such license. The licenses may not be transferred to a new location, unless the publicly owned or leased airport moves its terminal facilities to a new location. The license further permits the vendor to sell wine and distilled spirits to the airlines in sealed miniature containers and other alcoholic beverages for consumption on the aircraft by the passengers of the plane while the plane is airborne.⁴

The term "special airport license" is defined as "a vendor license to sell certain alcoholic beverages only on those airport premises which have been designated in the United States National Airport System Plan, 49 U.S.C. s. 1711, as air carrier airports, commuter airports, and reliever airports."⁵

The term "airport terminal" is defined as "the airport passenger handling facilities or premises publicly owned or leased by a county, municipality, or public authority at airports which have been designated in the United States National Airport System Plan, 49 U.S.C. s. 1711, as air carrier airports, commuter airports, and reliever airports."⁶

The Division may also issue vendor permits to any operator of railroads or sleeping cars to sell alcoholic beverages on passenger trains. The license permits the vendor to sell alcoholic beverages in dining, club, parlor, buffet, or observation car operated by the vendor, so long as the car has posted certified copies of the license. The alcoholic beverages must be sold only to passengers in the car for consumption in the car. The licensees must sell liquor in miniature bottles. The annual tax for the license is \$2500 annually.⁷ Passengers are not permitted to take the alcoholic beverages off of the railroad cars into any train station or other public place.

The operators of railroads or sleeping cars are required to keep records and make monthly reports on the 15th of every month, regarding the sale of alcoholic beverages within Florida. The licensees are required to pay excise taxes on alcoholic beverages for which excise taxes have not already been paid.⁸

The Florida Constitution provides that municipalities have "governmental, corporate and proprietary powers to enable them to conduct municipal government, perform municipal functions and render municipal services, and may exercise any power for municipal purposes except as otherwise provided by law."⁹ Additionally, the Florida Constitution provides that the local option on the legality or prohibition of the sale of intoxicating liquors, wines or beers shall be preserved to each county.¹⁰ Finally, "the board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law, but an ordinance in conflict with a municipal ordinance shall not be effective within the municipality to the

⁴ s. 561.20(2)(d), F.S.

⁵ s. 561.01(12), F.S.

⁶ s. 561.01(13), F.S.

⁷ s. 565.02(2), F.S.

⁸ s. 565.02(3)(b), F.S.

⁹ Fla. Const., art. VIII, s. 2.

¹⁰ Fla. Const., art VIII, s. 5.

extent of such conflict.”¹¹ Therefore, cities and counties are permitted to draft ordinances regarding the legality and prohibition of alcoholic beverages.

Section 562.45, F.S., establishes penalties for violating the Beverage Law; the power of municipalities and counties to enact local ordinances; prohibitions on the regulation of certain activities or business transactions; and requirements for nondiscriminatory treatment.

Specifically, s. 562.45(1), F.S., provides:

- Any person willfully and knowingly making any false entries in any records required under the Beverage Law or willfully violating any of the provisions of the Beverage Law, concerning the excise tax provided for shall be guilty of a felony of the third degree.
- It is unlawful for any person to violate any provision of the Beverage Law, and any person who violates any provision of the Beverage Law for which no penalty has been provided shall be guilty of a misdemeanor of the second degree.
- Any person who has been convicted of a violation of any provision of the Beverage Law and shall thereafter be convicted of a further violation of the Beverage Law, shall, upon conviction of a subsequent offense, be guilty of a felony of the third degree.

Section 562.45(2), F.S., states that:

- Nothing contained in the Beverage Law shall be construed to affect or impair the power or right of any county or incorporated municipality of the state to enact ordinances regulating the hours of business and location of place of business, and prescribing sanitary regulations of any licensee under the Beverage Law. The division may not issue a change in the series of a license or approve a change of a licensee’s location unless the licensee provides documentation of proper zoning from the appropriate county or municipal zoning authorities.
- Nothing in the Beverage Law shall be construed to affect or impair the power or right of any county or incorporated municipality of the state to enact ordinances regulating the type of entertainment and conduct permitted in any establishment licensed under the Beverage Law.
- A county or municipality may not enact any ordinance that regulates or prohibits those activities or business transactions of a licensee regulated by the Division of Alcoholic Beverages and Tobacco under the Beverage Law. Except as otherwise provided in the Beverage Law, a local government, when enacting ordinances designed to promote and protect the general health, safety, and welfare of the public, shall treat a licensee in a nondiscriminatory manner and in a manner that is consistent with the manner of treatment of any other lawful business transacted in this state. Nothing in this section shall be construed to affect or impair the enactment or enforcement by a county or municipality of any zoning, land development or comprehensive plan authorized under ss. 1, 2, and 5, Art. VIII of the State Constitution.

Effect of the Bill

The bill permits the Division to issue a vendor’s license to operators of railroad transit stations. The bill defines the term “railroad transit station” to mean:

[A] platform or terminal facility where passenger trains operating upon a guided rail system according to a fixed schedule between two or more cities regularly stop to load and unload passengers or goods and includes any passenger waiting lounge or dining, retail, entertainment, or recreational facilities within the premises owned or leased by the railroad operator or owner.

The bill provides that the railroad transit station operator must pay an annual tax of \$2500. Such license would be good throughout the state and permits the railroad transit station operator to sell alcoholic beverages within the property of the railroad transit station.

The railroad transit station operator is not required to sell alcoholic beverages in miniature bottles, but the bill does not alter the requirements on railroads or sleeping cars.

Additionally, the bill permits additional licenses to be issued to operators of restaurants, shops, or other facilities that are part of, or that serve, railroad transit stations.

The bill provides that railroad transit stations are not required to comply with s. 562.14(1), F.S., which provides that alcoholic beverages may not be served, or permitted to be served or consumed at any place holding a license between the hours of midnight and 7 a.m.

Additionally, the bill provides that railroad transit stations and the licensed operators of restaurants, shops, or other facilities that are part of, or that serve railroad transit stations are exempt from the penalties for violations from the Beverage Law and municipal or county ordinances as provided for in s. 562.42, F.S.

Pursuant to the bill's exemption from s. 562.45(1), F.S., the railroad transit stations and the operators of restaurants, shops, or other facilities that are part of, or that serve, railroad transit stations will be exempt from criminal penalties for:

- Willfully and knowingly making any false entries in any records required under the Beverage Law or willfully violating any of the provisions of the Beverage Law, concerning the excise tax (3rd degree felony).
- Violating any provision of the Beverage Law for which no penalty has been provided (2nd degree misdemeanor).
- A 2nd or subsequent violation of the Beverage Law (3rd degree felony).

Pursuant to the bill's exemption from s. 562.45(2), F.S., the railroad transit stations and the operators of restaurants, shops, or other facilities that are part of, or that serve, railroad transit stations may be exempt from local government ordinances:

- Regulating hours of business and location of place of business licensed under the Beverage Law;
- Prescribing sanitary regulations licensed under the Beverage Law;
- Regulating type of entertainment and conduct permitted in any establishment licensed under the Beverage Law.
- Requiring treatment of alcoholic beverage licensees to be in a nondiscriminatory manner and in a manner that is consistent with the manner of treatment of any other lawful business transacted in this state.

The exemptions from county and municipality ordinances appear to contradict the language in s. 562.45(2), F.S., which prohibits the impairment of the ability of a county or municipality to enforce zoning, land development or comprehensive plan authorized under article VIII, sections 1, 2, and 5, of the Florida Constitution.

B. SECTION DIRECTORY:

Section 1 amends s. 218.32, F.S., requiring local governmental entities to include revenues derived from the use of temporary alcoholic beverages permits in annual fiscal reports.

Section 2 amends s. 561.01, F.S., defining term "railroad transit station."

Section 3 amends s. 561.422, F.S., authorizing the Division to issue temporary permits to municipalities and counties to sell alcoholic beverages at events.

Section 4 amends s. 562.14, F.S., exempting railroad transit stations from provisions regulating the time during which alcoholic beverages may be sold.

Section 5 amends s. 565.02, F.S., authorizing railroad transit stations to obtain licenses to sell alcoholic beverages and providing requirements.

Section 6 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Department indicates the number of railroad transit stations is unknown. However, each railroad transit station will be required to pay \$2500 annually for licensure, therefore, the Department anticipates an indeterminate increase in revenues.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

There would be an indeterminate increase in revenues because 24% and 38% of alcoholic beverage license fees are redistributed to counties and municipalities, respectively.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Railroad transit stations would be permitted to obtain licensure to sell alcoholic beverages, which would increase the stations' revenues. Competitive vendors in the area may lose revenues due to competition.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Division would have to adopt rules addressing violations related to the amendments.

C. DRAFTING ISSUES OR OTHER COMMENTS:

By exempting the railroad transit stations from s. 562.45(2), F.S., the bill the railroad transit stations and operators of restaurants, shops, or other facilities that are part of, or that serve, railroad transit stations to be exempt from criminal penalties for:

- Willfully and knowingly making any false entries in any records required under the Beverage Law or willfully violating any of the provisions of the Beverage Law, concerning the excise tax (3rd degree felony).
- Violating any provision of the Beverage Law for which no penalty has been provided (2nd degree misdemeanor).
- A 2nd or subsequent violation of the Beverage Law (3rd degree felony).

Also, the railroad transit stations and the operators of restaurants, shops, or other facilities that are part of, or that serve, railroad transit stations may be exempt from local government ordinances:

- Regulating hours of business and location of place of business licensed under the Beverage Law;
- Prescribing sanitary regulations licensed under the Beverage Law;
- Regulating type of entertainment and conduct permitted in any establishment licensed under the Beverage Law.
- Requiring treatment of alcoholic beverage licensees to be in a nondiscriminatory manner and in a manner that is consistent with the manner of treatment of any other lawful business transacted in this state.

Section 562.45(2), F.S., provides that “nothing in [s. 562.45, F.S.] shall be construed to affect or impair the enactment or enforcement by a county or municipality of any zoning, land development or comprehensive plan authorized under [article VIII, sections 1, 2, and 5, of the Florida Constitution].” this exemption impairs the enforcement of ordinances authorized under the sections of the Florida Constitution in contradiction of current law.

The bill sponsor has indicated she will provide amendments addressing these drafting issues.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled

2 An act relating to alcoholic beverage permits;
3 amending s. 218.32, F.S.; requiring local governmental
4 entities to include revenues derived from the use of
5 temporary alcoholic beverage permits in annual
6 financial reports; amending s. 561.01, F.S.; defining
7 the term "railroad transit station"; amending s.
8 561.422, F.S.; authorizing the Division of Alcoholic
9 Beverages and Tobacco within the Department of
10 Business and Professional Regulation to issue
11 temporary permits to municipalities and counties to
12 sell alcoholic beverages for consumption on the
13 premises of an event; providing conditions for such
14 permits; requiring such municipalities and counties to
15 remove and properly dispose of unconsumed alcoholic
16 beverages; amending s. 562.14, F.S.; exempting
17 railroad transit stations from provisions regulating
18 the time during which alcoholic beverages may be sold,
19 served, and consumed; amending s. 565.02, F.S.;
20 authorizing operators of railroad transit stations to
21 obtain licenses to sell alcoholic beverages at such
22 stations; exempting railroad transit stations from
23 liquor bottle size restrictions; exempting operators
24 of restaurants, shops, or other facilities that are
25 part of, or that serve, railroad transit stations from
26 certain licensing regulations; authorizing alcoholic

27 beverages to be served in all areas within the
 28 property of a railroad transit station; providing an
 29 effective date.

30
 31 Be It Enacted by the Legislature of the State of Florida:

32
 33 Section 1. Paragraph (a) of subsection (1) of section
 34 218.32, Florida Statutes, is amended to read:

35 218.32 Annual financial reports; local governmental
 36 entities.—

37 (1)(a) Each local governmental entity that is determined
 38 to be a reporting entity, as defined by generally accepted
 39 accounting principles, and each independent special district as
 40 defined in s. 189.012, shall submit to the department a copy of
 41 its annual financial report for the previous fiscal year in a
 42 format prescribed by the department. The annual financial report
 43 must include a list of each local governmental entity included
 44 in the report and each local governmental entity that failed to
 45 provide financial information as required by paragraph (b). The
 46 annual financial report must also include all revenues derived
 47 from the use of temporary permits obtained by a reporting entity
 48 pursuant to s. 561.422. The chair of the governing body and the
 49 chief financial officer of each local governmental entity shall
 50 sign the annual financial report submitted pursuant to this
 51 subsection attesting to the accuracy of the information included
 52 in the report. The county annual financial report must be a

53 single document that covers each county agency.

54 Section 2. Subsection (22) is added to section 561.01,
55 Florida Statutes, to read:

56 561.01 Definitions.—As used in the Beverage Law:

57 (22) "Railroad transit station" means a platform or
58 terminal facility where passenger trains operating upon a guided
59 rail system according to a fixed schedule between two or more
60 cities regularly stop to load and unload passengers or goods and
61 includes any passenger waiting lounge or dining, retail,
62 entertainment, or recreational facilities within the premises
63 owned or leased by the railroad operator or owner.

64 Section 3. Section 561.422, Florida Statutes, is amended
65 to read:

66 561.422 Nonprofit civic organizations, municipalities, and
67 counties; temporary permits.—

68 (1) Upon the filing of an application, presentation of a
69 local building and zoning permit, and payment of a fee of \$25
70 per permit, the director of the division may issue a permit
71 authorizing a ~~bona fide~~ nonprofit civic organization,
72 municipality, or county to sell alcoholic beverages for
73 consumption on the premises of an event only, for a period not
74 to exceed 3 days, subject to any state law or municipal or
75 county ordinance regulating the time for selling such beverages.
76 All net profits from sales of alcoholic beverages collected
77 during the permit period must be retained by the nonprofit civic
78 organization, municipality, or county. Any such nonprofit civic

79 organization, municipality, or county may be issued only three
 80 such permits per calendar year.

81 (2) Notwithstanding other provisions of the Beverage Law,
 82 any nonprofit civic organization, municipality, or county
 83 licensed under this section may purchase alcoholic beverages
 84 from a distributor or vendor licensed under the Beverage Law.

85 (3) All alcoholic beverages purchased for sale by a
 86 municipality or county which remain unconsumed after an event
 87 must be removed from the premises of the event and properly
 88 disposed of by the municipality or county.

89 Section 4. Subsection (1) of section 562.14, Florida
 90 Statutes, is amended to read:

91 562.14 Regulating the time for sale of alcoholic and
 92 intoxicating beverages; prohibiting use of licensed premises.—

93 (1) Except as otherwise provided by county or municipal
 94 ordinance, ~~no~~ alcoholic beverages may not be sold, consumed,
 95 served, or permitted to be served or consumed in any place
 96 holding a license under the division between the hours of
 97 midnight and 7 a.m. of the following day. This section does
 98 ~~shall~~ not apply to railroad transit stations or to railroads
 99 selling only to passengers for consumption on railroad cars.

100 Section 5. Subsection (2) of section 565.02, Florida
 101 Statutes, is amended to read:

102 565.02 License fees; vendors; clubs; caterers; and
 103 others.—

104 (2) (a) Any operator of railroad transit stations,

105 railroads, or sleeping cars in this state may obtain a license
 106 to sell the beverages mentioned in the Beverage Law ~~on passenger~~
 107 ~~trains~~ upon the payment of an annual license tax of \$2,500, ~~the~~
 108 ~~tax to be paid~~ to the division. Such license is good throughout
 109 the state and authorizes ~~shall authorize~~ the licensee holder
 110 ~~thereof~~ to keep for sale and to sell all beverages mentioned in
 111 the Beverage Law on ~~upon~~ any dining, club, parlor, buffet, or
 112 observation car or within the property of a railroad transit
 113 station operated by the licensee. ~~it in this state, but~~ Such
 114 beverages may be sold only to passengers on such ~~upon the~~ cars
 115 or within the property of such railroad transit station and must
 116 be served for consumption thereon. A municipality or county may
 117 not require an additional license or levy a tax for the
 118 privilege of selling such beverages.

119 (b) Except for alcoholic beverages sold within the
 120 property of a railroad transit station, it is unlawful for such
 121 licensees to purchase or sell any liquor except in miniature
 122 bottles of not more than 2 ounces. ~~Every such license shall be~~
 123 ~~good throughout the state. No license shall be required, or tax~~
 124 ~~levied by any municipality or county, for the privilege of~~
 125 ~~selling such beverages for consumption in such cars.~~ Such
 126 beverages may ~~shall~~ be sold only on cars in which ~~are posted~~
 127 certified copies of the licenses issued to the ~~such~~ operator are
 128 posted. ~~Such~~ Certified copies of such licenses shall be issued
 129 by the division upon the payment of a tax of \$10.

130 (c) A limitation of the number of licenses issued pursuant

131 to this section does not prohibit the issuance of any license
 132 authorized by the Beverage Law or any special license issued
 133 pursuant to s. 561.20 to operators of restaurants, shops, or
 134 other facilities that are part of, or that serve, railroad
 135 transit stations, and any such licenses issued are exempt from
 136 s. 562.45. The alcoholic beverages sold by a licensed operator
 137 may be consumed in all areas within the property of the railroad
 138 transit station as defined in s. 561.01(22).

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

BUSINESS AND PROFESSIONS SUBCOMMITTEE

**HB 645 by Rep. Peters
Relating to Alcoholic Beverage Permits**

**AMENDMENT SUMMARY
January 26, 2016**

Amendment 1 by Rep. Peters: The amendment makes the following changes:

- Removes the exemption from s. 562.45, F.S., for railroad transit stations, and operators of restaurants, shops, or other facilities that are part of, or that serve, railroad transit stations, thus providing such establishments are not exempt from county and municipal ordinances or penalties for violations of the Beverage Law.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Business & Professions
 2 Subcommittee

3 Representative Peters offered the following:

4

5 **Amendment**

6 Remove lines 135-136 and insert:

7 transit stations. The alcoholic beverages sold by a licensed
 8 operator

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1127 Resale of Tickets
SPONSOR(S): Moskowitz
TIED BILLS: **IDEN./SIM. BILLS:** SB 1344

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Butler	BSB Anstead <i>LA</i>
2) Agriculture & Natural Resources Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The resale of admission tickets and fraudulent activities related to the resale of admission tickets are regulated by Chapter 817, F.S. Currently, the resale of tickets is both prohibited under certain circumstances and restricted in other circumstances. Florida law does not currently address whether an event or admission ticket is deemed to be a license or a property interest.

The bill defines a "ticket" as "a license issued by the operator of a place of entertainment for admission to that place of entertainment at the date and time specified on the ticket, subject to the terms and conditions specified by the operator."

The bill prohibits an operator of a place of entertainment or the operator's agent from placing restrictions on the resale of a subscription or season ticket. An operator or the operator's agent cannot restrict the reselling of a ticket as a condition to purchase the ticket, as a condition to retain remaining subscription or season tickets, or as a condition to retain the right to purchase future subscription or season ticket packages.

The bill prohibits denying access to a ticketed event based on the fact that the ticket was resold.

The bill prohibits an operator or an operator's agent from selling or conveying tickets to any secondary ticket reseller owned or controlled by the operator or the operator's agent.

The bill prohibits the use of paperless ticketing systems for subscription or season tickets unless either the paperless ticket may be transferred without fee or restriction or the customer is given the option to receive the ticket in a transferable form at the time of purchase. Operators may not increase the price of a ticket, or impose a service charge, based on the form or transferability of the ticket.

These restrictions are not intended to prevent an operator from ejecting or denying access to a person based on conduct, behavior, for the safety of patrons, or to address fraud or misconduct, and the bill provides that an operator may still place restrictions on the resale of tickets that are offered as part of a targeted promotion to specific individuals or groups.

There does not appear to be a fiscal impact to state or local governments.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Tickets – Definition and Use

Absent a statute to the contrary, an event or admission ticket is generally considered to be a license to witness the performance, which may be restricted or revoked by the owner or proprietor at will, before or after admission of the ticketholder.¹ Florida law does not currently address whether an event or admission ticket is deemed to be a license or a property interest.

A common restriction placed on an event or admission ticket by the seller is the inability to reenter the venue facility upon leaving. In addition to manner of use restrictions, the ticket seller is also able to place conditions and restrictions upon the resale or transferability of the ticket.

Generally, a person or entity offering to resell a ticket may only charge \$1 above the admission price charged by the initial ticket seller. A person or entity must abide by these restrictions for tickets for passage or accommodations on a common carrier unless the person or entity is a travel agency,² multiday or multievent tickets to a theme park or entertainment complex,³ and tickets issued by a charitable organization that offers no more than 3,000 tickets per performance.⁴

Any other tickets may be resold for a price greater than \$1 above the admission price if the person or website is authorized to do so by the original ticket seller or provides certain guarantees and disclosures.⁵

A person or website offering tickets for resale that is not authorized by the original ticket seller must guarantee a full refund, including all fees, when a ticketed event is canceled, the purchaser is denied admission except when such denial is the fault of the purchaser, or the ticket is not delivered in the manner requested by the purchaser.⁶ Further, such person or website operator must disclose that it is not the issuer, original seller, or reseller of the ticket, does not control the pricing of the ticket, and that the ticket may be resold for more than its original value.⁷

A person who knowingly resells a ticket in violation of the ticket resale provisions of s. 817.36, F.S., is liable to the state for a civil penalty equal to three times the amount for which the ticket or tickets were sold.⁸

Effect of the Bill

The bill defines a “ticket” as “a license issued by the operator of a place of entertainment for admission to that place of entertainment at the date and time specified on the ticket, subject to the terms and conditions specified by the operator.”

¹ 27A Am. Jur. 2d Entertainment and Sports Law § 42.

² s. 817.36(1)(a), F.S.

³ s. 817.36(1)(b), F.S.

⁴ s. 817.36(1)(c), F.S.

⁵ s. 817.36(1)(d), F.S.

⁶ *Id.*

⁷ *Id.*

⁸ s. 817.36(4), F.S.

The bill prohibits an operator of a place of entertainment or the operator's agent from placing restrictions on the resale of subscription or season tickets, and an operator or their agent may not:

- Restrict the reselling tickets as a condition of purchase, as a condition to retain tickets for the duration of the subscription or season, or as a condition to retain the right to purchase future subscription or season ticket packages;
- Deny access to the possessor of a resold subscription or season ticket based solely on the grounds that the ticket has been resold;
- Use a paperless ticketing system unless either the paperless ticket may be transferred without fee or restriction, or the customer is given the option to receive the ticket in a transferrable form (such as a paper ticket) at the time of purchase;
- Increase the price of a ticket based on the form or transferability of the ticket; and,
- Impose a service charge based the type of ticket a customer chooses to receive.

The bill provides that the above restrictions are not intended to prevent an operator or an operator's agent from revoking a ticket or ejecting a person from a venue based on conduct or behavior at an event or place of entertainment.

The bill provides that an operator or the operator's agent may place restrictions on the resale of tickets that are offered as part of a targeted promotion, sold at a discounted price, or provided free of charge to specific individuals or groups of individuals; however, restrictions may not be placed on the resale of tickets offered promotionally to the general public.

The bill requires that any promotionally discounted or free tickets that have restrictions on their resale must be clearly marked as such.

The bill provides an operator or the operator's agent may revoke or restrict season tickets or the resale of those tickets for reasons relating to violations of policies at the place of entertainment to the extent the operator or agent may deem necessary for the protection and the safety of patrons or to address fraud or misconduct.

The bill prohibits an operator or an operator's agent from selling or conveying tickets to any secondary ticket reseller owned or controlled by the operator or the operator's agent.

The bill does not define a "place of entertainment."

B. SECTION DIRECTORY:

Section 1 amends s. 817.36, F.S., to prohibit an operator or operator's agent of a place of entertainment from placing restrictions on the resale of subscription or season tickets.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. The bill may provide protections for resellers of tickets and the secondary market for tickets; however, it may have an indeterminate negative fiscal impact on primary ticket vendors, such as places of entertainment or venues.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill does not define a "place of entertainment." This phrase could be defined to clarify who may be affected by the bill.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

1 A bill to be entitled
 2 An act relating to the resale of tickets; amending s.
 3 817.36, F.S.; defining the term "ticket"; prohibiting
 4 an operator of a place of entertainment or the
 5 operator's agent from restricting the resale of
 6 tickets, denying access to a ticket holder, or using a
 7 paperless ticketing system under certain
 8 circumstances; providing an exception to the
 9 prohibition on using a paperless ticketing system;
 10 providing for construction; authorizing an operator or
 11 an operator's agent to revoke or restrict tickets
 12 under certain circumstances; prohibiting an operator
 13 or an operator's agent from selling or conveying
 14 tickets to a secondary ticket seller owned or
 15 controlled by the operator or the operator's agent;
 16 providing an effective date.

17
 18 Be It Enacted by the Legislature of the State of Florida:

19
 20 Section 1. Present subsections (1) through (5) of section
 21 817.36, Florida Statutes, are redesignated as subsections (2)
 22 through (6), respectively, present subsection (6) of that
 23 section is amended, and subsections (7) and (8) are added to
 24 that section, to read:

25 817.36 Resale of tickets.—
 26 (1)(6) As used in this section, the term:

27 (a) "Software" means computer programs that are primarily
 28 designed or produced for the purpose of interfering with the
 29 operation of any person or entity that sells, over the Internet,
 30 tickets of admission to a sporting event, theater, musical
 31 performance, or place of public entertainment or amusement of
 32 any kind.

33 (b) "Ticket" means a license issued by the operator of a
 34 place of entertainment for admission to that place of
 35 entertainment at the date and time specified on the ticket,
 36 subject to the terms and conditions specified by the operator.

37 (7) Notwithstanding any other provision, an operator of a
 38 place of entertainment or the operator's agent is prohibited
 39 from:

40 (a) Restricting by any means the resale of tickets
 41 included in a subscription or season ticket package as a
 42 condition of purchase, as a condition to retain such tickets for
 43 the duration of the subscription or season ticket package
 44 agreement, or as a condition to retain any contractually agreed
 45 upon rights to purchase future subscription or season ticket
 46 packages which are otherwise conferred in the subscription or
 47 season ticket agreement.

48 (b) Denying access to a ticket holder who possesses a
 49 resold subscription or season ticket to a performance or event
 50 based solely on the grounds that the ticket has been resold.

51 (c) Using a paperless ticketing system unless the consumer
 52 is given an option to purchase paperless tickets that the

53 consumer may transfer at any price, at any time, and without
 54 additional fees independent of the operator or operator's agent.
 55 However, an operator or an operator's agent may use a paperless
 56 ticketing system that does not allow for independent
 57 transferability of paperless tickets if the consumer is offered
 58 an option at the time of initial sale to purchase the same
 59 tickets in some other form that is transferrable independent of
 60 the operator or the operator's agent, including, but not limited
 61 to, paper tickets or electronic tickets. The price for a ticket
 62 shall be the same regardless of the form or transferability of
 63 the ticket. The ability for a ticket to be transferred
 64 independently of the operator or the operator's agent may not
 65 constitute a special service for the purpose of imposing a
 66 service charge under this section.

67
 68 This subsection may not be construed to prohibit an operator of
 69 a place of entertainment or the operator's agent from
 70 maintaining and enforcing any policies regarding conduct or
 71 behavior at or in connection with his or her place of
 72 entertainment or from restricting the resale of tickets that are
 73 offered as part of a targeted promotion, sold at a discounted
 74 price, or provided free of charge to specific individuals or
 75 groups of individuals because of their status as or membership
 76 in a specific community or group, including, but not limited to,
 77 persons with disabilities, students, religious or civic
 78 organizations, or persons demonstrating economic hardship;

79 however, tickets offered promotionally to the general public are
80 not considered as tickets offered to specific individuals or
81 groups of individuals. Any promotionally discounted or free
82 tickets for which the operator or the operator's agent restricts
83 resale must be clearly marked as such. An operator or the
84 operator's agent may revoke or restrict season tickets or the
85 resale of those tickets for reasons relating to violations of
86 policies at the place of entertainment to the extent the
87 operator or agent may deem necessary for the protection and the
88 safety of patrons or to address fraud or misconduct.

89 (8) An operator or an operator's agent may not sell or
90 convey tickets to any secondary ticket reseller owned or
91 controlled by the operator or the operator's agent.

92 Section 2. This act shall take effect July 1, 2016.

BUSINESS AND PROFESSIONS SUBCOMMITTEE

**HB 1127 by Rep. Moskowitz
Resale of Tickets**

**AMENDMENT SUMMARY
January 26, 2016**

Amendment 1 by Rep. Moskowitz: The amendment provides that an operator of a place of entertainment or an operator's agent may not place restrictions on the resale or transfer of any ticket, and may not deny entry to the possessor of a resold ticket based solely on the fact that the ticket was resold. The amendment removes language that prohibited an operator or an operator's agent from selling or conveying tickets to a secondary reseller owned or controlled by the operator or the operator's agent.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Business & Professions
2 Subcommittee

3 Representative Moskowitz offered the following:

4
5 **Amendment (with title amendment)**

6 Remove lines 33-91 and insert:

7 (b) A ticket is a license, issued by the operator of a
8 place of entertainment, for admission to the place of
9 entertainment at the date and time specified on the ticket,
10 subject to the terms and conditions as specified by the
11 operator.

12 (7) Notwithstanding any other provision of law, an operator
13 of a place of entertainment or the operator's agent is
14 prohibited from:

15 (a) Restricting, by any means, the resale or transfer of any
16 ticket.



Amendment No. 1

17 (b) Denying a person access to a place of entertainment whom
18 possesses a resold ticket, based solely on the grounds that such
19 ticket has been resold.

20
21 This subsection may not be construed to prohibit an operator of
22 a place of entertainment or the operator's agent from
23 maintaining and enforcing any policies regarding conduct or
24 behavior at or in connection with his or her place of
25 entertainment. An operator or an operator's agent may restrict
26 the resale of tickets that are offered to specific individuals
27 or groups of individuals as part of a targeted promotion, which
28 may be sold at a discounted price or provided free of charge
29 because of the individual's or group of individual's status or
30 membership in a specific community, including, but not limited
31 to, persons with disabilities, students, religious or civic
32 organizations, or persons demonstrating economic hardship;
33 however, the resale may not be restricted for tickets that are
34 offered promotionally to the general public. Any promotionally
35 discounted or free tickets for which the operator or the
36 operator's agent restricts resale must be clearly marked as
37 such. An operator or the operator's agent may revoke or restrict
38 tickets, or the resale of those tickets, for reasons relating to
39 violations of policies at the place of entertainment to the
40 extent the operator or agent may deem necessary for the
41 protection and the safety of patrons or to address fraud or
42 misconduct, including, but not limited to, attempts by two or

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Amendment No. 1

43 more persons to gain admission to a place of entertainment with
44 both a cancelled ticket and the originally issued ticket or a
45 re-issued ticket.

46

47

48

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

49

Remove lines 6-16 and insert:

50

tickets or denying access to a holder of a resold ticket;

51

providing for construction; authorizing an operator or an

52

operator's agent to revoke or restrict tickets under certain

53

circumstances; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1289 Elevators
SPONSOR(S): Steube
TIED BILLS: **IDEN./SIM. BILLS:** SB 1602

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Whittier <i>JWW</i>	Anstead <i>fe</i>
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

This bill creates s. 399.031, F.S., the "Maxwell Erik 'Max' Grablin Act," to provide requirements for new and existing elevators in residential dwellings. The bill defines the term "residential dwelling" to mean a single-family residence or a single residential unit or single apartment in a multifamily building.

Specifically, for elevators installed in a residential dwelling, the bill requires the following:

- The clearance between the hoistway doors or gates and the edge of the hoistway landing sill may not exceed 3 inches; and
- The clearance between the hoistway face of the landing door or gate and the car door or gate may not exceed 3 inches.

Further, all elevators in a residential dwelling must be equipped with a sensor device that prevents the elevator from operating if an object or any part of a person is located between the hoistway face of the landing door or gate and the car door or gate.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Relevant Residential Elevator Requirements

Chapter 399, F.S., Elevator Safety, is enforced by the Division of Hotels and Restaurants within the Department of Business and Professional Regulation. Section 399.02(3)(u), F.S., lists elevators located in private residences as equipment not covered by the chapter.

The Florida Building Code, Residential (Code) provides the requirements for “the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height... .”¹ The Code provides that private residence elevators shall comply with American Society of Mechanical Engineers (ASME) requirements.²

ASME develops and maintains major codes addressing safety in design, construction, installation, operation, inspection, testing, maintenance, alteration, and repair of elevators, dumbwaiters, escalators, moving walks, material lifts, and dumbwaiters with automatic transfer devices, wheelchair lifts, or inclined-stairway chair lifts.³

With regard to private residence elevator hoistway doors or gates,⁴ the ASME requires the following:

The clearance between the hoistway doors or gates and the hoistway edge of the landing sill shall not exceed 75 mm (3 inches). The distance between the hoistway face of the landing door or gate and the car door or gate shall not exceed 125 mm (5 inches).⁵

Residential Elevator Accidents

In the last few years, the media has reported several private residential elevator accidents involving children.⁶ A major concern is that many residential elevators have a dangerous gap between the elevator and hoistway door allowing children as old as 12 to fit between them. When the elevator is called to another floor, the hoistway door automatically locks, and the child’s body is carried along with the elevator car often crushing the child leading to death or permanent injuries.⁷

¹ Section R101.2 of the 2014 Florida Building Code, Residential.

² Section R321.1 of the 2014 Florida Building Code, Residential.

³ American Society of Mechanical Engineers, <https://www.asme.org/about-asme/standards/safety-codes-for-elevators-and-escalators> (last visited Jan. 24, 2016).

⁴ A hoistway door or gate is the door between an elevator shaft or hoistway and the floor landing and is normally closed except when the elevator is stopped at the floor for passengers or freight.

⁵ Section 5.3.1.7.2 of ASME A17.1-2007/CSA B44-07.

⁶ See The Safety Institute, *Safety Advocates Petition CPSC for Mandatory Residential Elevator Standard Citing Numerous at Deaths* <http://www.thesafetyinstitute.org/safety-advocates-petition-cpsc-for-mandatory-residential-elevator-standard-citing-numerous-deaths/> (last visited January 25, 2016), and CBS News, *In-home elevator accidents causing catastrophic harm to kids* at <http://www.cbsnews.com/news/in-home-elevator-accidents-causing-catastrophic-harm-to-kids/> (last visited January 25, 2016).

⁷ The Safety Institute, *Safety Advocates Petition CPSC for Mandatory Residential Elevator Standard Citing Numerous at Deaths* <http://www.thesafetyinstitute.org/safety-advocates-petition-cpsc-for-mandatory-residential-elevator-standard-citing-numerous-deaths/> (last visited January 25, 2016)

In November 2014, safety advocates filed a petition with the U.S. Consumer Product Safety Commission requesting mandatory safety standards for the design and installation of residential elevators to eliminate excessive space between the elevator car door/gate (interior door) and the hoistway or swing door (exterior door).⁸ The Miami Herald reports that, "Elevator deaths are not common - incidents involving both elevators and escalators kill about 30 people every year and seriously injure about 17,000 people a year, according to the U.S. Bureau of Labor Statistics and the Consumer Product Safety Commission. The two major causes of death are falls and being caught between moving parts... ."

Most recently, in January 2015, 12-year-old Maxwell Erik "Max" Grablin crawled into the elevator shaft in his home in Bradenton to find his pet hamster. The hoistway door to the elevator locked behind him, trapping him below the elevator. The elevator, having no sensor to detect that something was in the shaft, was lowered and crushed him.⁹

Effects of Proposed Changes

The bill creates s. 399.031, F.S., the "Maxwell Erik 'Max' Grablin Act," to provide requirements for new and existing elevators in residential dwellings. The bill defines the term "residential dwelling" to mean a single-family residence or a single residential unit or single apartment in a multifamily building.

Specifically, for elevators installed in a residential dwelling, the bill requires the following:

- The clearance between the hoistway doors or gates and the edge of the hoistway landing sill may not exceed 3 inches; and
- The clearance between the hoistway face of the landing door or gate and the car door or gate may not exceed 3 inches.

Further, all elevators in a residential dwelling must be equipped with a sensor device that prevents the elevator from operating if an object or any part of a person is located between the hoistway face of the landing door or gate and the car door or gate.

B. SECTION DIRECTORY:

Section 1. Creates s. 399.031, F.S., relating to elevators within residential dwellings. Provides clearance requirements for elevators installed in residences and requires such elevators to be equipped with certain sensors.

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

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁸ Petition for Recall to Repair/Retrofit and Rulemaking by petitioners The Safety Institute, Carol Pollack-Nelson, Ph.D., and Cash, Krugler and Fredricks, L.L.C., filed with the United States Consumer Products Safety Commission on November 13, 2014. A copy of the petition is available at: <http://www.regulations.gov/#!documentDetail;D=CPSC-2015-0001-0002> (last visited January 25, 2016).

⁹ Irby, Kate, *After Florida boy suffocates in elevator shaft chasing pet hamster, his parents on safety mission*, The Miami Herald, January 18, 2016 at <http://www.miamiherald.com/news/state/florida/article55252190.html> (last visited January 25, 2016).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See *Fiscal Comments*.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Homeowners will incur indeterminate costs of complying with the new provisions if they have residential elevators that do not have the required sensors or that currently do not meet the new hoistway measurements.

D. FISCAL COMMENTS:

Residential elevators are not regulated by DBPR; therefore, local building officials would be enforcing the bill's requirements. The fiscal impact to the local building departments is unknown.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Chapter 399, F.S., Elevator Safety, is enforced by the Division of Hotels and Restaurants within DBPR. This chapter currently does not apply to elevators within private residences.

The provision is retroactive and it is unclear how the enforcement will be implemented for existing residential elevators.

The sponsor has indicated that an amendment will be filed to the bill to address these issues.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.

1 A bill to be entitled

2 An act relating to elevators; creating s. 399.031,
3 F.S.; providing a short title; providing clearance
4 requirements for elevators installed in residential
5 dwellings; requiring all such elevators to be equipped
6 with a certain sensor device; defining the term
7 "residential dwelling"; providing applicability;
8 providing an effective date.
9

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

11
12 Section 1. Section 399.031, Florida Statutes, is created
13 to read:

14 399.031 Clearance requirements between elevator doors for
15 residential dwellings; sensor device required.-

16 (1) This section may be cited as the "Maxwell Erik 'Max'
17 Grablin Act."

18 (2) For elevators installed in a residential dwelling:

19 (a) The clearance between the hoistway doors or gates and
20 the edge of the hoistway landing sill may not exceed 3 inches;
21 and

22 (b) The clearance between the hoistway face of the landing
23 door or gate and the car door or gate may not exceed 3 inches.

24 (3) All elevators in a residential dwelling must be
25 equipped with a sensor device that prevents the elevator from
26 operating if an object or any part of a person is located

27 | between the hoistway face of the landing door or gate and the
28 | car door or gate.

29 | (4) As used in this section, the term "residential
30 | dwelling" means a single-family residence or a single
31 | residential unit or single apartment in a multifamily building.

32 | (5) This section applies to all new and existing elevators
33 | in a residential dwelling.

34 | Section 2. This act shall take effect July 1, 2016.

BUSINESS & PROFESSIONS SUBCOMMITTEE

HB 1289 by Rep. Steube Elevators

AMENDMENT SUMMARY January 26, 2016

Amendment 1 by Rep. Steube (strike-all): Retains the provisions of the bill and makes the following changes:

- Provides specific clearances for several types of elevators that may be found in private residences;
- More precisely describes the action that the device on the platform of the elevator car is supposed to perform with regard to stopping the elevator car's downward motion;
- Removes the retroactive provision; and
- Makes technical changes with regard to terms and definitions.



Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

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

1 Committee/Subcommittee hearing bill: Business & Professions
 2 Subcommittee
 3 Representative Steube offered the following:

Amendment (with title amendment)

6 Remove everything after the enacting clause and insert:
 7 Section 1. Section 399.031, Florida Statutes, is created
 8 to read:

9 399.031 Clearance requirements between elevator doors for
 10 elevators inside a private residence.-

11 (1) This section may be cited as the "Maxwell Erik 'Max'
 12 Grablin Act."

13 (2) For elevators installed in a private residence:

14 (a) The distance between the hoistway face of the hoistway
 15 doors and the hoistway edge of the landing sill may not exceed
 16 3/4 inch for swinging doors and 2 1/4 inches for sliding doors.

17 (b)1. Horizontal sliding car doors and gates shall be
 18 designed and installed to withstand a force of 75 pounds applied



Amendment No. 1

19 horizontally on an area 4 inches by 4 inches at right angles to
20 and at any location on the car door without permanent
21 deformation. The deflection may not exceed 3/4 inch and may not
22 displace the door from its guides or tracks. The force must be
23 applied while the door is in the fully closed position.

24 2. Folding car doors shall be designed and installed to
25 withstand a force of 75 pounds applied horizontally using a 4-
26 inch-diameter sphere at any location within the folds on the car
27 door without permanent deformation. The deflection may not
28 exceed 3/4 inch and may not displace the door from its guides or
29 tracks. The force must be applied while the door is in the fully
30 closed position.

31 (c) The distance between the hoistway face of the landing
32 door and the hoistway face of the car door or gate shall conform
33 to one of the following:

34 1. If a power-operated horizontally sliding hoistway and
35 car doors are used, the measurement between the leading edge of
36 the doors or sight guard, if provided, may not exceed 4 inches.
37 If it is possible for a user to detach or disconnect either door
38 from the operator and such detachment or disconnection allows
39 the user to operate the door manually, the requirement in
40 subparagraph 5. applies.

41 2. If swinging hoistway doors and folding car doors are
42 used and both doors are in the fully closed position, the space
43 between the hoistway door and the folding door must reject a 4-
44 inch-diameter sphere at all points.

45 3. If swinging hoistway doors and car gates are used, the
46 space between the hoistway door and the car gate must reject a

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Amendment No. 1

47 4-inch-diameter sphere at all points.

48 4. If the car doors are powered and arranged so that they
49 cannot be closed until after the hoistway door is closed, and
50 the car doors automatically open when the car is at a landing
51 and the hoistway door is opened, the measurement between the
52 hoistway face of the hoistway door and the hoistway face of the
53 car door at its leading edge may not exceed 4 inches. If it is
54 possible for a user to detach or disconnect either door from the
55 operator and such detachment or disconnection allows the user to
56 operate the door manually, the requirement in subparagraph 5.
57 applies.

58 5. If swinging or horizontally sliding hoistway doors and
59 manual horizontally sliding car doors are used and both doors
60 are in the fully closed position, the space between the swinging
61 or horizontally sliding hoistway door and the manual
62 horizontally sliding car doors must reject a 4-inch-diameter
63 sphere at all points.

64 (3) The underside of the platform of an elevator car shall
65 be equipped with a device that, if the platform of the elevator
66 car is obstructed anywhere on its underside in its downward
67 travel, interrupts the electric power to the driving machine
68 motor and brake, if provided, and stops the elevator car's
69 downward motion within 2 inches. The stroke of the device may
70 not be less than the stopping distance of the platform of the
71 elevator car. The force required to operate the device may not
72 exceed 15 pounds. Downward motion shall be permitted to resume
73 only after the elevator has been manually reset.

74 (4) This section applies to all new elevators in a private

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Amendment No. 1

75 residence.

76 Section 2. This act shall take effect July 1, 2016.

77 -----

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

79 Remove everything before the enacting clause and insert:

80 A bill to be entitled

81 An act relating to elevators; creating s. 399.031,
82 F.S.; providing a short title; providing clearance
83 requirements for elevators installed in private
84 residences; requiring certain doors and gates to
85 withstand a specified amount of force; requiring
86 certain doors to reject a sphere of a specified size
87 under certain circumstances; requiring all such
88 elevators to be equipped with a certain device;
89 providing requirements for the device; providing
90 applicability; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1405 Community Associations
SPONSOR(S): Bracy
TIED BILLS: IDEN./SIM. BILLS: SB 1292

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Brown-Blake	Anstead <i>La</i>
2) Government Operations Appropriations Subcommittee			
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes (Division), located under the Department of Business and Professional Regulation (Department), has limited regulatory authority over condominium associations, cooperative associations, and homeowner's associations (limited only to arbitration of election and recall disputes). A condominium is a form of real property ownership created pursuant to ch. 718, F.S. A cooperative is a form of real property ownership created pursuant to ch. 719, F.S. A homeowners' association is a corporation responsible for the operation of a community or mobile home subdivision and is created pursuant to ch. 720, F.S.

State law requires that condominium, cooperative, and homeowners' associations provide a financial report to unit owners or members within 21 days after the final financial report is completed, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws.

The bill provides that, upon notification by a unit owner or member to the Division that the association has failed to provide the financial report, the association must provide the financial report. If the association fails to comply, the association must provide the financial report to the Division for the next three years.

State law requires that condominium, cooperative, and homeowners' associations prepare and complete a financial report for the preceding fiscal year based upon the following provisions:

- An association with total annual revenues of \$150,000 or more, but less than \$300,000, shall prepare compiled financial statements.
- An association with total annual revenues of at least \$300,000, but less than \$500,000, shall prepare reviewed financial statements.
- An association with total annual revenues of \$500,000 or more shall prepare audited financial statements.
- An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.
- An association that operates fewer than 50 units, regardless of the association's annual revenues, shall ["may" for homeowners' associations] prepare a report of cash receipts and expenditures in lieu of financial statements.

The bill removes the requirement that an association operating fewer than 50 units, regardless of the association's annual revenues, shall [or may] prepare a report of cash receipts and expenditures in lieu of financial statements; thereby basing year-end financial reports required to be completed by the association solely on the level of annual revenues.

There appears to be no fiscal impact on state or local governments.

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

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

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DATE: 1/25/2016

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

General

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

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks and related associations;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities;
- Homeowner's Associations (limited to arbitration of election and recall disputes).¹

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which maybe owned by one or more persons, but have an undivided share of access to common facilities.² A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.³ A declaration governs the relationships among condominium unit owners and the condominium association.

A cooperative is a form of real property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association,⁴ and individual units are leased to the residents, who own shares in the cooperative association.⁵ The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are in many instances nearly identical.

A homeowners' association is a corporation responsible for the operation of a community or mobile home subdivision and is created pursuant to ch. 720, F.S. Only homeowners' associations whose covenants and restrictions include mandatory assessments are regulated by the statute. The Department currently only provides arbitration for election and recall disputes for homeowners' associations but does not regulate homeowners' associations. However, the Department does regulate the community association managers which often manage homeowners' associations.

Providing a Financial Report

Background

In accordance with ss. 718.111(13), 719.104(4), and 720.303(7), F.S., within 90 days after the end of the fiscal year or calendar year, or annually on a date provided in the bylaws, the association is required to prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or calendar year, or other date as provided in the bylaws, the association must provide each member⁶,

¹ *Id.*

² s. 718.103(11), F.S.

³ s. 718.104(2), F.S.

⁴ s. 719.103(2), F.S.

⁵ s. 719.103(26), F.S.

⁶ S. 718.111(13), F.S. requires that the condominium association "mail a copy of the financial report to each unit owner at the last address furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice

a copy of the financial report or a notice that a copy of the financial report is available upon request without charge, upon receipt of a written request from the member or unit owner.

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

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

Condominium associations and cooperative associations must hold the meeting to approve the waiver of financial reporting requirements before the end of the fiscal year. The vote is effective only for the fiscal year in which the vote is taken, except that the approval may also be effective for the following fiscal year. A condominium association or cooperative association may not waive the financial reporting requirements for more than 3 consecutive years.⁷

Effect of Bill

Under the financial reporting requirements for condominiums associations, cooperative associations, and homeowners' associations, the bill provides that, upon notification by a member or unit owner to the Division that the association has failed to provide a member or unit owner with a copy of the financial report, the association must provide the member or unit owner with a copy of the report. If the association fails to comply, the association must then provide to the Division, a copy of the financial report for the next three years and may not waive a financial reporting requirement.

Preparing a Financial Report

Background

Condominiums associations, cooperative associations, and homeowners' associations are required to comply with financial reporting requirements enumerated in ss. 718.111, 719.104, and 720.303, F.S. Those associations whose total annual revenues meet the following criteria shall prepare a complete set of financial statements according to the generally accepted accounting principles. The associations shall prepare the financial statements as follows:

- An association with total annual revenues between \$150,000 and \$299,999 shall prepare a compiled financial statement.
- An association with total annual revenues between \$300,000 and \$499,999 shall prepare a reviewed financial statement.
- An association with total annual revenues of \$500,000 or more shall prepare an audited financial statement.

Some associations are exempt from the preceding requirements if they do not meet the total annual revenue requirements or are of a certain size. Such associations must comply with the following requirements:

- An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.⁸

that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner.”

⁷ s. 719.104(4)(e), F.S.

⁸ A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and

- An association in a community of fewer than 50 units, regardless of the association's annual revenues, **shall** prepare a report of cash receipts and expenditures in lieu of the financial statements.⁹

Effect of Bill

Under the financial reporting requirements for condominiums associations, cooperative associations, and homeowners' associations, the bill removes the provisions that an association operating fewer than 50 units or parcels, regardless of the association's annual revenues, shall ["may" for homeowners' associations] prepare a report of cash receipts and expenditures in lieu of financial statements; thereby the type of year-end financial reports required to be completed by the association would be based solely on the level of annual revenues.

B. SECTION DIRECTORY:

Section 1 amends s. 718.111, F.S., relating to preparing and providing condominium associations' financial reports.

Section 2 amends s. 719.104, F.S., relating to preparing and providing cooperative associations' financial reports.

Section 3 amends s. 720.303, F.S., relating to preparing and providing homeowners' associations' financial reports.

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 Department has indicated that the revenues are unknown. The bill is unclear as to the Division's role in enforcing the financial report requirements. The bill does not identify an action the division is required to take upon receipt of the financial reports. Maintaining the records could have a minimal impact that could be addressed by current resources.¹⁰

2. Expenditures:

See note above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves, if maintained by the association. For condominium associations, "reserves" could include reserves accumulated and expended for capital expenditures, deferred maintenance and any other category for which the association maintains reserves.

⁹ S. 719.104(4) and 720.303(7), F.S., provides that this exemption from the requirement to prepare a financial report applies unless the declaration or other recorded governing documents provide otherwise.

¹⁰ Florida Department of Business and Professional Regulation, 2016 Agency Legislative Bill Analysis, SB 1292, p.5 (January 22, 2016).

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certain associations operating fewer than 50 units or parcels are currently able to prepare a report of cash receipts and expenditures in lieu of a financial statement. The bill would remove this exemption from the financial statements requirement, thus requiring the associations to prepare financial statements according to generally accepted accounting principles. Some of these associations may choose to hire accountants or community association managers to have the financial statements prepared. Associations operating with fewer than 50 units that were previously allowed to prepare a cash receipts and expenditures report in lieu of the financial reporting requirements set under ss. 718.111, 719.104, and 720.303, F.S., would now incur costs ranging from \$1,000-\$5,000 based on their annual revenues. This amount could exceed \$5,000 based on annual revenues, size, amenities and complexity of accounting systems of the associations.¹¹

The number of associations that would be affected is unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill requires the association to provide a financial report to unit owners or members of the specific association upon notification that the unit owner or member has contacted the Division to inform the Division of the association's failure to provide the report. The language is unclear as to who is responsible for notifying the association that the unit owner or member has contacted the Division.

The bill further requires associations that have failed to provide financial reports in a timely manner to unit owners or members to provide 3 years of financial reports to the Division. The language does not indicate whether the Division is required to maintain the reports, for how long, and whether the Division is required to provide the reports to unit owners or members upon request.

The bill sponsor has indicated he will provide amendments addressing these drafting issues.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

¹¹ Email from Justin A.Thames, Director of Government Affairs, Florida Institute of CPAs, Re: HB1405, cost of financial reports, January 25, 2016, (on file with the Business and Professions Subcommittee).

A bill to be entitled

An act relating to community associations; amending ss. 718.111, 719.104, and 720.303, F.S.; requiring certain condominium, cooperative, and homeowners' associations to provide financial reports to the Division of Florida Condominiums, Timeshares, and Mobile Homes under certain circumstances; deleting a provision authorizing certain associations to prepare a report of cash receipts and expenditures in lieu of certain financial statements; providing an effective date.

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

Section 1. Subsection (13) of section 718.111, Florida Statutes, is amended to read:

718.111 The association.—

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

27 furnished to the association by the unit owner, or hand deliver
28 to each unit owner, a copy of the financial report or a notice
29 that a copy of the financial report will be mailed or hand
30 delivered to the unit owner, without charge, upon receipt of a
31 written request from the unit owner. Upon notification by a unit
32 owner to the division that the association has not provided the
33 unit owner with a copy of the financial report after receipt of
34 a written request as required under this subsection, the
35 association must provide the unit owner with a copy of the
36 financial report. If the association fails to do so, the
37 association must provide the division with a copy of the
38 financial report for the next 3 years and may not waive a
39 financial reporting requirement as provided in paragraph (d).
40 The division shall adopt rules setting forth uniform accounting
41 principles and standards to be used by all associations and
42 addressing the financial reporting requirements for
43 multicondominium associations. The rules must include, but not
44 be limited to, standards for presenting a summary of association
45 reserves, including a good faith estimate disclosing the annual
46 amount of reserve funds that would be necessary for the
47 association to fully fund reserves for each reserve item based
48 on the straight-line accounting method. This disclosure is not
49 applicable to reserves funded via the pooling method. In
50 adopting such rules, the division shall consider the number of
51 members and annual revenues of an association. Financial reports
52 shall be prepared as follows:

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

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

61 2. An association with total annual revenues of at least
 62 \$300,000, but less than \$500,000, shall prepare reviewed
 63 financial statements.

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

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

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

73 2.3. A report of cash receipts and disbursements must
 74 disclose the amount of receipts by accounts and receipt
 75 classifications and the amount of expenses by accounts and
 76 expense classifications, including, but not limited to, the
 77 following, as applicable: costs for security, professional and
 78 management fees and expenses, taxes, costs for recreation

79 facilities, expenses for refuse collection and utility services,
 80 expenses for lawn care, costs for building maintenance and
 81 repair, insurance costs, administration and salary expenses, and
 82 reserves accumulated and expended for capital expenditures,
 83 deferred maintenance, and any other category for which the
 84 association maintains reserves.

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

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

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

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

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

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

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

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

105 | of an audited financial statement.

106 |

107 | Such meeting and approval must occur before the end of the
 108 | fiscal year and is effective only for the fiscal year in which
 109 | the vote is taken, except that the approval may also be
 110 | effective for the following fiscal year. If the developer has
 111 | not turned over control of the association, all unit owners,
 112 | including the developer, may vote on issues related to the
 113 | preparation of the association's financial reports, from the
 114 | date of incorporation of the association through the end of the
 115 | second fiscal year after the fiscal year in which the
 116 | certificate of a surveyor and mapper is recorded pursuant to s.
 117 | 718.104(4)(e) or an instrument that transfers title to a unit in
 118 | the condominium which is not accompanied by a recorded
 119 | assignment of developer rights in favor of the grantee of such
 120 | unit is recorded, whichever occurs first. Thereafter, all unit
 121 | owners except the developer may vote on such issues until
 122 | control is turned over to the association by the developer. Any
 123 | audit or review prepared under this section shall be paid for by
 124 | the developer if done before turnover of control of the
 125 | association. An association may not waive the financial
 126 | reporting requirements of this section for more than 3
 127 | consecutive years.

128 | Section 2. Subsection (4) of section 719.104, Florida
 129 | Statutes, is amended to read:

130 | 719.104 Cooperatives; access to units; records; financial

131 reports; assessments; purchase of leases.—

132 (4) FINANCIAL REPORT.—

133 (a) Within 90 days following the end of the fiscal or
 134 calendar year or annually on such date as provided in the bylaws
 135 of the association, the board of administration shall prepare
 136 and complete, or contract with a third party to prepare and
 137 complete, a financial report covering the preceding fiscal or
 138 calendar year. Within 21 days after the financial report is
 139 completed by the association or received from the third party,
 140 but no later than 120 days after the end of the fiscal year,
 141 calendar year, or other date provided in the bylaws, the
 142 association shall provide each member with a copy of the annual
 143 financial report or a written notice that a copy of the
 144 financial report is available upon request at no charge to the
 145 member. Upon notification by a member to the division that the
 146 association has not provided the member with a copy of the
 147 financial report upon request as required under this subsection,
 148 the association must provide the member with a copy of the
 149 financial report. If the association fails to do so, the
 150 association must provide the division with a copy of the
 151 financial report for the next 3 years and may not waive a
 152 financial reporting requirement as provided in paragraph (b) or
 153 paragraph (e). The division shall adopt rules setting forth
 154 uniform accounting principles, standards, and reporting
 155 requirements.

156 (b) Except as provided in paragraph (c), an association

157 whose total annual revenues meet the criteria of this paragraph
 158 shall prepare or cause to be prepared a complete set of
 159 financial statements according to the generally accepted
 160 accounting principles adopted by the Board of Accountancy. The
 161 financial statements shall be as follows:

162 1. An association with total annual revenues between
 163 \$150,000 and \$299,999 shall prepare a compiled financial
 164 statement.

165 2. An association with total annual revenues between
 166 \$300,000 and \$499,999 shall prepare a reviewed financial
 167 statement.

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

170 4. The requirement to have the financial statement
 171 compiled, reviewed, or audited does not apply to an association
 172 if a majority of the voting interests of the association present
 173 at a duly called meeting of the association have voted to waive
 174 this requirement for the fiscal year. In an association in which
 175 turnover of control by the developer has not occurred, the
 176 developer may vote to waive the audit requirement for the first
 177 2 years of operation of the association, after which time waiver
 178 of an applicable audit requirement shall be by a majority of
 179 voting interests other than the developer. The meeting shall be
 180 held prior to the end of the fiscal year, and the waiver shall
 181 be effective for only one fiscal year. An association may not
 182 waive the financial reporting requirements of this section for

183 more than 3 consecutive years.

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

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

193 2.3. A report of cash receipts and expenditures must
 194 disclose the amount of receipts by accounts and receipt
 195 classifications and the amount of expenses by accounts and
 196 expense classifications, including the following, as applicable:
 197 costs for security, professional, and management fees and
 198 expenses; taxes; costs for recreation facilities; expenses for
 199 refuse collection and utility services; expenses for lawn care;
 200 costs for building maintenance and repair; insurance costs;
 201 administration and salary expenses; and reserves, if maintained
 202 by the association.

203 (d) If at least 20 percent of the unit owners petition the
 204 board for a greater level of financial reporting than that
 205 required by this section, the association shall duly notice and
 206 hold a membership meeting within 30 days after receipt of the
 207 petition to vote on raising the level of reporting for that
 208 fiscal year. Upon approval by a majority of the voting interests

209 represented at a meeting at which a quorum of unit owners is
 210 present, the association shall prepare an amended budget or
 211 shall adopt a special assessment to pay for the financial report
 212 regardless of any provision to the contrary in the declaration
 213 or other recorded governing documents. In addition, the
 214 association shall provide within 90 days after the meeting or
 215 the end of the fiscal year, whichever occurs later:

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

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

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

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

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

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

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

235 Section 3. Subsection (7) of section 720.303, Florida
 236 Statutes, is amended to read:

237 720.303 Association powers and duties; meetings of board;
 238 official records; budgets; financial reporting; association
 239 funds; recalls.—

240 (7) FINANCIAL REPORTING.—Within 90 days after the end of
 241 the fiscal year, or annually on the date provided in the bylaws,
 242 the association shall prepare and complete, or contract with a
 243 third party for the preparation and completion of, a financial
 244 report for the preceding fiscal year. Within 21 days after the
 245 final financial report is completed by the association or
 246 received from the third party, but not later than 120 days after
 247 the end of the fiscal year or other date as provided in the
 248 bylaws, the association shall, within the time limits set forth
 249 in subsection (5), provide each member with a copy of the annual
 250 financial report or a written notice that a copy of the
 251 financial report is available upon request at no charge to the
 252 member. Upon notification by a member to the division that the
 253 association has not provided the member with a copy of the
 254 financial report upon request as required under this subsection,
 255 the association must provide the member with a copy of the
 256 financial report. If the association fails to do so, the
 257 association must provide the division with a copy of the
 258 financial report for the next 3 years and may not waive a
 259 financial reporting requirement as provided in paragraph (d).
 260 Financial reports shall be prepared as follows:

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

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

270 2. An association with total annual revenues of at least
 271 \$300,000, but less than \$500,000, shall prepare reviewed
 272 financial statements.

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

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

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

283 2.3. A report of cash receipts and disbursement must
 284 disclose the amount of receipts by accounts and receipt
 285 classifications and the amount of expenses by accounts and
 286 expense classifications, including, but not limited to, the

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

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

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

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

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

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

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

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

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

324 Section 4. This act shall take effect July 1, 2016.

BUSINESS AND PROFESSIONS SUBCOMMITTEE

HB 1405 by Rep. Bracy Relating to Community Associations

AMENDMENT SUMMARY January 26, 2016

Amendment by Rep. Bracy (strike-all): The strike-all makes the following changes:

- Provides that a unit owner/member may contact the Division if the association fails to provide a copy of the financial report within the required time and after the unit owner/member has submitted a written request.
- Requires the Division to contact the association within 5 business days of the unit owners/members initial contact, to request the association comply.
- Requires the association to submit a copy of the financial report to the Division within 7 business days if the association continues to not provide the copy to the unit owner or member.
- Requires the association to provide a copy of the financial report to the Division for the 2 subsequent fiscal years within 21 days after the final financial report is completed or received by the association.
- Prohibits the association from waiving the financial reporting requirement
- Requires the Division to maintain the records and provide a copy to members of the public upon request.

Amendment to strike-all by Rep. Trujillo (Amendment a1): The amendment to the strike-all makes the following changes:

- Amends the official records maintained by condominium associations to mirror the official records maintained by homeowners' associations.
- Requires condominium associations with more than 500 parcels to provide members with access to a protected website that contains specific records and documents.
- Permits condominium associations with less than 500 parcels to provide the documents on a website.
- Requires outgoing board members to turn over administrative rights or controls of a website or other digital or electronic assets to the incoming board.

Amendment to strike-all by Rep. Trujillo (Amendment a2): The amendment to the strike-all makes the following changes:

- Amends the official records maintained by homeowners' associations to mirror the official records maintained by condominium associations.
- Requires homeowners' associations with more than 7500 parcels to provide members with access to a protected website that contains specific records and documents.
- Permits homeowners' associations with less than 7500 parcels to provide the documents on a website.



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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: Business & Professions
 2 Subcommittee

3 Representative Bracy offered the following:

4
 5 **Amendment (with title amendment)**

6 Remove everything after the enacting clause and insert:
 7 Section 1. Subsection (13) of section 718.111, Florida
 8 Statutes, is amended to read:

9 718.111 The association.—

10 (13) FINANCIAL REPORTING.—Within 90 days after the end of
 11 the fiscal year, or annually on a date provided in the bylaws,
 12 the association shall prepare and complete, or contract for the
 13 preparation and completion of, a financial report for the
 14 preceding fiscal year. Within 21 days after the final financial
 15 report is completed by the association or received from the
 16 third party, but not later than 120 days after the end of the
 17 fiscal year or other date as provided in the bylaws, the



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

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

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



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44 financial statements.

45 2. An association with total annual revenues of at least
46 \$300,000, but less than \$500,000, shall prepare reviewed
47 financial statements.

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

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

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

57 2.3. A report of cash receipts and disbursements must
58 disclose the amount of receipts by accounts and receipt
59 classifications and the amount of expenses by accounts and
60 expense classifications, including, but not limited to, the
61 following, as applicable: costs for security, professional and
62 management fees and expenses, taxes, costs for recreation
63 facilities, expenses for refuse collection and utility services,
64 expenses for lawn care, costs for building maintenance and
65 repair, insurance costs, administration and salary expenses, and
66 reserves accumulated and expended for capital expenditures,
67 deferred maintenance, and any other category for which the
68 association maintains reserves.

69 (c) An association may prepare, without a meeting of or



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70 approval by the unit owners:

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

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

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

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

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

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

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

90

91 Such meeting and approval must occur before the end of the
92 fiscal year and is effective only for the fiscal year in which
93 the vote is taken, except that the approval may also be
94 effective for the following fiscal year. If the developer has
95 not turned over control of the association, all unit owners,



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96 including the developer, may vote on issues related to the
97 preparation of the association's financial reports, from the
98 date of incorporation of the association through the end of the
99 second fiscal year after the fiscal year in which the
100 certificate of a surveyor and mapper is recorded pursuant to s.
101 718.104(4)(e) or an instrument that transfers title to a unit in
102 the condominium which is not accompanied by a recorded
103 assignment of developer rights in favor of the grantee of such
104 unit is recorded, whichever occurs first. Thereafter, all unit
105 owners except the developer may vote on such issues until
106 control is turned over to the association by the developer. Any
107 audit or review prepared under this section shall be paid for by
108 the developer if done before turnover of control of the
109 association. An association may not waive the financial
110 reporting requirements of this section for more than 3
111 consecutive years.

112 (e) If an association has not provided the unit owner with
113 a copy of the financial report after receipt of a written
114 request within the time required pursuant to this section, the
115 unit owner may contact the division to report the association's
116 failure to comply. Upon notification, the division shall
117 contact the association to request the association provide the
118 copy of the financial report to the unit owner within 5 business
119 days. If the association further fails to provide the copy of
120 the financial report, the association shall be required to
121 provide a copy of the financial report to the division within 7

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122 business days. Additionally, the association shall provide a
123 copy of the financial report to the Division for the 2
124 subsequent fiscal years within 21 days after the final financial
125 report is completed by the association or received from the
126 third party and may not waive the financial reporting
127 requirement as provided in paragraph (d). The Division shall
128 maintain the financial reports and provide a copy of the
129 financial reports to members of the public upon request.

130 Section 2. Subsection (4) of section 719.104, Florida
131 Statutes, is amended to read:

132 719.104 Cooperatives; access to units; records; financial
133 reports; assessments; purchase of leases.-

134 (4) FINANCIAL REPORT.-

135 (a) Within 90 days following the end of the fiscal or
136 calendar year or annually on such date as provided in the bylaws
137 of the association, the board of administration shall prepare
138 and complete, or contract with a third party to prepare and
139 complete, a financial report covering the preceding fiscal or
140 calendar year. Within 21 days after the financial report is
141 completed by the association or received from the third party,
142 but no later than 120 days after the end of the fiscal year,
143 calendar year, or other date provided in the bylaws, the
144 association shall provide each member with a copy of the annual
145 financial report or a written notice that a copy of the
146 financial report is available upon request at no charge to the
147 member. The division shall adopt rules setting forth uniform



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148 accounting principles, standards, and reporting requirements.

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

155 1. An association with total annual revenues between
156 \$150,000 and \$299,999 shall prepare a compiled financial
157 statement.

158 2. An association with total annual revenues between
159 \$300,000 and \$499,999 shall prepare a reviewed financial
160 statement.

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

163 4. The requirement to have the financial statement
164 compiled, reviewed, or audited does not apply to an association
165 if a majority of the voting interests of the association present
166 at a duly called meeting of the association have voted to waive
167 this requirement for the fiscal year. In an association in which
168 turnover of control by the developer has not occurred, the
169 developer may vote to waive the audit requirement for the first
170 2 years of operation of the association, after which time waiver
171 of an applicable audit requirement shall be by a majority of
172 voting interests other than the developer. The meeting shall be
173 held prior to the end of the fiscal year, and the waiver shall



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174 be effective for only one fiscal year. An association may not
175 waive the financial reporting requirements of this section for
176 more than 3 consecutive years.

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

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

186 2.3. A report of cash receipts and expenditures must
187 disclose the amount of receipts by accounts and receipt
188 classifications and the amount of expenses by accounts and
189 expense classifications, including the following, as applicable:
190 costs for security, professional, and management fees and
191 expenses; taxes; costs for recreation facilities; expenses for
192 refuse collection and utility services; expenses for lawn care;
193 costs for building maintenance and repair; insurance costs;
194 administration and salary expenses; and reserves, if maintained
195 by the association.

196 (d) If at least 20 percent of the unit owners petition the
197 board for a greater level of financial reporting than that
198 required by this section, the association shall duly notice and
199 hold a membership meeting within 30 days after receipt of the



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200 petition to vote on raising the level of reporting for that
201 fiscal year. Upon approval by a majority of the voting interests
202 represented at a meeting at which a quorum of unit owners is
203 present, the association shall prepare an amended budget or
204 shall adopt a special assessment to pay for the financial report
205 regardless of any provision to the contrary in the declaration
206 or other recorded governing documents. In addition, the
207 association shall provide within 90 days after the meeting or
208 the end of the fiscal year, whichever occurs later:

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

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

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

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

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

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

225 3. A report of cash receipts and expenditures, a compiled

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226 financial statement, or a reviewed financial statement in lieu
227 of an audited financial statement.

228 (f) If an association has not provided the unit owner with
229 a copy of the financial report after receipt of a written
230 request within the time required as provided in paragraph (a),
231 the unit owner may contact the division to report the
232 association's failure to comply. Upon notification, the
233 division shall contact the association to request the
234 association provide the copy of the financial report to the unit
235 owner within 5 business days. If the association further fails
236 to provide the copy of the financial report, the association
237 shall be required to provide a copy of the financial report to
238 the division within 7 business days. Additionally, the
239 association shall provide a copy of the financial report to the
240 Division for the 2 subsequent fiscal years within 21 days after
241 the final financial report is completed by the association or
242 received from the third party and may not waive the financial
243 reporting requirement as provided in paragraph (b) or paragraph
244 (e). The Division shall maintain the financial reports and
245 provide a copy of the financial reports to members of the public
246 upon request.

247 Section 3. Subsection (7) of section 720.303, Florida
248 Statutes, is amended to read:

249 720.303 Association powers and duties; meetings of board;
250 official records; budgets; financial reporting; association
251 funds; recalls.-

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

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

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

274 2. An association with total annual revenues of at least
275 \$300,000, but less than \$500,000, shall prepare reviewed
276 financial statements.

277 3. An association with total annual revenues of \$500,000



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278 or more shall prepare audited financial statements.

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

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

287 2.3. A report of cash receipts and disbursement must
288 disclose the amount of receipts by accounts and receipt
289 classifications and the amount of expenses by accounts and
290 expense classifications, including, but not limited to, the
291 following, as applicable: costs for security, professional, and
292 management fees and expenses; taxes; costs for recreation
293 facilities; expenses for refuse collection and utility services;
294 expenses for lawn care; costs for building maintenance and
295 repair; insurance costs; administration and salary expenses; and
296 reserves if maintained by the association.

297 (c) If 20 percent of the parcel owners petition the board
298 for a level of financial reporting higher than that required by
299 this section, the association shall duly notice and hold a
300 meeting of members within 30 days of receipt of the petition for
301 the purpose of voting on raising the level of reporting for that
302 fiscal year. Upon approval of a majority of the total voting
303 interests of the parcel owners, the association shall prepare or



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304 cause to be prepared, shall amend the budget or adopt a special
305 assessment to pay for the financial report regardless of any
306 provision to the contrary in the governing documents, and shall
307 provide within 90 days of the meeting or the end of the fiscal
308 year, whichever occurs later:

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

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

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

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

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

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

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

328 (e) If an association has not provided the unit owner with
329 a copy of the financial report after receipt of a written



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330 request within the time required pursuant to this section, the
331 unit owner may contact the division to report the association's
332 failure to comply. Upon notification, the division shall contact
333 the association to request the association provide the copy of
334 the financial report to the unit owner within 5 business days.
335 If the association further fails to provide the copy of the
336 financial report, the association shall be required to provide a
337 copy of the financial report to the division within 7 business
338 days. Additionally, the association shall provide a copy of the
339 financial report to the Division for the 2 subsequent fiscal
340 years within 21 days after the final financial report is
341 completed by the association or received from the third party
342 and may not waive the financial reporting requirement as
343 provided in paragraph (d). The Division shall maintain the
344 financial reports and provide a copy of the financial reports to
345 members of the public upon request.

346 Section 4. This act shall take effect July 1, 2016.

347 -----
348
349 **T I T L E A M E N D M E N T**

350 Remove lines 2-11 and insert:

351 A bill to be entitled

352 An act relating to community associations; amending ss.
353 718.111, 719.104, and 720.303, F.S.; requiring certain
354 condominium, cooperative, and homeowners' associations to
355 provide financial reports to the Division of Florida



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1405 (2016)

Amendment No. 1

356 | Condominiums, Timeshares, and Mobile Homes under certain
357 | circumstances; deleting a provision authorizing certain
358 | associations to prepare a report of cash receipts and
359 | expenditures in lieu of certain financial statements;
360 | providing an effective date.



Amendment No. a1

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: Business & Professions
2 Subcommittee

3 Representative Trujillo offered the following:

4
5 **Amendment to Amendment (250827) by Representative Bracy**
6 **(with title amendment)**

7 Remove lines 7-9 of the amendment and insert:

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

10 718.111 The association -

11 (12) OFFICIAL RECORDS.-

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

15 1. A copy of the plans, specifications, permits, and
16 warranties related to improvements to the common areas or other
17 property that the association is obligated to maintain, repair,



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18 or replace, and other items provided by the developer pursuant
19 to s. 718.301(4).

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

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

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

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

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

33 7. A current roster of all unit owners and their mailing
34 addresses, unit identifications, voting certifications, and, if
35 known, telephone numbers. The association shall also maintain
36 the e-mail ~~electronic mailing~~ addresses and facsimile numbers of
37 unit owners consenting to receive notice by electronic
38 transmission. The e-mail ~~electronic mailing~~ addresses and
39 facsimile numbers are not accessible to unit owners if consent
40 to receive notice by electronic transmission is not provided in
41 accordance with subparagraph (c)5. The e-mail addresses and
42 facsimile numbers provided by unit owners to receive notice by
43 electronic transmission must be removed from any association



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44 records if the unit owner revokes his or her consent to receive
45 notice by electronic transmission. However, the association is
46 not liable for an inadvertent disclosure of the electronic mail
47 address or facsimile number for receiving electronic
48 transmission of notices.

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

51 9. A current copy of any management agreement, lease, or
52 other contract to which the association is a party or under
53 which the association or the unit owners have an obligation or
54 responsibility. Bids for materials, equipment, or services are
55 official records and must be maintained by the association for a
56 period of 1 year.

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

59 11. Financial and accounting records for the association
60 and separate accounting records for each condominium that the
61 association operates. All accounting records must be maintained
62 for at least 7 years. Any person who knowingly or intentionally
63 defaces or destroys such records, or who knowingly or
64 intentionally fails to create or maintain such records, with the
65 intent of causing harm to the association or one or more of its
66 members, is personally subject to a civil penalty pursuant to s.
67 718.501(1)(d). The financial and accounting records must
68 include, but are not limited to:

69 a. Accurate, itemized, and detailed records of all



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70 receipts and expenditures.

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

75 c. All tax returns, audits, reviews, accounting
76 statements, and financial reports of the association or
77 condominium.

78 d. Any records that identify, measure, record, or
79 communicate financial information ~~All contracts for work to be~~
80 ~~performed. Bids for work to be performed are also considered~~
81 ~~official records and must be maintained by the association.~~

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

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

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

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

94 16. A copy of the inspection report as described in s.
95 718.301(4) (p).



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96 (b) The official records of the association must be
97 maintained within the state for at least 7 years. The records of
98 the association shall be made available to a unit owner within
99 45 miles of the condominium property or within the county in
100 which the condominium property is located within 5 working days
101 after receipt of a written request by the board or its designee.
102 However, such distance requirement does not apply to an
103 association governing a timeshare condominium. This paragraph
104 may be complied with by having a copy of the official records of
105 the association available for inspection or copying on the
106 condominium property or association property, or the association
107 may offer the option of making the records available to a unit
108 owner electronically via the Internet or by allowing the records
109 to be viewed in electronic format on a computer screen and
110 printed upon request. The association is not responsible for the
111 use or misuse of the information provided to an association
112 member or his or her authorized representative pursuant to the
113 compliance requirements of this chapter unless the association
114 has an affirmative duty not to disclose such information
115 pursuant to this chapter.

116 (c)1. In addition to any other provision of law,
117 associations with 500 or more units must provide a digital copy
118 of specified documents on the association's website.

119 a. An association's website must be:

120 (I) An independent website or web portal, wholly owned and
121 operated by the association; or



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122 (II) A website or web portal operated by a third party
123 provider with whom the association owns, leases, rents, or
124 otherwise obtains the right to operate a web page, subpage, web
125 portal, or collection of subpages or web portals dedicated to
126 the association's activities and where required notices,
127 records, and documents may be posted by the association.

128 b. The association's website must be accessible through
129 the Internet and must contain a subpage, web portal, or other
130 protected electronic location that is inaccessible to the
131 general public and that is accessible only to unit owners and
132 employees of the association.

133 c. The association must provide access to each unit owner
134 to the protected sections of the association's website that
135 contain any notices, records, or documents that must be
136 electronically provided.

137 2. The following documents must be placed in digital
138 format on the website:

139 a. Copies of the official records described in paragraph
140 (a). However, the current roster of all unit owners with their
141 mailing addresses and parcel identifications may not be placed
142 in digital format on the website. The website must include the
143 following statement: "A current roster of all unit owners and
144 their mailing addresses and parcel identifications is available
145 at the request of any unit owner or unit owner representative,
146 including the e-mail addresses of the unit owners who have
147 consented to receive notice by electronic transmission." The



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148 notice shall include the e-mail address of the person to contact
149 for a copy of the roster.

150 b. The annual budget required by s. 718.112(2)(f) and any
151 proposed budget to be considered at the annual meeting.

152 c. The financial report required by subsection (13) and
153 any proposed financial report to be considered at a meeting.

154 d. Any document created by the association or a board
155 member relating to the recall of a director, pursuant to s.
156 718.112(2)(j), or any document created for or filed by the
157 association in an arbitration proceeding conducted by the
158 division regarding the recall of a director.

159 e. The certification of each director required by s.
160 718.112(2)(d)4.b.

161 f. A list of all contracts or transactions between the
162 association and any director, officer, corporation, firm, or
163 association that is not an affiliated condominium association,
164 or other entity in which an association director is also a
165 director or officer and financially interested.

166 g. Any fidelity bond entered into by the association.

167 h. Any contract or document regarding a conflict of
168 interest or possible conflict of interest as provided in ss.
169 468.436(2) and 718.3026(3).

170 i. Notice of any board meeting and the agenda for the
171 meeting, as required by s. 718.112(2)(d)3., placed online no
172 later than 14 days before the meeting posted in plain view on
173 the front page, or on a separate subpage labeled "Notices" which



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174 is conspicuously visible and linked from the front page of the
175 association's website. The association must post on the
176 association's website any documents to be considered during the
177 meeting or listed on the agenda at least 7 days before the
178 meeting at which the document or the information within the
179 document will be considered, unless otherwise stated, including
180 the following documents:

181 (I) The proposed annual budget required by s.
182 718.112(2)(e), which must be provided at least 14 days before
183 the meeting.

184 (II) The proposed financial report required by subsection
185 (13).

186 (III) A list of persons seeking to be elected to the
187 board.

188 3. The association shall ensure that the information and
189 records described in paragraph (d), which are not permitted to
190 be accessible to unit owners, are not placed on the
191 association's website. If protected information, or information
192 restricted from being accessible to unit owners, is included in
193 documents that are required to be placed on the association's
194 website, the association shall ensure the information is
195 redacted before placing the documents online.

196 (d)-(e) Physical copies of the official records of the
197 association are open to inspection by any association member or
198 the authorized representative of such member at all reasonable
199 times. The right to inspect the records includes the right to



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200 make or obtain copies, at the reasonable expense, if any, of the
201 member. The association may adopt reasonable rules regarding the
202 frequency, time, location, notice, and manner of record
203 inspections and copying. The failure of an association to
204 provide the records within 10 working days after receipt of a
205 written request creates a rebuttable presumption that the
206 association willfully failed to comply with this paragraph. A
207 unit owner who is denied access to official records is entitled
208 to the actual damages or minimum damages for the association's
209 willful failure to comply. Minimum damages are \$50 per calendar
210 day for up to 10 days, beginning on the 11th working day after
211 receipt of the written request. The failure to permit inspection
212 entitles any person prevailing in an enforcement action to
213 recover reasonable attorney fees from the person in control of
214 the records who, directly or indirectly, knowingly denied access
215 to the records. Any person who knowingly or intentionally
216 defaces or destroys accounting records that are required by this
217 chapter to be maintained during the period for which such
218 records are required to be maintained, or who knowingly or
219 intentionally fails to create or maintain accounting records
220 that are required to be created or maintained, with the intent
221 of causing harm to the association or one or more of its
222 members, is personally subject to a civil penalty pursuant to s.
223 718.501(1)(d). The association shall maintain an adequate number
224 of copies of the declaration, articles of incorporation, bylaws,
225 and rules, and all amendments to each of the foregoing, as well

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226 as the question and answer sheet as described in s. 718.504 and
227 year-end financial information required under this section, on
228 the condominium property to ensure their availability to unit
229 owners and prospective purchasers, and may charge its actual
230 costs for preparing and furnishing these documents to those
231 requesting the documents. An association shall allow a member or
232 his or her authorized representative to use a portable device,
233 including a smartphone, tablet, portable scanner, or any other
234 technology capable of scanning or taking photographs, to make an
235 electronic copy of the official records in lieu of the
236 association's providing the member or his or her authorized
237 representative with a copy of such records. The association may
238 not charge a member or his or her authorized representative for
239 the use of a portable device. Notwithstanding this paragraph,
240 the following records are not accessible to unit owners:

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

251 2. Information obtained by an association in connection



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252 with the approval of the lease, sale, or other transfer of a
253 unit.

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

261 4. Medical records of unit owners.

262 5. Social security numbers, driver license numbers, credit
263 card numbers, e-mail addresses, telephone numbers, facsimile
264 numbers, emergency contact information, addresses of a unit
265 owner other than as provided to fulfill the association's notice
266 requirements, and other personal identifying information of any
267 person, excluding the person's name, unit designation, mailing
268 address, property address, and any address, e-mail address, or
269 facsimile number provided to the association to fulfill the
270 association's notice requirements. Notwithstanding the
271 restrictions in this subparagraph, an association may print and
272 distribute to parcel owners a directory containing the name,
273 parcel address, and all telephone numbers of each parcel owner.
274 However, an owner may exclude his or her telephone numbers from
275 the directory by so requesting in writing to the association. An
276 owner may consent in writing to the disclosure of other contact
277 information described in this subparagraph. The association is

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278 not liable for the inadvertent disclosure of information that is
279 protected under this subparagraph if the information is included
280 in an official record of the association and is voluntarily
281 provided by an owner and not requested by the association.

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

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

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

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

302 2. An association and its authorized agent are not liable
303 for providing such information in good faith pursuant to a



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304 written request if the person providing the information includes
305 a written statement in substantially the following form: "The
306 responses herein are made in good faith and to the best of my
307 ability as to their accuracy."

308 (g)~~(f)~~ An outgoing board or committee member must
309 relinquish all official records and property of the association
310 in his or her possession or under his or her control, including
311 administrative rights or controls of an association's website or
312 other digital or electronic asset of the association, to the
313 incoming board within 5 days after the election. The division
314 shall impose a civil penalty as set forth in s. 718.501(1)(d)6.
315 against an outgoing board or committee member who willfully and
316 knowingly fails to relinquish such records and property.

317
318 -----

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

320 Remove lines 352-360 of the amendment and insert:
321 An act relating to community associations; amending s. 718.111,
322 F.S.; requiring certain condominium associations to provide
323 financial reports to the Division of Florida Condominiums,
324 Timeshares, and Mobile Homes under certain circumstances;
325 deleting a provision authorizing certain associations to prepare
326 a report of cash receipts and expenditures in lieu of certain
327 financial statements; revising records required to be maintained
328 by a condominium association; providing requirements relating to
329 the provision of specified documents on an association's



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 1405 (2016)

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330 website; amending ss. 719.104 and 720.303, F.S.; requiring
331 certain cooperative associations to provide financial reports to
332 the Division of Florida Condominiums, Timeshares, and Mobile
333 Homes under certain circumstances; deleting a provision
334 authorizing certain associations to prepare a report of cash
335 receipts and expenditures in lieu of certain financial
336 statements; providing an effective date.



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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: Business & Professions
 2 Subcommittee

3 Representative Trujillo offered the following:

4
 5 **Amendment to Amendment (250827) by Representative Bracy**
 6 **(with title amendment)**

7 Remove lines 247-251 of the amendment and insert:

8 Section 3. Subsections (4) and (7) of section 720.303,
 9 Florida Statutes, are amended to read:

10 720.303 Association powers and duties; meetings of board;
 11 official records; budgets; financial reporting; association
 12 funds; recalls.—

13 (4) OFFICIAL RECORDS.—The association shall maintain each
 14 of the following items, when applicable, which constitute the
 15 official records of the association:

16 (a) Copies of any plans, specifications, permits, and
 17 warranties related to improvements constructed on the common



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18 areas or other property that the association is obligated to
19 maintain, repair, or replace, and other items provided by the
20 developer pursuant to s. 720.307(4).

21 (b) A copy of the bylaws of the association and of each
22 amendment to the bylaws.

23 (c) A certified copy of the articles of incorporation of
24 the association and of each amendment thereto.

25 (d) A copy of the declaration of covenants and a copy of
26 each amendment thereto.

27 (e) A copy of the current rules of the homeowners'
28 association.

29 (f) The minutes of all meetings of the board of directors
30 and of the members, which minutes must be retained for at least
31 7 years.

32 (g) A current roster of all members and their mailing
33 addresses and parcel identifications. The association shall also
34 maintain the electronic mailing addresses and the numbers
35 designated by members for receiving notice sent by electronic
36 transmission of those members consenting to receive notice by
37 electronic transmission. The electronic mailing addresses and
38 numbers provided by members ~~unit owners~~ to receive notice by
39 electronic transmission shall be removed from association
40 records when consent to receive notice by electronic
41 transmission is revoked. However, the association is not liable
42 for an erroneous disclosure of the electronic mail address or
43 the number for receiving electronic transmission of notices.



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44 (h) All of the association's insurance policies or a copy
45 thereof, which policies must be retained for at least 7 years.

46 (i) A current copy of all contracts to which the
47 association is a party, including, without limitation, any
48 management agreement, lease, or other contract under which the
49 association has any obligation or responsibility. Bids received
50 by the association for materials, equipment, or services, work
51 ~~to be performed~~ must also be considered official records and
52 must be maintained kept for a period of 1 year.

53 (j) The financial and accounting records of the
54 association, kept according to good accounting practices. All
55 financial and accounting records must be maintained for a period
56 of at least 7 years. The financial and accounting records must
57 include:

58 1. Accurate, itemized, and detailed records of all
59 receipts and expenditures.

60 2. A current account and a periodic statement of the
61 account for each member, designating the name and current
62 address of each member who is obligated to pay assessments, the
63 due date and amount of each assessment or other charge against
64 the member, the date and amount of each payment on the account,
65 and the balance due.

66 3. All tax returns, audits, reviews, financial statements,
67 and financial reports of the association.

68 4. Any other records that identify, measure, record, or
69 communicate financial information.

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70 (k) A copy of the disclosure summary described in s.
71 720.401(1).

72 (l) Ballots, sign-in sheets, voting proxies, and all other
73 papers relating to voting by members, which must be maintained
74 for 1 year after the date of the election, vote, or meeting to
75 which the document relates.

76 (m) ~~(l)~~ All other written records of the association not
77 specifically included in the foregoing which are related to the
78 operation of the association.

79 (6) ACCESS TO ASSOCIATION DOCUMENTS AND RECORDS ON AN
80 ASSOCIATION WEBSITE.-

81 (a) In addition to any other provision of general law,
82 associations with 7,500 or more parcels must provide a digital
83 copy of specified documents on the association's website. An
84 association with fewer than 7,500 parcels located within the
85 physical boundaries of an affiliated association that has more
86 than 7,500 or more parcels must provide digital copies of
87 specified documents on the larger affiliated association's
88 website. An association with fewer than 7,500 parcels located
89 within the physical boundaries of an association with more than
90 7,500 or more parcels, but that is not affiliated with the
91 larger association, may provide digital copies of certain
92 documents on its website if the association chooses to do so.

93 1. An association's website must be:

94 a. An independent website or web portal, wholly owned and
95 operated by the association; or



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96 b. A website or web portal that is operated by a third-
97 party provider with whom the association owns, leases, rents, or
98 otherwise obtains the right to operate a web page, subpage, web
99 portal, or collection of subpages or web portals dedicated to
100 the association's activities and where required notices,
101 records, and documents may be posted by the association.

102 2. The association's website must be accessible through
103 the Internet, and must contain a subpage, web portal, or other
104 protected electronic location that is accessible only to the
105 unit owners and employees of the association.

106 3. The association must provide access to each member to
107 the protected sections of the association's website that contain
108 any notices, records, or documents that must be electronically
109 provided.

110 (b) The following documents must be placed in digital
111 format on the website:

112 1. Copies of the official records in subsection (4). The
113 current roster of all members with their mailing addresses and
114 parcel identifications may not be placed in digital format on
115 the website. The website must include the following statement:
116 "A current roster of all members and their mailing addresses and
117 parcel identifications is available at the request of any
118 association member." The notice shall include the e-mail address
119 of the person to contact for a copy of the roster.

120 2. The annual budget required by subsection (7) and any
121 proposed budget to be considered at the annual meeting.



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122 3. The financial report required by subsection (8) and any
123 proposed financial report to be considered at a meeting.

124 4. Any document created by the association or a board
125 member relating to the recall of a director, pursuant to
126 subsection (11), or any document created for or filed by the
127 association in an arbitration proceeding conducted by the
128 division regarding the recall of a director.

129 5. A copy of the information submitted to the division to
130 comply with the reporting requirement in subsection (14).

131 6. Documentation reporting the compensation of directors,
132 officers, or members authorized under subsection (13).

133 7. The certification of each director required by s.
134 720.3033(1).

135 8. A list of all contracts or transactions between the
136 association and any director, officer, corporation, firm, or
137 association that is not an affiliated homeowners' association,
138 or other entity in which an association director is also a
139 director or officer is financially interested.

140 9. Any fidelity bond entered into by the association.

141 10. A map of the association, including association
142 boundaries.

143 11. Any contract or document regarding a conflict of
144 interest or possible conflict of interest as provided in ss.
145 468.436(2) and 720.3033.

146 12. Notice of any board meeting and the agenda for the
147 meeting, as required by subsection (2), placed online no later

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148 than 14 days before the meeting posted in plain view on the
149 front page, or on a separate subpage labeled "Notices" which is
150 conspicuously visible and linked from the front page of the
151 association's website. The association must post on the
152 association's website any documents to be considered during the
153 meeting or listed on the agenda no later than 7 days before the
154 meeting at which the document or the information within the
155 document will be considered, including the following documents:

- 156 a. The proposed annual budget required by subsection (7);
- 157 b. The proposed financial report required by subsection
158 (8).
- 159 c. A list of persons seeking to be elected to the board.
- 160 d. A copy of contracts or transactions listed in
161 subparagraph 8.
- 162 e. Any competitive bids for materials, equipment, or
163 services.
- 164 f. Any proposed contracts or proposed transactional
165 documents related to any possible conflict of interest set forth
166 in ss. 468.436(2) and 720.3033.

167 (c) The association shall ensure that the information and
168 records described in subparagraph (5)(c), which are not
169 permitted to be accessible to members or parcel owners, are not
170 placed on the association's website. If protected information,
171 or information restricted from being accessible to members or
172 parcel owners, is included in documents that are required to be
173 placed on the association's website, the association shall

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174 ensure the information is redacted before placing the documents
175 online.

176

177 -----

178

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

179

Remove lines 352-360 of the amendment and insert:

180

An act relating to community associations; amending ss. 718.111

181

and 719.104, F.S.; requiring certain condominium associations

182

and cooperative associations to provide financial reports to the

183

Division of Florida Condominiums, Timeshares, and Mobile Homes

184

under certain circumstances; deleting a provision authorizing

185

certain associations to prepare a report of cash receipts and

186

expenditures in lieu of certain financial statements; amending

187

s. 720.303, F.S., requiring certain condominium associations to

188

provide financial reports to the Division of Florida

189

Condominiums, Timeshares, and Mobile Homes under certain

190

circumstances; deleting a provision authorizing certain

191

associations to prepare a report of cash receipts and

192

expenditures in lieu of certain financial statements; revising

193

records required to be maintained by a homeowners' association;

194

providing requirements relating to the provision of specified

195

documents on an association's website; revising reporting

196

requirements; deleting a provision relating the future

197

expiration of the reporting requirements; providing an effective

198

date.