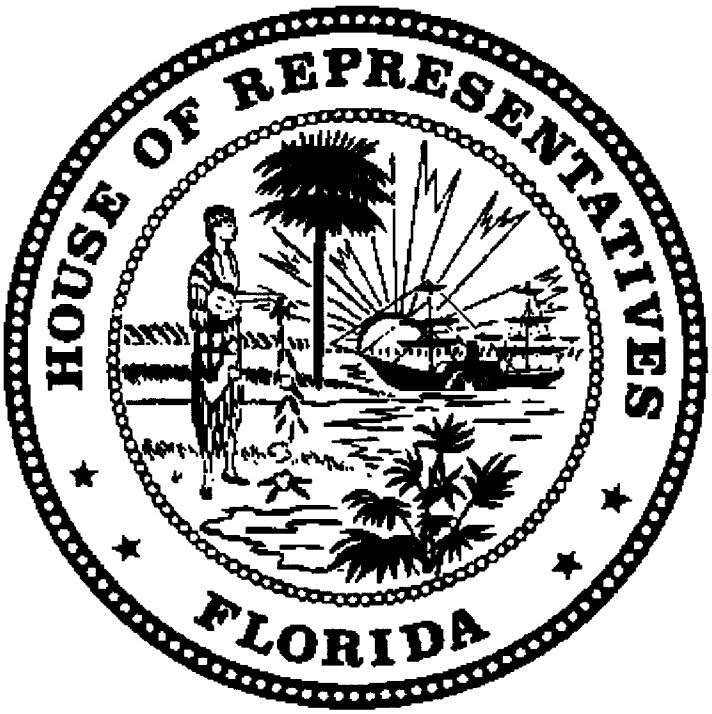

Civil Justice & Claims Subcommittee

Tuesday, January 30, 2018
8:00 – 11:00 AM
404 HOB

Meeting Packet

Richard Corcoran
Speaker

Heather Fitzenhagen
Chair

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Civil Justice & Claims Subcommittee

Start Date and Time:	Tuesday, January 30, 2018 08:00 am
End Date and Time:	Tuesday, January 30, 2018 11:00 am
Location:	Sumner Hall (404 HOB)
Duration:	3.00 hrs

Consideration of the following bill(s):

HB 507 Pub. Rec./E-mail Addresses of Current Justices and Judges by Shaw
HB 573 Involuntary Examinations Under the Baker Act by Daniels, Pigman
HB 691 Self-Service Storage Facilities by Moraitis
HB 753 Judicial Nominating Commissions by White
CS/HB 841 Community Associations by Careers & Competition Subcommittee, Moraitis
CS/HB 851 Lost or Abandoned Personal Property by Agriculture & Property Rights Subcommittee, Olszewski
HB 853 Housing Discrimination by Davis
HB 909 Free Expression on Campus by Rommel, Clemons
HB 979 Uniform Voidable Transactions Act by Moraitis
HB 1187 Guardianship by Spano
HB 1369 Long-Term Care Facility Responsibility by Mariano
HB 6523 Relief/Ashraf Kamel & Marguerite Dimitri/Palm Beach County School Board by Raburn
HB 6527 Relief/Christopher Cannon/City of Tallahassee by Alexander
HB 6535 Relief/Estate of Dr. Sherrill Lynn Aversa/Department of Transportation by Newton

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Monday, January 29, 2018.

By request of the Chair, all committee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Monday, January 29, 2018.

NOTICE FINALIZED on 01/26/2018 4:10PM by Ellerkamp.Donna

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 507 Pub. Rec./E-mail Addresses of Current Justices and Judges
SPONSOR(S): Shaw
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1202

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		Tuszynski	Bond
2) Oversight, Transparency & Administration Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The bill exempts from public record requirements the business e-mail addresses of current justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges.

The bill provides a public necessity statement as required by the Florida Constitution.

The bill may have a minimal fiscal impact on the state and does not appear to have a fiscal impact on local governments.

The effective date of the bill is July 1, 2018.

Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption for certain records of e-mail addresses; thus, it requires a two-thirds vote for final passage.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Public Records

Article I, s. 24(a) of the Florida Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records from the requirements of Art. I, s. 24(a) of the Florida Constitution provided the exemption passes by two-thirds vote of each chamber, states with specificity the public necessity justifying the exemption (public necessity statement), and is no broader than necessary to meet its public purpose.[1]

The Florida Statutes also address the public policy regarding access to government records. Section 119.07(1), F.S. guarantees every person a right to inspect and copy any state, county, or municipal record, unless the record is exempt. Furthermore, the Open Government Sunset Review Act[2] provides that a public record exemption may be created or maintained only if it serves an identifiable public purpose and the "Legislature finds that the purpose is sufficiently compelling to override the strong public policy of open government and cannot be accomplished without the exemption."[3] However, the exemption may be no broader than is necessary to meet one of the following purposes:

- Allow the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption;
- Protect sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision; or
- Protect trade or business secrets.[4]

The Open Government Sunset Review Act does not apply to an exemption that applies solely to the Legislature or the State Court System.[5]

Public Records and Members of the Judiciary

Currently, s. 119.071(4)(d)(2.)e., F.S. exempts several types of information from ch. 119, F.S. for current or former members of the judiciary, namely:

- Their home addresses, dates of birth, and telephone numbers.
- The names, home addresses, dates of birth, telephone numbers, and places of employment of their spouses and children.
- The names and locations of schools and day care facilities attended by their children.

Communication with Members of the Judiciary

Due process requires that generally, when a party to a lawsuit wishes to communicate with the presiding judge or justice, the other party must be present. A communication between a party and the presiding judge or justice outside the presence of the other party is "*ex parte* communication" and

[1] FLA. CONST. art. I, s. 24(c).
[2] s. 119.15, F.S.
[3] s. 119.15(6)(b), F.S.
[4] Id.
[5] s. 119.15(2)(b), F.S.

highly disfavored, usually resulting in a breach of the rules regulating attorneys and judges.[6] *Ex parte* communications between parties and judges usually do not occur via telephone because judicial assistants usually receive telephone calls. E-mail communication presents a special problem in that a party to a case may send an e-mail directly to a judge, not realizing that such *ex parte* communication is prohibited and can compromise the integrity of the proceedings.

Effect of the Bill

The bill amends s. 119.071, F.S. to provide that the business e-mail addresses of current justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges are exempt[7] from s. 119.07(1), F.S. and art. I, s. 24(a) of the Florida Constitution.

The bill provides a public necessity statement as required by the Florida Constitution, specifying that it is a public necessity to protect business e-mail addresses of current Florida justices and judges, because public release of such addresses could result in improper *ex parte* communications necessitating recusal or other action that could negatively affect the judiciary; that the harm that may result from the release of such addresses outweighs any public benefit; and that the public can contact the judicial member via e-mail through the judicial member's judicial assistant without the need for the judicial member's business e-mail address.

B. SECTION DIRECTORY:

Section 1: Amends s. 119.071, F.S. regarding the e-mail addresses of current justices and judges.
Section 2: Provides a public necessity statement.
Section 3: Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See fiscal comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

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[6] *See* Canon 3(B)(7), Code of Judicial Conduct (a judge generally must not "initiate, permit, or consider ex parte communications, or consider other communications outside the presence of the parties concerning a pending or impending proceeding . . . "); R. Regulating Fla. Bar 4-3.5(b).

[7] There is a difference between records the Legislature designates as exempt from public records requirements and those the Legislature designates as *confidential and* exempt. A record classified as exempt from public disclosure may be disclosed under certain circumstances. *See WFTV, Inc. v. The School Board of Seminole*, 874 So.2d 48 (Fla. 5th DCA 2004), review denied 892 So.2d 1015 (Fla. 2004); *City of Riviera Beach v. Barfield*, 642 So.2d 1135 (Fla. 4th DCA 2004); and *Williams v. City of Minneola*, 575 So.2d 687 (Fla. 5th DCA 1991). If the Legislature designates a record as confidential and exempt from public disclosure, the record may not be released by the custodian of public records to anyone other than the persons or entities specifically designated in statute. *See* 85-62 Fla. Op. Att'y Gen. (1985).

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

The bill could have an insignificant negative fiscal impact on courts because staff responsible for complying with public records requests may require training related to the creation of the public record exemption.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

Vote Requirement
Article I, s. 24(c) of the Florida Constitution requires a two-thirds vote of the members present and voting for final passage of a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it requires a two-thirds vote for final passage.

Public Necessity Statement and Breadth of Exemption
Article I, s. 24(c) of the Florida Constitution requires a public necessity statement for a newly created or expanded public record or public meeting exemption. The bill creates a public record exemption; therefore, it includes a public necessity statement. Article I, s. 24(c) of the Florida Constitution also requires a newly created public record or public meeting exemption to be no broader than necessary to accomplish the stated purpose of the law.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to public records; amending s. 119.071, F.S.; providing an exemption from public records requirements for business e-mail addresses of current justices and judges; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Paragraph (d) of subsection (4) of section 119.071, Florida Statutes, is amended to read:

119.071 General exemptions from inspection or copying of public records.—

(4) AGENCY PERSONNEL INFORMATION.—

(d)1. For purposes of this paragraph, the term "telephone numbers" includes home telephone numbers, personal cellular telephone numbers, personal pager telephone numbers, and telephone numbers associated with personal communications devices.

2.a. The home addresses, telephone numbers, dates of birth, and photographs of active or former sworn or civilian law enforcement personnel, including correctional and correctional probation officers, personnel of the Department of Children and

Families whose duties include the investigation of abuse, neglect, exploitation, fraud, theft, or other criminal activities, personnel of the Department of Health whose duties are to support the investigation of child abuse or neglect, and personnel of the Department of Revenue or local governments whose responsibilities include revenue collection and enforcement or child support enforcement; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

b. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Department of Financial Services whose duties include the investigation of fraud, theft, workers' compensation coverage requirements and compliance, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care

facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

c. The home addresses, telephone numbers, dates of birth, and photographs of current or former nonsworn investigative personnel of the Office of Financial Regulation's Bureau of Financial Investigations whose duties include the investigation of fraud, theft, other related criminal activities, or state regulatory requirement violations; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

d. The home addresses, telephone numbers, dates of birth, and photographs of current or former firefighters certified in compliance with s. 633.408; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment

of the spouses and children of such firefighters; and the names and locations of schools and day care facilities attended by the children of such firefighters are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15, and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

e.(I) The home addresses, dates of birth, and telephone numbers of current or former justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of current or former justices and judges; and the names and locations of schools and day care facilities attended by the children of current or former justices and judges are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-sub-subparagraph ~~sub-subparagraph~~ is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

(II) The business e-mail addresses of current justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges are exempt from s.

119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2023, unless reviewed and saved from repeal through reenactment by the Legislature.

f. The home addresses, telephone numbers, dates of birth, and photographs of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; the names, home addresses, telephone numbers, photographs, dates of birth, and places of employment of the spouses and children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors; and the names and locations of schools and day care facilities attended by the children of current or former state attorneys, assistant state attorneys, statewide prosecutors, or assistant statewide prosecutors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

g. The home addresses, dates of birth, and telephone numbers of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division

of Administrative Hearings, and child support enforcement hearing officers; and the names and locations of schools and day care facilities attended by the children of general magistrates, special magistrates, judges of compensation claims, administrative law judges of the Division of Administrative Hearings, and child support enforcement hearing officers are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

h. The home addresses, telephone numbers, dates of birth, and photographs of current or former human resource, labor relations, or employee relations directors, assistant directors, managers, or assistant managers of any local government agency or water management district whose duties include hiring and firing employees, labor contract negotiation, administration, or other personnel-related duties; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

i. The home addresses, telephone numbers, dates of birth, and photographs of current or former code enforcement officers;

the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

j. The home addresses, telephone numbers, places of employment, dates of birth, and photographs of current or former guardians ad litem, as defined in s. 39.820; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such persons; and the names and locations of schools and day care facilities attended by the children of such persons are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

k. The home addresses, telephone numbers, dates of birth, and photographs of current or former juvenile probation officers, juvenile probation supervisors, detention superintendents, assistant detention superintendents, juvenile justice detention officers I and II, juvenile justice detention officer supervisors, juvenile justice residential officers, juvenile justice residential officer supervisors I and II,

juvenile justice counselors, juvenile justice counselor supervisors, human services counselor administrators, senior human services counselor administrators, rehabilitation therapists, and social services counselors of the Department of Juvenile Justice; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

1. The home addresses, telephone numbers, dates of birth, and photographs of current or former public defenders, assistant public defenders, criminal conflict and civil regional counsel, and assistant criminal conflict and civil regional counsel; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such defenders or counsel; and the names and locations of schools and day care facilities attended by the children of such defenders or counsel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution.

m. The home addresses, telephone numbers, dates of birth, and photographs of current or former investigators or inspectors of the Department of Business and Professional Regulation; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such current

or former investigators and inspectors; and the names and locations of schools and day care facilities attended by the children of such current or former investigators and inspectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

n. The home addresses, telephone numbers, and dates of birth of county tax collectors; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such tax collectors; and the names and locations of schools and day care facilities attended by the children of such tax collectors are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2022, unless reviewed and saved from repeal through reenactment by the Legislature.

o. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel of the Department of Health whose duties include, or result in, the determination or adjudication of eligibility for social security disability benefits, the investigation or prosecution of complaints filed against health care practitioners, or the inspection of health

care practitioners or health care facilities licensed by the Department of Health; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2019, unless reviewed and saved from repeal through reenactment by the Legislature.

p. The home addresses, telephone numbers, dates of birth, and photographs of current or former impaired practitioner consultants who are retained by an agency or current or former employees of an impaired practitioner consultant whose duties result in a determination of a person's skill and safety to practice a licensed profession; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such consultants or their employees; and the names and locations of schools and day care facilities attended by the children of such consultants or employees are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2020, unless reviewed and saved from repeal through reenactment by the Legislature.

q. The home addresses, telephone numbers, dates of birth, and photographs of current or former emergency medical technicians or paramedics certified under chapter 401; the names, home addresses, telephone numbers, dates of birth, and places of employment of the spouses and children of such emergency medical technicians or paramedics; and the names and locations of schools and day care facilities attended by the children of such emergency medical technicians or paramedics are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

r. The home addresses, telephone numbers, dates of birth, and photographs of current or former personnel employed in an agency's office of inspector general or internal audit department whose duties include auditing or investigating waste, fraud, abuse, theft, exploitation, or other activities that could lead to criminal prosecution or administrative discipline; the names, home addresses, telephone numbers, dates of birth, and places of employment of spouses and children of such personnel; and the names and locations of schools and day care facilities attended by the children of such personnel are exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution. This sub-subparagraph is subject to the Open

Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2021, unless reviewed and saved from repeal through reenactment by the Legislature.

3. An agency that is the custodian of the information specified in subparagraph 2. and that is not the employer of the officer, employee, justice, judge, or other person specified in subparagraph 2. shall maintain the exempt status of that information only if the officer, employee, justice, judge, other person, or employing agency of the designated employee submits a written request for maintenance of the exemption to the custodial agency.

4. The exemptions in this paragraph apply to information held by an agency before, on, or after the effective date of the exemption.

Section 2. The Legislature finds that it is a public necessity that business e-mail addresses of the current justices of the Supreme Court, district court of appeal judges, circuit court judges, and county court judges be made exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Art. I of the State Constitution. Public release of such e-mail addresses could result in e-mails from the public or parties to an action regarding pending litigation being sent directly to justices or judges, creating the risk of ex parte communications that could necessitate recusal or other action that may negatively affect judicial efficiency and court schedules. The Legislature further

finds that the harm that may result from the release of such e-mail addresses outweighs any public benefit that may be derived from their disclosure. If the justices' and judges' business e-mail addresses are exempt from public records requirements, the public may still use e-mail to contact a justice or judge through his or her judicial assistant.

Section 3. This act shall take effect July 1, 2018.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 507 (2018)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Civil Justice & Claims Subcommittee

Representative Shaw offered the following:

Amendment

Remove line 98 and insert:

(II) The direct business e-mail addresses of current justices of

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 573 Involuntary Examinations Under the Baker Act
SPONSOR(S): Daniels and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 112

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Quality Subcommittee	13 Y, 0 N	Siples	McElroy
2) Civil Justice & Claims Subcommittee		Tuszynski	Bond
3) Health & Human Services Committee			

SUMMARY ANALYSIS

In 1971, the Legislature passed the Florida Mental Health Act ("Baker Act") to address the mental health needs of individuals in the state. The Baker Act allows for voluntary and, under certain circumstances, involuntary, examinations of individuals suspected of having a mental illness, and establishes procedures for courts, law enforcement, and certain health care practitioners to initiate such examinations.

Currently, the following health care practitioners may initiate the involuntary examination of a person under the Baker Act (some subject to certain training and experience requirements): a physician, a clinical psychologist, a psychiatric nurse, a mental health counselor, a marriage and family therapist, and a clinical social worker.

HB 573 adds advanced registered nurse practitioners and physician assistants to the list of health care practitioners who may initiate the involuntary examination of a person under the Baker Act.

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

The bill has an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Involuntary Examination under the Baker Act

In 1971, the Legislature passed the Florida Mental Health Act (also known as "The Baker Act"[1]), codified in part I of ch. 394, F.S., to address mental health needs in the state.[2] The Baker Act provides the authority and process for the voluntary and involuntary examination of persons who meet certain criteria, and the subsequent inpatient or outpatient placement of such individuals for treatment.

The Department of Children and Families (DCF) administers the Baker Act through receiving facilities which are designated by DCF. The receiving facility may be public or private and provides the initial examination and short-term treatment of persons who meet the criteria under the Baker Act.[3] A person who requires longer term treatment may be transported to a DCF-designated treatment facility. Treatment facilities are state owned, operated, or supported that hospitals, centers, or clinics that are provide extended treatment and hospitalization beyond what is provided in a receiving facility.[4]

Current law allows an involuntary examination if there is reason to believe a person has a mental illness and; because of the illness, the person:[5]

- Has refused a voluntary examination after explanation of the purpose of the exam or is unable to determine for himself or herself that an examination is needed; and
- Is likely to suffer from self-neglect or substantial harm to her or his well-being, or be a danger to himself or herself or others.

A person who is subject to an involuntary examination may not be held longer than 72 hours in a receiving facility.[6]

Courts, law enforcement officers, and certain health care practitioners are authorized to initiate such involuntary examinations.[7] A circuit court may enter an *ex parte* order stating a person meets the criteria for involuntary examination.[8] A law enforcement officer[9] may take a person into custody who

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[1] "The Baker Act" is named for its sponsor, Representative Maxine E. Baker, one of the first two women from Dade County elected to office in the Florida Legislature. As chair of the House Committee on Mental Health, she championed the treatment of mental illness in a manner that would not sacrifice a patient's rights and dignity. Baker served five terms as a member of the Florida House of Representatives from 1963-1972 and was instrumental in the passage of the Florida Mental Health Act. *See* University of Florida Smathers Libraries, *A Guide to the Maxine E. Baker Papers*, *available at* http://www.library.ufl.edu/spec/pkyonge/baker.htm (last visited January 22, 2018), and Department of Children and Families and University of South Florida, Department of Mental Health Law and Policy, *2014 Baker Act User Reference Guide: The Florida Mental Health Act* (2014), *available at* http://www.dcf.state.fl.us/programs/samh/mentalhealth/laws/BakerActManual.pdf (last visited January 22, 2018).

[2] Chapter 71-131, s. 1, Laws of Fla.

[3] S. 394.455(39), F.S.

[4] S. 394.455(47), F.S.

[5] S. 394.463(1), F.S. If the examination period ends on a weekend or a holiday, the person must be released no later than the next working day.

[6] S. 394.463(2)(g), F.S. For those under the age of 18, the examination must be initiated within 12 hours of arrival at the receiving facility.

[7] S. 394.463(2)(a), F.S.

[8] Id.

[9] "Law enforcement officer" means any person who is elected, appointed, or employed full time by any municipality or the state or any political subdivision thereof; who is vested with authority to bear arms and make arrests; and whose primary responsibility is the prevention and detection of crime or the enforcement of the penal, criminal, traffic, or highway laws of the state. This definition includes all certified supervisory and command personnel whose duties include, in whole or in part, the supervision, training, guidance, and management responsibilities of full-time law enforcement officers, part-time law enforcement officers, or auxiliary law enforcement officers but does not include support personnel employed by the employing agency. Section 943.10(1), F.S.

appears to meet the criteria for involuntary examination and transport them to a receiving facility for examination.[10] Health care practitioners may initiate an involuntary examination by executing the *Certificate of Professional Initiating an Involuntary Examination*, an official form adopted in rule by DCF.[11] The health care practitioner must have examined the person within the preceding 48 hours and state that the person meets the criteria for involuntary examination.[12] The Baker Act currently authorizes the following health care practitioners to initiate an involuntary examination by certificate:[13]

- A physician licensed under ch. 458, F.S., or ch. 459, F.S., who has experience in the diagnosis and treatment of mental and nervous disorders, or a physician employed by the United States Department of Veterans Affairs or Department of Defense.[14]
- A clinical psychologist, as defined in s. 490.003(7), F.S., with three years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility.[15]
- A psychiatric nurse who is certified as an advanced registered nurse practitioner under s. 464.012, who has a master's degree or a doctorate in psychiatric nursing, holds a national advanced practice certification as a psychiatric mental health advance practice nurse, and has two years of post-master's clinical experience under the supervision of a physician.[16]
- A mental health counselor licensed under ch. 491, F.S.
- A marriage and family therapist licensed under ch. 491, F.S.
- A clinical social worker licensed under ch. 491, F.S.

Between July 1, 2015 and June 30, 2016, there were 194,354 involuntary examinations initiated in the state. Law enforcement initiated half of the involuntary examinations (50.86 percent), followed closely by mental health professionals (47.27 percent), with the remaining initiated pursuant to *ex parte* orders by judges (1.88 percent).[17]

Physician Assistants

Physician assistant (PA) licensure in Florida is governed by ss. 458.347(7) and 459.022(7), F.S. The Department of Health (DOH) licenses PAs and the Florida Council on Physician Assistants (Council) regulates them.[18] PAs are also regulated by either the Florida Board of Medicine for PAs licensed under ch. 458, F.S., or the Florida Board of Osteopathic Medicine for PAs licensed under ch. 459, F.S. The duty of a board and its members is to make disciplinary decisions concerning whether a doctor or PA has violated the provisions of his or her practice act.[19] There are 9,118 PAs who hold active licenses to practice in Florida.[20]

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[10] Supra, FN 7.
[11] The *Certificate of Professional Initiating an Involuntary Examination* is a form created by the DCF which must be executed by health care practitioners initiating an involuntary examination under The Baker Act. The form contains information related to the person's diagnosis and the health care practitioner's personal observations of statements and behaviors that support the involuntary examination of such person. *See* rule reference in Rule 65E-5.280, F.A.C. The form is also available at: http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/3052b.pdf (last visited January 22, 2018).
[12] S. 394.463(2)(a)3., F.S.
[13] Id.
[14] S. 394.455(32), F.S.
[15] S. 394.455(5), F.S.
[16] S. 394.455(35), F.S.
[17] Christy, A., et al., Baker Act Reporting Center, Louis de la Parte Florida Mental Health Institute, Department of Mental Health Law & Policy, University of South Florida, *Fiscal Year 2015/2016 Report Annual Report* (March 2017), available at http://www.usf.edu/cbcs/baker-act/documents/annual_report.pdf (last visited January 22, 2018).
[18] The Council consists of three physicians who are members of the Board of Medicine; one member who is a member of the Board of Osteopathic Medicine, and a physician assistant appointed by the State Surgeon General. (Sections 458.347(9) and 459.022(8), F.S.)
[19] SS. 458.347(12) and 459.022(12), F.S.
[20] Email correspondence with the Department of Health, dated December 14, 2017 (on file with the Health Quality Subcommittee).

PAs may only practice under the direct or indirect supervision of a medical doctor or doctor of osteopathic medicine with whom they have a clinical relationship.[21] A supervising physician may only delegate tasks and procedures to the PA that are within the supervising physician's scope of practice.[22] The supervising physician is responsible and liable for any acts or omissions of the PA and may not supervise more than four PAs at any time.[23]

To be licensed as a PA in Florida, an applicant must:[24]

- Submit a completed application and appropriate fees.[25]
- Complete of an approved PA training program;
- Obtain a passing score on the National Commission on Certification of Physician Assistant exam;
- Acknowledge any prior felony convictions;
- Submit to a background screening and have no disqualifying offenses;[26]
- Acknowledge any previous revocation or denial of licensure in any state; and
- A copy of course transcripts and a copy of the course description from a PA training program describing the course content in pharmacotherapy if the applicant is seeking prescribing authority.

Licenses are renewed biennially. At the time of renewal, must submit an acknowledgement that he or she has not been convicted of any felony in the previous two years and complete a physician assistant workforce survey.[27]

Florida law does not expressly allow PAs to refer for or initiate involuntary examinations under the Baker Act; however, in 2008, Attorney General Bill McCollum issued an opinion stating:

> A physician assistant pursuant to Chapter 458 or 459, Florida Statutes, may refer a patient for involuntary evaluation pursuant to section 394.463, Florida Statutes, provided that the physician assistant has experience regarding the diagnosis and treatment of mental and nervous disorders and such tasks are within the supervising physician's scope of practice.[28]

PAs are not required by law to have experience in the diagnosis and treatment of mental and nervous disorders.

Advanced Registered Nurse Practitioners

Nurses are licensure are licensed by DOH and regulated by the Board of Nursing pursuant to part I of ch. 464, F.S. Licensure requirements to practice nursing include completion of an approved educational course of study, passage of an examination approved by DOH, and acceptable criminal background screening results.[29]

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[21] SS. 458.347(2)(f) and 459.022(2)(f), F.S., define supervision as responsible supervision and control which requires the easy availability or physical presence of the licensed physician for consultation and direction of the PA.
[22] Rules 64B8-30.012 and 64B15-6.010, F.A.C.
[23] S. 458.347(15) and 459.022(15), F.S.
[24] S. 458.347(7) and 459.022(7), F.S.
[25] The application fee is $100 and the initial license fee is $205. *See* rr. 64B8-30.019, and 64B15-6.013, F.A.C.
[26] S. 456.0135, F.S.
[27] SS. 458.347(7)(b)-(c) and 459.022(7)(b)-(c), F.S.
[28] Op. Att'y Gen. Fla. 08-31 (2008), available at http://www.dcf.state.fl.us/programs/samh/MentalHealth/laws/agopinion.pdf (last visited January 22, 2018).
[29] SS. 464.008 and 464.009, F.S. As an alternative to licensure by examination, a nurse may also be eligible for licensure by endorsement.

A nurse who holds a current license to practice professional nursing may apply to be certified as an Advanced Registered Nurse Practitioner (ARNP), under s. 464.012, F.S., if the nurse meets one or both of the following requirements:

- Certification by a specialty board; or
- Graduation from a program leading to a master's degree in a nursing clinical specialty area with preparation in specialized practitioner skills.

Current law defines three categories of ARNPs: certified registered nurse anesthetists, certified nurse midwives, and nurse practitioners.[30] All ARNPs, regardless of practice category, may only practice within the framework of an established protocol and under the supervision of an allopathic or osteopathic physician or dentist.[31] ARNPs may carry out treatments as specified in statute, including:[32]

- Prescribing, dispensing, administering, or ordering any drug;[33]
- Initiating appropriate therapies for certain conditions;
- Ordering diagnostic tests and physical and occupational therapy;
- Ordering any medication for administration patients in certain facilities; and
- Performing additional functions as determined by rule.[34]

In addition to the above-allowed acts, an ARNP may also perform other acts as authorized by statute and within his or her specialty.[35] Further, if it is within an ARNP's established protocol, the ARNP may establish behavioral problems and diagnosis and make treatment recommendations.[36] There are 27,588 ARNPs who hold active licenses to practice in Florida.[37]

Currently, only ARNPs who are "psychiatric nurses" may initiate involuntary examinations under the Baker Act.[38] To qualify as a psychiatric nurse, an ARNP must have a master's or doctoral degree in psychiatric nursing, hold a national advance practice certification as a psychiatric mental health advanced practice nurse, and have two years post-master's clinical experience.[39]

Effect of Proposed Changes

HB 573 authorizes PAs and ARNPs to initiate involuntary examinations under the Baker Act. A PA or ARNP must execute a certificate stating that a person he or she examined within the preceding 48 hours appears to meet the criteria for an involuntary examination. Under current law, only a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist or clinical social worker may initiate an involuntary examination by executing such a certificate.

The bill defines a "physician assistant" and an "advanced registered nurse practitioner" in the same manner as their respective practice acts (ss. 458.347, 459.022, and 464.003, F.S.).

The bill makes necessary conforming changes due to the statutory changes made by the bill.

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[30] S. 464.012(2), F.S.
[31] S. 464.012(3), F.S.
[32] Id.
[33] An ARNP may only prescribe controlled substances if he or she has graduated from a program leading to a master's or doctoral degree in a clinical nursing specialty area with training in specialized practitioner skills. An ARNP is limited to prescribing a 7-day supply of Schedule II controlled substances. Only a psychiatric nurse may prescribe psychotropic controlled substances for the treatment of mental disorders and psychiatric mental health controlled substances for children younger than 18.
[34] S. 464.003(2), F.S., defines "advanced or specialized nursing practice" to include additional activities that an ARNP may perform as approved by the Board of Nursing.
[35] S. 464.012(4), F.S.
[36] S. 464.012(4)(c)1., F.S.
[37] Email correspondence with the Department of Health, dated December 14, 2017 (on file with the Health Quality Subcommittee).
[38] S. 394.463(2)(a), F.S.
[39] S. 394.455(35). F.S.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.455, F.S., relating to definitions.
Section 2: Amends s. 394.463, F.S., relating to involuntary examinations.
Section 3: Amends s. 39.407, F.S., relating to medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.
Section 4: Amends s. 394.495, F.S., relating to child and adolescent mental health system care; programs and services.
Section 5: Amends s. 394.496, F.S., relating to service planning.
Section 6: Amends s. 394.9085, F.S., relating to behavioral provider liability.
Section 7: Amends s. 409.972, F.S., relating to mandatory and voluntary enrollment.
Section 8: Amends s. 744.2007, F.S., relating to powers and duties.
Section 9: Provides an effective date of July 1, 2018.

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:

None.

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:

No additional rule-making authority is necessary to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to involuntary examinations under the Baker Act; amending s. 394.455, F.S.; defining terms; amending s. 394.463, F.S.; authorizing physician assistants and advanced registered nurse practitioners to execute a certificate under certain conditions stating that they have examined a person and find the person appears to meet the criteria for involuntary examination; amending ss. 39.407, 394.495, 394.496, 394.9085, 409.972, and 744.2007, F.S.; conforming cross-references; providing an effective date.

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

Section 1. Present subsections (5) through (48) of section 394.455, Florida Statutes, are redesignated as subsections (6) through (49), respectively, a new subsection (5) is added to that section, and present subsection (33) is amended, to read:

394.455 Definitions.—As used in this part, the term:

(5) "Advanced registered nurse practitioner" means a person licensed in this state to practice professional nursing and certified in advanced or specialized nursing practice, as defined in s. 464.003.

(34) ~~(33)~~ "Physician assistant" has the same meaning as provided in s. 458.347(2) ~~means a person licensed under chapter~~

~~458 or chapter 459 who has experience in the diagnosis and treatment of mental disorders~~.

Section 2. Paragraph (a) of subsection (2) of section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(2) INVOLUNTARY EXAMINATION.—

(a) An involuntary examination may be initiated by any one of the following means:

1. A circuit or county court may enter an ex parte order stating that a person appears to meet the criteria for involuntary examination and specifying the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on written or oral sworn testimony that includes specific facts that support the findings. If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation, a law enforcement officer, or other designated agent of the court, shall take the person into custody and deliver him or her to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The order of the court shall be made a part of the patient's clinical record. A fee may not be charged for the filing of an order under this subsection. A facility accepting the patient based on this order must send a copy of the order to the department the next working day. The order may be submitted electronically through existing

data systems, if available. The order shall be valid only until the person is delivered to the facility or for the period specified in the order itself, whichever comes first. If no time limit is specified in the order, the order shall be valid for 7 days after the date that the order was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver the person or have him or her delivered to an appropriate, or the nearest, facility within the designated receiving system pursuant to s. 394.462 for examination. The officer shall execute a written report detailing the circumstances under which the person was taken into custody, which must be made a part of the patient's clinical record. Any facility accepting the patient based on this report must send a copy of the report to the department the next working day.

3. A physician, physician assistant, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, ~~or~~ clinical social worker, or an advanced registered nurse practitioner may execute a certificate stating that he or she has examined a person within the preceding 48 hours and finds that the person appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. If other less restrictive means, such as voluntary appearance for outpatient evaluation, are not available, a law enforcement officer shall

take into custody the person named in the certificate and deliver him or her to the appropriate, or nearest, facility within the designated receiving system pursuant to s. 394.462 for involuntary examination. The law enforcement officer shall execute a written report detailing the circumstances under which the person was taken into custody. The report and certificate shall be made a part of the patient's clinical record. Any facility accepting the patient based on this certificate must send a copy of the certificate to the department the next working day. The document may be submitted electronically through existing data systems, if applicable.

Section 3. Paragraph (a) of subsection (3) of section 39.407, Florida Statutes, is amended to read:

39.407 Medical, psychiatric, and psychological examination and treatment of child; physical, mental, or substance abuse examination of person with or requesting child custody.—

(3)(a)1. Except as otherwise provided in subparagraph (b)1. or paragraph (e), before the department provides psychotropic medications to a child in its custody, the prescribing physician shall attempt to obtain express and informed consent, as defined in s. 394.455 ~~s. 394.455(15)~~ and as described in s. 394.459(3)(a), from the child's parent or legal guardian. The department must take steps necessary to facilitate the inclusion of the parent in the child's consultation with the physician. However, if the parental rights of the parent have

been terminated, the parent's location or identity is unknown or cannot reasonably be ascertained, or the parent declines to give express and informed consent, the department may, after consultation with the prescribing physician, seek court authorization to provide the psychotropic medications to the child. Unless parental rights have been terminated and if it is possible to do so, the department shall continue to involve the parent in the decisionmaking process regarding the provision of psychotropic medications. If, at any time, a parent whose parental rights have not been terminated provides express and informed consent to the provision of a psychotropic medication, the requirements of this section that the department seek court authorization do not apply to that medication until such time as the parent no longer consents.

2. Any time the department seeks a medical evaluation to determine the need to initiate or continue a psychotropic medication for a child, the department must provide to the evaluating physician all pertinent medical information known to the department concerning that child.

Section 4. Subsection (3) of section 394.495, Florida Statutes, is amended to read:

394.495 Child and adolescent mental health system of care; programs and services.—

(3) Assessments must be performed by:

(a) A professional as defined in s. 394.455(6), (8), (33),

(36), or (37) ~~s. 394.455(5), (7), (32), (35), or (36)~~;

(b) A professional licensed under chapter 491; or

(c) A person who is under the direct supervision of a qualified professional as defined in s. 394.455(6), (8), (33), (36), or (37) ~~s. 394.455(5), (7), (32), (35), or (36)~~ or a professional licensed under chapter 491.

Section 5. Subsection (5) of section 394.496, Florida Statutes, is amended to read:

394.496 Service planning.—

(5) A professional as defined in s. 394.455(6), (8), (33), (36), or (37) ~~s. 394.455(5), (7), (32), (35), or (36)~~ or a professional licensed under chapter 491 must be included among those persons developing the services plan.

Section 6. Subsection (6) of section 394.9085, Florida Statutes, is amended to read:

394.9085 Behavioral provider liability.—

(6) For purposes of this section, the terms "detoxification services," "addictions receiving facility," and "receiving facility" have the same meanings as those provided in ss. 397.311(26)(a)4., 397.311(26)(a)1., and 394.455(40) ~~394.455(39)~~, respectively.

Section 7. Paragraph (b) of subsection (1) of section 409.972, Florida Statutes, is amended to read:

409.972 Mandatory and voluntary enrollment.—

(1) The following Medicaid-eligible persons are exempt

from mandatory managed care enrollment required by s. 409.965, and may voluntarily choose to participate in the managed medical assistance program:

(b) Medicaid recipients residing in residential commitment facilities operated through the Department of Juvenile Justice or a treatment facility as defined in s. 394.455(48) ~~s. 394.455(47)~~.

Section 8. Subsection (7) of section 744.2007, Florida Statutes, is amended to read:

744.2007 Powers and duties.—

(7) A public guardian may not commit a ward to a treatment facility, as defined in s. 394.455(48) ~~s. 394.455(47)~~, without an involuntary placement proceeding as provided by law.

Section 9. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 691 Self-Service Storage Facilities
SPONSOR(S): Moraitis, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** SB 898

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		Tuszynski	Bond
2) Careers & Competition Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

The "Self Storage Facility Act" regulates self-service storage facilities, which are designed and used for the purpose of renting individual storage space to tenants for the purpose of storing personal property. The owner of a self-service storage facility has a lien on all personal property located at a self-service storage facility for rent, labor, and other charges, including expenses reasonably incurred in the sale or other disposition of such property. To conduct a lien sale the owner is required to take certain steps. One of these steps is that the owner must publish an advertisement of the sale once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility is located. If there is no such newspaper of general circulation, the advertisement must be posted at least 10 days before the sale in at least three conspicuous places in the neighborhood where the self-service storage facility is located.

HB 691 allows an advertisement for sale to be published continuously for 2 consecutive weeks on a public website that customarily conducts personal property auctions as an alternative to publishing once a week for consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility is located. The bill also removes the requirement for the owner, when there is no newspaper of general circulation, to post the advertisement at least 10 days before the sale in at least three conspicuous places in the neighborhood where the self-service storage facility is located.

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

The bill provides an effective date of July 1, 2018

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Self-Service Storage

Part III of ch. 83, F.S. is known as the "Self Storage Facility Act." The Act regulates self-service storage facilities.[1] These facilities are designed and used for the purpose of renting or leasing individual storage space to tenants who are to have access to such space for the purpose of storing and removing personal property.[2]

The owner of a self-service storage facility has a lien[3] on all personal property located at a self-service storage facility for rent, labor, or other charges and expenses necessary for property preservation or reasonably incurred in the sale or other disposition of such property.[4] The lien attaches on the date the personal property is brought to the self-service storage facility.[5]

If a tenant fails to pay the rent on the self-storage facility space when it becomes due, after 5 days the owner may deny the tenant access to the personal property located in the self-service storage facility.

Enforcement of Lien

The owner of the self-storage facility may satisfy his or her lien by conducting a lien sale. The facility owner is required to take certain steps before satisfying the lien.

First, the owner must provide written notice to the tenant prior to the sale of the property, in person or by certified mail to the tenant's last known address and conspicuously posted at the self-service storage facility. The notice must contain a statement showing:

- The amount due;
- The date it became due;
- A description of the property;
- A demand for payment within 14 days; and
- A conspicuous statement that, unless the claim is paid within the time stated in the notice, the personal property will be advertised for sale or other disposition and will be sold or otherwise disposed of at a specified time and place.

If the tenant has not satisfied the balance due after the expiration of the time provided by the notice, the facility owner may advertise for a sale of the property. An advertisement of the sale must be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility is located. If there is no such newspaper of general circulation, the advertisement must be posted at least 10 days before the sale in at least three conspicuous places in the neighborhood where the self-service storage facility is located.[6] The advertisement must include a brief and general description of the property believed to be contained in the storage unit, the address of the facility, the name of the tenant, and the time, place, and manner of the sale or other disposition, which may not be sooner than 15 days after the first publication.[7]

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[1] SS. 83.801 through 83.809, F.S.
[2] S. 83.803(1), F.S.
[3] A lien is a legal right or interest that a creditor has in another's property, lasting usually until a debt or duty that it secures is satisfied. Blacks Law Dictionary (10th ed. 2014), lien.
[4] S. 83.805, F.S.
[5] Id., In the event of default, the owner must give notice to persons who hold perfected security interests under the Uniform Commercial Code in which the tenant is a named debtor.
[6] s. 83.806, F.S.
[7] s. 83.806(4)(a), F.S.

After sale, the facility owner may utilize the proceeds of the sale to pay some or all of the balance due. The facility owner must hold any balance for delivery, on demand, to the tenant. The facility owner must provide notice of any balance to the tenant in person or by certified mail. The balance is considered abandoned if the tenant does not claim it within two years.[8]

Effect of Proposed Language

HB 691 allows an advertisement for sale of the contents of a self-service storage facility to be published continuously for 2 consecutive weeks on a public website that customarily conducts personal property auctions as an alternative to publishing once a week for consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility is located. The bill also removes the requirement, when there is no newspaper of general circulation, for the owner to post the advertisement at least 10 days before the sale in at least three conspicuous places in the neighborhood where the self-service storage facility is located.

B. SECTION DIRECTORY:

Section 1: Amends s. 83.806, F.S., relating to enforcement of a lien.
Section 2: Provides an effective date of July 1, 2018.

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:

Should self-service storage facilities elect to utilize the alternate method for publication allowed in the bill, there may be an indeterminate negative fiscal impact on newspapers of general circulation. To the extent that a lien sale does not cover the balance due and other costs associated with the sale of property, the use of the alternate method for publication may have an indeterminate positive fiscal impact on self-service storage facilities by reducing advertisement costs.

D. FISCAL COMMENTS:

None.

[8] s. 83.806(8), F.S.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to self-service storage facilities; amending s. 83.806, F.S.; providing that advertisement of a sale or disposition of property may be published on certain websites; deleting a required alternative form of advertisement; providing an effective date.

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

Section 1. Subsection (4) of section 83.806, Florida Statutes, is amended to read:

83.806 Enforcement of lien.—An owner's lien as provided in s. 83.805 may be satisfied as follows:

(4) After the expiration of the time given in the notice, an advertisement of the sale or other disposition shall be published once a week for 2 consecutive weeks in a newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located or published continuously for 2 consecutive weeks on a public website that customarily conducts personal property auctions.

(a) A lien sale may be conducted on a public website that customarily conducts personal property auctions. The facility or unit owner is not required to hold a license to post property for online sale. Inasmuch as any sale may involve property of more than one tenant, a single advertisement may be used to

dispose of property at any one sale.

(b) The advertisement shall include:

1. A brief and general description of what is believed to constitute the personal property contained in the storage unit, as provided in paragraph (2)(b).

2. The address of the self-service storage facility or the address where the self-contained storage unit is located and the name of the tenant.

3. The time, place, and manner of the sale or other disposition. The sale or other disposition shall take place at least 15 days after the first publication.

~~(c) If there is no newspaper of general circulation in the area where the self-service storage facility or self-contained storage unit is located, the advertisement shall be posted at least 10 days before the date of the sale or other disposition in at least three conspicuous places in the neighborhood where the self-service storage facility or self-contained storage unit is located.~~

Section 2. This act shall take effect July 1, 2018.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 691 (2018)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Civil Justice & Claims Subcommittee

Representative Moraitis offered the following:

Amendment

Remove line 19 and insert:

continuously for 14 consecutive days on a public website that

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 753 Judicial Nominating Commissions
SPONSOR(S): White
TIED BILLS: **IDEN./SIM. BILLS:** SB 1030

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		Jones	Bond
2) Judiciary Committee			

SUMMARY ANALYSIS

Trial court judicial positions that become vacant during a judge's term and all appellate judicial positions are filled by a system of nomination and appointment in which the Governor must appoint a justice or judge from a list of nominees provided by the relevant judicial nominating commission (JNC). There are separate JNCs for the Supreme Court, each district court of appeal, and each of the twenty judicial circuits. Each JNC has nine volunteer members. Five members are appointed solely by the Governor, and four members are appointed by the Governor from a list of nominees provided by The Florida Bar. Members of the JNCs serve 4-year staggered terms.

HB 753 maintains the current JNC structure of twenty-six 9-member JNCs, keeps five members of each JNC appointed solely by the Governor, and keeps four-year terms. This bill changes the method of selection of the four remaining members of each JNC to provide for appointment by the President of the Senate and the Speaker of the House of Representatives. Each leader will appoint two members of each JNC. Appointments will be staggered.

The bill creates a transition rule and provides that current members of JNCs will serve the remainder of their terms unless removed for cause.

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

The effective date of the bill is July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Trial court judicial positions that become vacant during a judge's term and all appellate judicial positions are filled by the Governor from a list of nominees provided by a judicial nominating commission (JNC).[1] JNCs are required by the Florida Constitution, but the number of members and composition of each JNC is provided for by statute.[2] When an appellate judicial position becomes vacant, candidates submit their applications to the JNC for that court. The commission sends a list of three to six nominees to the Governor, and the Governor must fill the vacancy by selecting from that list.[3] Vacancies on the circuit or county courts that occur between elections are filled in the same manner as vacancies on the appellate bench.[4]

Article V, s. 11(d) of the Florida Constitution provides that JNCs must be created by general law for the Supreme Court, each district court of appeal, and each judicial circuit for all trial courts within that circuit. This constitutional provision is implemented by s. 43.291, F.S., which provides that each JNC consists of nine members appointed by the Governor.[5] Members serve 4-year staggered terms.[6] All JNC members must be residents of the territorial jurisdiction served by the JNC to which the member is appointed.[7]

The Governor appoints five of the nine members of each JNC at the Governor's sole discretion. Two of those five appointees must be members of The Florida Bar who are engaged in the practice of law.[8] The remaining four members of each JNC are appointed by the Governor from a list of nominees provided by the Board of Governors of The Florida Bar. The Board of Governors must submit three nominees for each position. Each of the nominees must be a member of The Florida Bar engaged in the practice of law. The Governor must either select an appointee from the list of nominees or reject all of the nominees and request that the Board of Governors submit a new list of three different recommended nominees.[9] In making appointments, the Governor must "seek to ensure that, to the extent possible, the membership of the commission reflects the racial, ethnic, and gender diversity, as well as the geographic distribution," of the population within the territorial jurisdiction of the JNC.[10] The Governor must also consider the adequacy of representation of each county within the judicial circuit.[11]

A justice or judge may not be a member of a JNC, but a JNC member may hold public office other than judicial office. A member of a JNC is not eligible for appointment, during his or her term of office and for a period of 2 years thereafter, to any state judicial office for which that JNC has the authority to make nominations.[12]

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[1] FLA. CONST. art. V, s. 11.
[2] FLA. CONST. art. V, s. 11(d).
[3] FLA. CONST. art. V, s. 11(a).
[4] FLA. CONST. art. V, s. 11(b).
[5] S. 43.291(1), F.S.
[6] S. 43.291(3), F.S.
[7] S. 43.291(1)(a), (b), F.S.
[8] S. 43.291(1)(b), F.S.
[9] S. 43.291(1)(a), F.S.
[10] S. 43.291(4), F.S.
[11] Id.
[12] S. 43.291(2), F.S.

Effect of the Bill

This bill provides that the President of the Senate and the Speaker of the House of Representatives appoint the four members of each JNC currently selected by the Governor upon nomination by the Board of Governors of The Florida Bar. Those appointees must still be members of The Florida Bar, but the requirement that they be engaged in the practice of law is removed. The Senate President and the House Speaker each appoint two members to each JNC, without any required input from the Governor or The Florida Bar. The Governor still selects the other five members of each JNC.

The bill provides that each current JNC member serves the remainder of his or her term unless removed for cause. For selections to the Supreme Court JNC, the Senate President appoints the members to fill the first and third positions that become vacant, and the House Speaker appoints the members to fill the second and fourth positions. For selections to circuit and district court JNCs with even-numbered districts or circuits, the Senate President appoints the members to fill the first and third positions that become vacant, and the House Speaker appoints the members to fill the second and fourth positions. For selections to circuit and district court JNCs with odd-numbered districts or circuits, the House Speaker appoints the members to fill the first and third positions that become vacant, and the Senate President appoints the members to fill the second and fourth positions. Once a JNC consists of five members appointed by the Governor, two members appointed by the House Speaker, and two members appointed by the Senate President, each subsequent expired term or vacancy is filled by appointment in the same manner as the member whose position is being filled.

This bill is effective July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 43.291, F.S., relating to the manner of appointing JNC members.
Section 2: Provides an effective date of July 1, 2018.

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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

It is unclear under this bill whether the Governor or the House Speaker and Senate President will appoint some of the vacancies that occur on July 1, 2018, pursuant to s. 43.291(3)(a), F.S., since this bill also takes effect July 1, 2018.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to judicial nominating commissions; amending s. 43.291, F.S.; revising the procedures for appointing members to judicial nominating commissions; providing an effective date.

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

Section 1. Paragraph (a) of subsection (1) and subsection (3) of section 43.291, Florida Statutes, are amended to read:

43.291 Judicial nominating commissions.—

(1) Each judicial nominating commission shall be composed of the following members:

(a) Four members of The Florida Bar, ~~appointed by the Governor, who are engaged in the practice of law,~~ each of whom is a resident of the territorial jurisdiction served by the commission to which the member is appointed. The President of the Senate and the Speaker of the House of Representatives ~~The Board of Governors of The Florida Bar~~ shall each appoint two members to fill positions as they expire or are vacated, that previously were held by members nominated by the Board of Governors of the Florida Bar, as follows:

1. For selections to the Supreme Court Judicial Nominating Commission, the President of the Senate shall appoint the members for the first and third positions that become vacant and

the Speaker of the House of Representatives shall appoint the members for the second and fourth positions.

2. For selections to the other judicial nominating commissions:

a. For each even-numbered district court or circuit court, the President of the Senate shall appoint the members for the first and third positions that become vacant and the Speaker of the House of Representatives shall appoint the members for the second and fourth positions.

b. For each odd-numbered district court or circuit court, the Speaker of the House of Representatives shall appoint the members for the first and third positions that become vacant and the President of the Senate shall appoint the members for the second and fourth positions ~~submit to the Governor three recommended nominees for each position. The Governor shall select the appointee from the list of nominees recommended for that position, but the Governor may reject all of the nominees recommended for a position and request that the Board of Governors submit a new list of three different recommended nominees for that position who have not been previously recommended by the Board of Governors~~.

(3) Notwithstanding any other provision of this section, each current member of a judicial nominating commission ~~appointed directly by the Board of Governors of The Florida Bar~~ shall serve the remainder of his or her term, unless removed for

cause. ~~The terms of all other members of a judicial nominating commission are hereby terminated, and the Governor shall appoint new members to each judicial nominating commission in the following manner:~~

~~(a) Two appointments for terms ending July 1, 2002, one of which shall be an appointment selected from nominations submitted by the Board of Governors of The Florida Bar pursuant to paragraph (1)(a);~~

~~(b) Two appointments for terms ending July 1, 2003; and~~

~~(c) Two appointments for terms ending July 1, 2004.~~

Every ~~subsequent~~ appointment, except an appointment to fill a vacant, unexpired term, shall be for 4 years. Each expired term or vacancy shall be filled by appointment in the same manner as the member whose position is being filled.

Section 2. This act shall take effect July 1, 2018.

Amendment No.

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

Committee/Subcommittee hearing bill: Civil Justice & Claims Subcommittee

Representative Grall offered the following:

Amendment

Remove lines 20-66 and insert:

members to fill positions as they expire or are vacated. For each position:

1. The Board of Governors of the Florida Bar shall recommend three qualified individuals for appointment to the position.

2. The President of the Senate or the Speaker of the House of Representatives, as appropriate, shall publish a list of qualified individuals that they are considering for appointment, which list shall include the recommendations of the Board of Governors of the Florida Bar.

3. The President of the Senate or the Speaker of the House of Representatives shall accept comments on the individuals on the list and shall wait at least 30 days after publication of the list before making an appointment ~~submit to the Governor three recommended nominees for each position. The Governor shall select the appointee from the list of nominees recommended for that position, but the Governor may reject all of the nominees recommended for a position and request that the Board of Governors submit a new list of three different recommended nominees for that position who have not been previously recommended by the Board of Governors~~.

(3) Notwithstanding any other provision of this section, each current member of a judicial nominating commission ~~appointed directly by the Board of Governors of The Florida Bar~~ shall serve the remainder of his or her term, unless removed for cause. As to positions that previously were held by members nominated by the Board of Governors of the Florida Bar, replacement at the end of the term shall be as follows:

1. For selections to the Supreme Court Judicial Nominating Commission, the President of the Senate shall appoint the members for the first and third positions that become vacant and the Speaker of the House of Representatives shall appoint the members for the second and fourth positions.

2. For selections to the other judicial nominating commissions:

a. For each even-numbered district court or circuit court, the President of the Senate shall appoint the members for the first and third positions that become vacant and the Speaker of the House of Representatives shall appoint the members for the second and fourth positions.

b. For each odd-numbered district court or circuit court, the Speaker of the House of Representatives shall appoint the members for the first and third positions that become vacant and the President of the Senate shall appoint the members for the second and fourth positions. ~~The terms of all other members of a judicial nominating commission are hereby terminated, and the Governor shall appoint new members to each judicial nominating commission in the following manner:~~

~~(a) Two appointments for terms ending July 1, 2002, one of which shall be an appointment selected from nominations submitted by the Board of Governors of The Florida Bar pursuant to paragraph (1)(a);~~

~~(b) Two appointments for terms ending July 1, 2003; and~~

~~(c) Two appointments for terms ending July 1, 2004.~~

Every ~~subsequent~~ appointment, except an appointment to fill a vacant, unexpired term, shall be for 4 years. Each expired term or vacancy shall be filled by appointment in the same manner as the member whose position is being filled.

Section 2. This act shall take effect January 8, 2019.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 841 Community Associations
SPONSOR(S): Careers & Competition Subcommittee, Moraitis, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** SB 1274

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Careers & Competition Subcommittee	13 Y, 0 N, As CS	Brackett	Anstead
2) Civil Justice & Claims Subcommittee		MM MacNamara	Bond NB
3) Commerce Committee			

SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes (Division), located within the Department of Business and Professional Regulation, has regulatory authority over condominium and cooperative associations. The Division has limited authority regarding homeowner's associations (HOA).

CS/HB 841:

- Removes the time limit on acquisition for classification as a bulk buyer, extending indefinitely the applicability of bulk buyer provisions previously limited to a specific time period.
- Extends the time that condominium associations have to post documents on a website to January 1, 2019.
- Provides that a condominium is not liable for disclosing restricted information unless the disclosure was with a knowing disregard of the restricted information.
- Provides that condominiums must permanently maintain certain official records.
- Removes the term limit provision for condominium board members.
- Allows condominiums to hire attorneys who represent the condominium's management company.
- Provides that condominium board members are recalled if the board determines the recall is facially valid; provides attorney's fees for a recalled board member who prevails in arbitration, and attorney's fees for condominium associations if the arbitrator determines the recalled board member's petition is frivolous.
- Provides that a condominium association may not waive the financial reporting requirements for two years if it fails to respond to the Division's request to provide a financial report to a unit owner.
- Increases the time in which a condominium or cooperative must respond to a unit owners' request to inspect records; requires electronic records related to voting to be retained as official records, and allows notice of board meetings by website.
- Requires that a vote authorizing an alteration or addition to a condominium be held prior to beginning work.
- Amends cooperative law to mirror condominium law regarding removal of board members who are 90 days or more delinquent on payments and restricting co-owners from serving on the board of directors.
- Allows HOAs to provide electronic notice to any member who has provided a fax number or email.
- Amends cooperative common expenses to include communication and information services in bulk contracts.
- Clarifies that HOAs may apply payments for late assessments to interest, fines, and fees before applying the payments to assessments.

The bill is not expected to have a fiscal impact on state or local government.

The effective date of the bill is July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

The Division of Condominiums, Timeshares and Mobile Homes (the Division), a division within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over the following business entities and individuals:

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

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons but have an undivided share of access to common facilities.[1] A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.[2] A declaration governs the relationships among condominium unit owners and the condominium association. All unit owners are members of the condominium association, an entity responsible for the operation of the common elements owned by the unit owners, which operates or maintains real property in which unit owners have use rights. The condominium association is overseen by an elected board of directors, commonly referred to as a "board of administration." The association enacts condominium association bylaws, which govern the administration of the association, including quorum, voting rights, and election and removal of board members.

A cooperative is a form of property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.[3] 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 (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.[4] Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA includes the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents. No state agency has direct oversight of HOAs. Florida law provides procedures and minimum requirements for operating and provides for a mandatory binding arbitration program, administered by the Division, only for certain election disputes.

[1] s. 718.103(11), F.S.
[2] s. 718.104(2), F.S.
[3] s. 719.103(2)(26), F.S.
[4] s. 720.301(9), F.S.

Official Records – Current Situation

Condominium and cooperative associations are required to maintain official records for at least 7 years. The official records must include:

- A copy of the articles of incorporation, declaration, bylaws of and rules of the association;
- Meeting minutes;
- A roster of all unit owners or members, including the electronic mailing addresses and fax numbers of unit owners consenting to receive notice by electronic transmission;
- A copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation;
- Accounting records for the association;
- All contracts for work to be performed including bids;
- A copy of the plans, permits, warranties, and other items provided by the developer;
- All other written records which are related to the operation of the association; and
- All ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners.[5]

Unit owners are able to inspect the official records, and a condominium or cooperative must have the records available for inspection within 5 working days of receiving a request to inspect them.[6]

Official Records – Effect of the Bill

The bill:

- Extends the deadline condominium and cooperative associations have to make records available to unit owners from 5 working days to 10 working days.
- Includes electronic records relating to voting to the list of official records that must be kept by condominium and cooperative associations.
- Provides that a condominium association must permanently maintain the following documents:
    - A copy of the articles of incorporation, declaration, bylaws of and rules of the association;
    - Meeting minutes; and
    - A copy of the plans, permits, warranties, and other items required by the developer.

Condominium websites – Current Situation and Effect of the Bill

By July 1, 2018, a condominium association with 150 or more units that does not manage timeshare units must post certain documents on a website that is only accessible to unit owners and employees of the condominium association. If the condominium association's website must include:

- The recorded declaration of condominium of each condominium operated by the condominium association and each amendment to each declaration;
- The recorded bylaws of the condominium association and each amendment to the bylaws;
- The articles of incorporation of the condominium association, or other documents creating the condominium association and each amendment thereto. The copy posted must be a copy of the articles of incorporation filed with the Department of State;
- The rules of the condominium association;
- Any management agreement, lease, or other contract to which the condominium association is a party or under which the condominium association or the unit owners have an obligation or responsibility. Summaries of bids for materials, equipment, or services must be maintained on the website for 1 year;
- The annual budget and any proposed budget to be considered at the annual meeting;
- The financial report and any proposed financial report to be considered at a meeting;

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[5] ss. 718.111(12)(a), & 719.104(2), F.S.

[6] *Id.*

- The certification of each director;
- All contracts or transactions between the condominium association and any director, corporation, firm, or condominium association that is not an affiliated condominium association or any other entity in which an condominium association director is also a director or officer and financially interested;
- Any contract or document regarding a conflict of interest or possible conflict of interest by a community association manager or a board member;
- The notice of any unit owner meeting and the agenda for the meeting, posted at least 14 days before the meeting. The notice must be posted in plain view on the front page of the website or on a separate subpage of the website labeled "Notices" which is conspicuously visible and linked from the front page; and
- Any documents to be considered during a meeting or listed on the agenda for a meeting. These must be posted at least 7 days before the meeting where the document will be considered.[7]

A condominium may not post the following protected documents or restricted information to its website unless the information or documents are redacted:

- Any record protected by the lawyer-client privilege or the work-product privilege;
- Information obtain by the condominium association in connection with the approval of the lease, sale, or other transfer of a unit;
- Personnel records of condominium association or management company employees;
- Medical records of the unit owners;
- Social security numbers, driver license numbers, credit card numbers, email addresses, telephone numbers, facsimile numbers, emergency contact information, and addresses of a unit owner other than as provided to fulfill notice requirements;
- Electronic security measures that are used to safeguard data, including passwords; and
- The software and operating system used by the condominium association, which allows the manipulation of the data.[8]

The bill extends the deadline condominium associations have to post certain documents to a website from July 1, 2018 to January 1, 2019.

The bill provides that a condominium association may post the complete copies of the bids for materials, equipment, or services in lieu of summaries of bids for materials, equipment, or services. The condominium association must post the copies or summaries of the bids after the bidding has closed.

The bill also provides that a condominium association or agent of a condominium association is not liable for disclosing protected or restricted information unless the disclosure was made with a knowing or intentional disregard of the protected or restricted nature of the information.

Condominium Financial Reporting – Current Situation and Effect of the Bill

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

- Complete an annual financial report for the previous fiscal year within 90 days after the end of the fiscal year, calendar year, or annually on a date provided in the bylaws;
- Provide unit or parcel owners the financial report or notice that the report is available upon request without charge within 21 days after the final financial report is completed by the condominium or received from the third party, but not later than 120 days after the end of the fiscal year or calendar year, or other date as provided in the bylaws; and

[7] s. 718.112(12)(g), F.S.
[8] *Id.*

- Prepare financial statements according to generally accepted accounting principles and in a manner dictated by the total revenue of the association, namely:
    - A condominium having total annual revenues between $150,000 and less than $300,000 must prepare compiled financial statements;
    - A condominium having total annual revenues of at least $300,000 but less than $500,000 must prepare reviewed financial statements;
    - An association having total revenues of $500,000 or more must prepare audited financial statements; and
    - An association with total annual revenue of less than $150,000 must prepare a report of cash receipts and expenditures.[9]

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

If a unit owner does not receive the financial report, he or she may contact the Division to report an association's failure to provide a copy of the financial report within the required time. If the Division determines that the association failed to provide the financial report in a timely manner, the Division will require the association to provide the financial report to the unit owner and the Division within five business days. If the association fails to comply with the Division's request the association may not waive the financial annual financial reporting requirements.

The bill provides that if an association fails to comply with the Division's request the association may not waive the financial annual financial reporting requirements for the fiscal year in which the unit owner's request is made and the following fiscal year.

Alterations or Additions to Condominium Property-Current Situation and Effect of the Bill

Condominiums are required to maintain the property of the condominium. In order to maintain condominium property, condominiums may provide a specific procedure to approve material alterations or additions to condominium property in the condominium's declaration, which is the document creating the condominium. If a condominium's declaration does not provide a procedure to approve material alterations or additions then approval by 75 percent of the voting interests is required to approve any material alterations or additions. It is not clear in current statute if the approval must occur before work begins on the additions or alterations.

The bill provides that approval by 75 percent of voting interests must be obtained prior to work beginning on the material alterations or additions of condominium property.

Condominium Conflicts of Interest – Current Law and Effect of the Bill

Current law provides that a condominium may not hire an attorney who represents the condominium's management company.[10]

The bill repeals the provision that a condominium may not hire an attorney who represents the condominium's management company.

Condominium, Cooperative, HOA Fines and Suspension – Current Law and Effect of the Bill

Condominium and cooperative associations and HOAs may levy fines and suspensions against a unit or parcel owner, the unit or parcel's occupant, or a guest of the unit owner for failing to comply with any provision in the condominium's declaration, bylaws, or the condominium's rules.[11]

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[9] s. 718.111(13), F.S.,
[10] s. 718.111(3), F.S.
[11] ss. 718.303(3), 719.303(3), & 720.305(2), F.S.

A board may not impose a fine or suspension unless it gives at least 14 days written notice of the imposed fine or suspension, and the opportunity for a hearing. The hearing must be held before a committee of unit owners who are not board members or residing in a board member's household. The role of the committee is to determine whether to confirm or reject the fine or suspension. For condominiums, the committee must approve the fine or suspension by a majority vote otherwise the board may not impose the fine or suspension. The committee for cooperative associations must agree with the fine or suspension otherwise the cooperative may not approve the fine or suspension.[12] HOAs must provide written notice of any fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any tenant, licensee, or invitee of the parcel owner.[13] Current law does not provide a date for when a fine is due once the committee has approved the fine.

The bill provides that a fine approved by the committee is due five days after the date of the committee meeting.

The bill provides that the committee for a condominium and cooperative association must be made up of at least three members who are appointed by the board, and are not officers, board members, employees of the association, or a spouse, parent, child, brother, or sister of an officer, board member, or employee of the association.

The committee for a cooperative association must approve the fine or suspension by majority vote otherwise the association may not impose the fine or suspension.

The condominium or cooperative must provide written notice of any fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or guest of the unit owner.

Notice of Board Meetings for Condominiums, Cooperatives, and HOAs – Current Situation

Associations are required to notice all board meetings by posting notice in a conspicuous place on the association's property for at least 48 hours. Notice must be posted 14 days before meetings where a nonemergency special assessment or an amendment to the rules regarding unit use is considered.[14]

If a parcel owner in a HOA provides written consent, the HOA may provide the parcel owner notice by electronic transmission for board meetings, committee meetings, annual meetings, and special meetings.[15]

Condominium and cooperative associations are required to notice all member meetings by mailing, hand delivering, or electronically transmitting notice at least 14 days before the meeting. They must also post notice in a conspicuous place at least 14 days before the meeting. If a condominium or cooperative association opts to broadcast notice in lieu of posting notice it must broadcast notice at least four times every broadcast hour of each day for 14 days.[16]

Notice of Board Meetings – Effect of the Bill

The bill allows condominium and cooperative associations to adopt rules for noticing all board and unit owner meetings on a website if the time requirements for physically posting the board meetings are met. Any rule adopted for website notice must include a requirement that the association send an electronic notice providing a hyperlink to the website where the notice is posted, to all unit owners

[12] s. 719.303(3), F.S.
[13] s. 720.305(2), F.S.
[14] ss. 718.112(2)(c), 720.303(2)(c), & 719.106(1)(c)(1), F.S.
[15] s. 720.303(2)(c), F.S.
[16] ss. 718.112(2)(d) & 719.106(1)(d), F.S.

whose email addresses are part of the official records, and in the same manner as notice for a meeting of the members. Notice by website must be in addition to the other notice requirements.

Any owner who consents to receiving notice for a meeting by electronic transmission is responsible for removing or bypassing any filters that block receipt of mass emails sent to members by an association for the purpose of giving notice.

The bill allows a HOA to give notice by electronic transmission to any parcel owner who provided written consent and a fax number or email address to the HOA.

Communication by Board Members for Cooperatives and HOAs – Current Situation and Effect of the Bill

It is not clear if board members for cooperative associations and HOAs may use email as a form of communication. Board members for condominium associations may use email as a form of communication.[17]

The bill allows members of the board of directors for cooperative associations and HOAs to use email as a form of communication. However, a board member may not cast a vote via email.

Cooperative Common Expenses and Bulk Contracts – Current Situation and Effect of the Bill

Common expenses are normal costs incurred by a cooperative association and include:

- Costs for the operation, maintenance, repair, or replacement of cooperative property;
- Costs of carrying out the powers and duties of the cooperative; or
- Costs designated by the cooperative as a common expense.[18]

Common expenses are paid by the unit owners of a cooperative association and are included in a cooperative association's annual budget to its members.[19]

Cooperative associations may provide in their bylaws that bulk contracts for the cost of a master antenna television system or franchised cable television service are common expenses. Unlike condominiums, cooperatives may not provide bulk contracts for the cost of communication services defined in ch. 202, F.S., information services, or internet services as common expenses.[20]

Chapter 202, F.S., defines communication services to mean the transmission, conveyance, or routing of:

- voice, data, audio, video; or
- any other information or signals, including:
  - video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave; or
  - other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.
- The term also includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added.

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[17] s. 718.112(2)(c), F.S.
[18] ss. 719.103(9), & 719.107, F.S.
[19] s. 719.103(1), & 719.106(1)(j), F.S.
[20] ss. 719.107, & 718.115(1)(d), F.S.

Examples of communication services include:

- Cable and satellite television
- Video and music streaming
- Telephones
- Mobile communications, and similar services[21]

Information service is defined as the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using or making available information via communications services.[22] The term also includes data processing and other services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser whose primary purpose for the underlying transaction is the processed data or information. The term does not include video service.

The bill amends cooperative association law to mirror condominium association law by providing that bulk contracts for communication services defined in ch. 202, F.S., internet services, and information services may be considered a common expense.

Cooperatives' Board of Directors and Board Members – Current Situation and Effect of the Bill

Cooperative associations are administered by a board of directors whose members are elected. The board consists of unit owners who have been elected to serve on the board. Directors of the board nominate officers, including president, secretary, and treasurer. The officers are responsible for the duties that are customarily performed by their counterparts in corporations.[23]

Unlike condominiums, cooperative associations are not required to have a provision that a director or officer is deemed to have abandoned their post if the officer or director is more than 90 days delinquent in the payment of any monetary obligation to the association.[24]

Additionally, cooperative associations do not have a provision that prevents co-owners of a unit in residential condominiums that are more than 10 units from serving on the board at the same time unless the co-owners own more than one unit or there are not enough eligible candidates to fill vacancies on the board.[25]

Condominium association board members serve one year terms, but a board member may serve a two year term if the association's bylaws or articles of incorporation allow it. Board members may not serve more than four consecutive 2-year terms, unless approved by two-thirds of the total voting interests or there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.[26]

The bill amends cooperative association law to mirror condominium association law by providing that:

- A director or officer is deemed to have abandoned their office if the officer or director is more than 90 days delinquent in the payment of any monetary obligation to the association; and
- In residential cooperatives that are more than 10 units, co-owners of a unit may not serve as members on the board at the same time unless the co-owners own more than one unit or there are not enough eligible candidates to fill vacancies on the board.

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[21] Florida Department of Revenue, *Florida Communications Services Tax*, http://floridarevenue.com/taxes/taxesfees/Pages/cst.aspx (last visited on Jan. 25, 2018).
[22] s. 202.11(5), F.S.
[23] s. 719.106(1), F.S.
[24] s. 718.112(2), F.S.
[25] *Id.*
[26] s. 718.112(2)(d), F.S.

The bill repeals the provision that condominium association board members may not serve more than four consecutive 2-year terms. The bill also provides that board member terms are two years, unless a shorter term is specified by an association's bylaws or articles of incorporation.

Board Member Recall – Current Situation

A member of a condominium association board may be recalled and removed from office by a majority of all the voting interests of the association at a special meeting or by an agreement in writing by a majority of all voting interests.[27]

If a recall is approved by a majority of all voting interests by vote at a special meeting, the board must notice and hold a board meeting within 5 business days of the special meeting to recall the board member or members. The recall is effective immediately and the recalled member or members must turn any records and association property in their possession to the board within 10 days of the vote.[28]

If a recall is approved in writing by a majority of all voting interests, the agreement or a copy of the agreement must be served on the condominium by certified mail or personal service. The board must notice and hold a meeting to recall the board member or members within 5 business days of being served. The recall is effective immediately and the recalled member or members must turn any records and association property in their possession to the board within 10 days.[29]

If a board fails to notice and hold a meeting within 5 business days of the unit owner's vote or receiving the written agreement, the recall is deemed effective and the recalled board member or members must turn over any records and association property to the board within 10 days.[30]

If the board fails to notice and hold the required meeting or fails to file the required petition, the unit owner representative may file a petition to the Division for arbitration challenging the board's failure to act. The petition must be filed within 60 days after the expiration of the applicable 5 business day period. However, the Division may not accept the petition if there are 60 days or fewer until the reelection of the board member or 60 days or less have elapsed since the election of the board member. The review of a petition is limited to the sufficiency of service on the board and the facial validity of the written agreement or ballots filed.[31]

A recalled board member may file a petition to the Division for arbitration challenging the validity of the recall. The petition must be filed within 60 days of the recall. The petition must name the condominium and the unit owner as the respondents.[32]

The prevailing party in arbitration shall be awarded attorney's fees in the amount determined by the arbitrator.[33]

Board Member Recall – Effect of the Bill

The bill provides the requirement that a board must hold a meeting within 5 days of the unit owners' vote or receiving a written agreement, in order to determine if the vote or written agreement is facially valid. If the board determines the vote or written agreement is facially valid, the recall becomes effective upon the conclusion of the meeting.

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[27] 718.112(2)(j), F.S.
[28] *Id.*
[29] *Id.*
[30] *Id.*
[31] *Id.*
[32] *Id.*
[33] 718.1255(4)(k), F.S.

The bill provides that a recalled board member may challenge the facial validity of the written agreement to recall, the ballots filed, or the substantial compliance with the procedural requirements for the recall.

If an arbitrator determines a board member's recall is invalid, the recall is null and void and the board member must be immediately reinstated. A board member who successfully challenges a recall is entitled to reasonable costs and attorney's fees from the respondents. An arbitrator may award reasonable costs and attorney's fees to the respondents if the arbitrator determines a recalled board member's request for arbitration is frivolous.

Bulk Assignees and Bulk Buyer – Current Situation

In 2010, the Legislature passed the Distressed Condominium Relief Act (Act) in order to relieve developers, lenders, unit owners, and condominium associations from certain provisions of the Florida Condominium Act. The Act was intended to relieve specific parties from certain liabilities so as to enable economic opportunities for successor purchasers of distressed condominiums.

Specifically, the Act created categories of "bulk buyers" and "bulk assignees." A bulk assignee is a person who acquires more than seven condominium parcels as provided in s. 718.703, F.S., and receives an assignment of some or all of the rights of the developer under specified recording documents. Similarly, a bulk buyer is a person who acquires more than seven condominium parcels, but who does not receive an assignment of developer rights other than the right to: conduct sales, leasing, and marketing activities within the condominium; be exempt from payment of working capital contributions; and be exempt from rights of first refusal. [34]

Because the Act was created in reaction to the "massive downturn in the condominium market which has occurred throughout the state," it was not intended to be open-ended. Rather, the intent of the Legislature was to enact the relief only for a specific and defined period:[35]

> "The Legislature further finds and declares that this situation cannot be open-ended without potentially prejudicing the rights of unit owners and condominium associations, and thereby declares that the provisions of this part may be used by purchasers of condominium inventory for only a specific and defined period."

Originally, the time limitation for classification as a bulk assignee or bulk buyer was until July 1, 2012.[36] In 2012, the Legislature extended the time limitation to July 1, 2015.[37] In 2014, the legislature again amended s. 718.707, F.S., to extend to July 1, 2016.

Finally, in 2015, the legislature again amended s. 718.707, F.S., to provide that a person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the parcels were acquired between July 1, 2010, and July 1, 2018.

Bulk Assignees and Bulk Buyer – Effect of the Bill

The bill removes the time limit on acquisition for classification as a bulk buyer, extending the applicability of the bulk buyer provisions indefinitely.

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[34] s. 718.703, F.S.
[35] s. 718.702, F.S.
[36] Ch. 10-174, Laws of Fla.
[37] Ch. 12-61, Laws of Fla.

HOA Elections – Current Situation and Effect of the Bill

HOAs are administered by a board of directors whose members are elected.[38] HOAs are required to hold board of director elections at its annual meeting or as provided in its governing documents.[39] Elections are conducted in accordance with the procedures set forth in the governing documents of the association. An election is not required unless more candidates are nominated than vacancies exist.[40]

The bill provides that if an election is not required because there are fewer or equal candidates than vacancies, and nominations from the floor are not required, then write-in nominations are not permitted. The candidates will commence service on the board of directors regardless of whether a quorum was attained at the annual meeting.

Payment of HOA Assessments – Current Situation and Effect of the Bill

HOAs are authorized to impose assessments on owners. Assessments are sums of money owed by parcel owners to an HOA to fund the HOA.[41] If assessments or installments of assessments are not paid timely, then they will accrue interest. Any payment received by a HOA for payment of an assessment or installment that accrued interest will first be applied to the interest accrued, then to any administrative late fee, then to any costs and reasonable attorney fees, and then to the delinquent assessment.[42] The order of payments is the same as condominium law.

The Florida Uniform Commercial Code (UCC) allows a debtor to make a restrictive notation on a payment instrument. Accepting the payment instrument with the notation may then be considered an accord and satisfaction of the outstanding debt.[43]

The bill provides that this application of the payment in HOA law applies notwithstanding the UCC. The bill further provides that this is intended to clarify existing law.

B. SECTION DIRECTORY:

Section 1. Amends s. 718.111, F.S, providing that attorneys may represent condominiums and management companies, amending requirements of official records for condominiums, limiting a condominium's liability for inadvertent disclosure of protected or restricted information, and amending penalties for condominiums who fail to provide financial reports to unit owners.

Section 2. Amends s. 718.112, F.S., providing for meeting notices by website, removing term limits for board members, and amending the provisions for the recall of condominium board members.

Section 3. Amends s. 718.113, F.S., amending voting requirements for alterations or additions to condominium property.

Section 4. Amends s. 718.3026, F.S. removing requirements relating to conflicts of interest for condominiums.

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[38] ss. 720.303 & 720.307, F.S.
[39] s. 720.306(2), F.S.
[40] *Id.*
[41] Charles F. Dudley & Peter Dunbar, The Law of Florida Homeowners Associations, 5 (9th ed. 2012-13).
[42] s. 720.3085(3), F.S.
[43] s. 673.3111, F.S. The UCC is a set of regulations adopted by all 50 states with the goal of harmonizing the laws of commercial transactions throughout the United States. Duke Law, *Uniform Commercial Code*, https://law.duke.edu/lib/researchguides/ucc/ (last visited on Jan. 25, 2018).

Section 5. Amends s. 718.3027, F.S., providing requirements relating to conflicts of interest for condominiums.

Section 6. Amends s. 718.303, F.S., revising requirements for fines or suspensions for condominiums.

Section 7. Amends s. 718.707, F.S., revising the time period for classifications of bulk buyer and assignee for condominiums.

Section 8. Amends s. 719.104, F.S., amending requirements of official records for cooperatives.

Section 9. Amends s. 719.106, F.S., providing for meeting notices by website and revising requirements for cooperative board members.

Section 10. Amends s. 719.107, F.S., revising requirements for cooperative common expenses.

Section 11. Amends s. 719.303, F.S., revising requirements for cooperative fines and suspensions.

Section 12. Amends s. 720.303, F.S., revising email requirements for board members.

Section 13. Amends s. 720.305, F.S., revising requirements for HOA fines and suspensions.

Section 14. Amends 720.306, F.S., revising HOA board member election requirements.

Section 15. Amends s. 720.3085, F.S., providing for the payment of HOA assessments.

Section 16. Provides an effective date.

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:

None.

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 23, 2018, the Careers & Competition Subcommittee adopted a strike-all amendment and reported the bill favorably as a committee substitute. The committee substitute:

- Removes the term limits for condominium association board members and provides that terms are for two years or less.
- Provides that a condominium association or agent of a condominium association is not liable for disclosing protected or restricted information unless the disclosure was made with a knowing or intentional disregard of the protected or restricted nature of the information.
- Provides that a condominium association must permanently maintain certain official records instead of for seven years.
- Extends the deadline for condominium associations required to create a website from July 1, 2018 to January 1, 2019.
- Provides that a condominium association must post any contract or document regarding a conflict of interest by a board member on its website, thereby maintaining current law.
- Provides that a condominium association must post complete copies of bids for materials, equipment, or summaries of bids after the bidding has closed.
- Removes the provision that homeowners' associations must fund reserve accounts, thereby maintaining current law.
- Removes the provision that homeowners' associations must notify potential owners that the budget of an association may not include sufficient funds for reserve funds, thereby maintaining current law.

This analysis is drafted to the committee substitute as passed by the Careers & Competition Subcommittee.

A bill to be entitled

An act relating to community associations; amending s. 718.111, F.S.; revising condominium association recordkeeping and financial reporting requirements; revising record retention policies; revising the list of documents that the association is required to post online; limiting an association's liability for inadvertent disclosure of protected or restricted information; amending s. 718.112, F.S.; revising provisions relating to required association bylaws; removing board term limits; authorizing an association to adopt rules for posting certain notices on a website; providing responsibilities for unit owners who receive electronic notices; revising and providing board member recall and challenge requirements; authorizing the recovery of attorney fees and costs in an action to challenge the validity of a board member recall; amending s. 718.113, F.S.; revising voting requirements relating to alterations and additions to certain common elements or association property; amending s. 718.3026, F.S.; removing a provision relating to certain contracts or transactions regarding conflicts of interest; amending s. 718.3027, F.S.; providing requirements for proposed activity that is identified as a conflict of interest; amending

s. 718.303, F.S.; revising fine and suspension requirements; amending s. 718.707, F.S.; revising the time period for classification as a bulk assignee or bulk buyer; amending s. 719.104, F.S.; revising cooperative association recordkeeping requirements; amending s. 719.106, F.S.; revising requirements to serve as a board member; prohibiting a board member from voting via e-mail; authorizing an association to adopt rules for posting certain notices on a website; providing responsibilities for unit owners who receive electronic notices; providing that directors or officers who are delinquent in certain payments owed in excess of certain periods of time be deemed to have abandoned their offices; amending s. 719.107, F.S.; specifying that certain services which are obtained pursuant to a bulk contract are deemed a common expense; amending s. 719.303, F.S.; revising fine and suspension requirements; amending s. 720.303, F.S.; prohibiting a board member from voting via e-mail; amending s. 720.305, F.S.; revising fine and suspension requirements; amending s. 720.306, F.S.; revising election requirements; amending s. 720.3085, F.S.; providing applicability; providing an effective date.

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

Section 1. Subsection (3), paragraphs (a), (b), and (g) of subsection (12), and paragraph (e) of subsection (13) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(3) POWER TO MANAGE CONDOMINIUM PROPERTY AND TO CONTRACT, SUE, AND BE SUED~~; CONFLICT OF INTEREST~~.—

~~(a)~~ The association may contract, sue, or be sued with respect to the exercise or nonexercise of its powers. For these purposes, the powers of the association include, but are not limited to, the maintenance, management, and operation of the condominium property. After control of the association is obtained by unit owners other than the developer, the association may institute, maintain, settle, or appeal actions or hearings in its name on behalf of all unit owners concerning matters of common interest to most or all unit owners, including, but not limited to, the common elements; the roof and structural components of a building or other improvements; mechanical, electrical, and plumbing elements serving an improvement or a building; representations of the developer pertaining to any existing or proposed commonly used facilities; and protesting ad valorem taxes on commonly used facilities and on units; and may defend actions in eminent domain or bring inverse condemnation actions. If the association has the

authority to maintain a class action, the association may be joined in an action as representative of that class with reference to litigation and disputes involving the matters for which the association could bring a class action. Nothing herein limits any statutory or common-law right of any individual unit owner or class of unit owners to bring any action without participation by the association which may otherwise be available.

~~(b) An association may not hire an attorney who represents the management company of the association.~~

(12) OFFICIAL RECORDS.—

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

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

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

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

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

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

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

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail ~~electronic mailing~~ addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail ~~electronic mailing~~ addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)3.e. However, the association is not liable for an inadvertent disclosure of the e-mail ~~electronic mail~~ address or facsimile number for receiving electronic transmission of notices.

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

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

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

11. Accounting records for the association and separate

accounting records for each condominium that the association operates. ~~All accounting records must be maintained for at least 7 years.~~ Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

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

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association.

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

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

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

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

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

17. Bids for materials, equipment, or services.

(b) The official records specified in subparagraphs (a)1.-6. must be permanently maintained from the inception of the association. All other official records ~~of the association~~ must be maintained within the state for at least 7 years, unless otherwise provided by general law. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 ~~5~~ working days after receipt of a written request by the board or its designee. However, such distance requirement does not apply to an association governing a timeshare condominium. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association may offer the option of making the records available to a unit

owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.

(g)1. By January ~~July~~ 1, 2019 ~~2018,~~ an association managing a condominium with 150 or more units which does not contain ~~manage~~ timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website.

a. The association's website must be:

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

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

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

of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website that contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment thereto. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. Any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or

services must be maintained on the website for 1 year. In lieu of summaries, complete copies of the bids may be posted.

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

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

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

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2)(b)6. and 718.3027(3) ~~ss. 468.436(2) and 718.3026(3)~~.

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website, or on a separate subpage of the website labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the

information within the document will be considered.

1. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice pursuant to s. 718.112(2)(c).

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed ~~permitted~~ to be accessible to unit owners, are not posted on the association's website. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website, the association shall ensure the information is redacted before posting the documents online. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted pursuant to this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

(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 furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the most recent financial report or a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and addressing the financial reporting requirements for multicondominium associations. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association. Financial reports shall be prepared as follows:

(e) A unit owner may provide written notice to the division of the association's failure to mail or hand deliver him or her a copy of the most recent financial report within 5 business days after he or she submitted a written request to the association for a copy of such report. If the division

determines that the association failed to mail or hand deliver a copy of the most recent financial report to the unit owner, the division shall provide written notice to the association that the association must mail or hand deliver a copy of the most recent financial report to the unit owner and the division within 5 business days after it receives such notice from the division. An association that fails to comply with the division's request may not waive the financial reporting requirement provided in paragraph (d) for the fiscal year in which the unit owner's request was made and the following fiscal year. A financial report received by the division pursuant to this paragraph shall be maintained, and the division shall provide a copy of such report to an association member upon his or her request.

Section 2. Paragraphs (a), (c), (d), and (j) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

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

(a) Administration.—

1. The form of administration of the association shall be described indicating the title of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and

boards. In the absence of such a provision, the board of administration shall be composed of five members, unless the ~~except in the case of a~~ condominium ~~which~~ has five or fewer units. The board shall consist of not fewer than three members in condominiums with five or fewer units that are not-for-profit corporations~~, in which case in a not-for-profit corporation the board shall consist of not fewer than three members~~. In the absence of provisions to the contrary in the bylaws, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of such officers customarily performed by officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them the duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board of administration. Unless otherwise provided in the bylaws, the members of the board shall serve without compensation.

2. When a unit owner of a residential condominium files a written inquiry by certified mail with the board of administration, the board shall respond in writing to the unit owner within 30 days after receipt of the inquiry. The board's response shall either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested

from the division. If the board requests advice from the division, the board shall, within 10 days after its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the board shall, within 60 days after the receipt of the inquiry, provide in writing a substantive response to the inquiry. The failure to provide a substantive response to the inquiry as provided herein precludes the board from recovering attorney fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. The association may through its board of administration adopt reasonable rules and regulations regarding the frequency and manner of responding to unit owner inquiries, one of which may be that the association is only obligated to respond to one written inquiry per unit in any given 30-day period. In such a case, any additional inquiry or inquiries must be responded to in the subsequent 30-day period, or periods, as applicable.

(c) Board of administration meetings.—Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The

division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose. An item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the board members. Such emergency action must be noticed and ratified at the next regular board meeting. ~~However,~~ Written notice of a meeting at which a nonemergency special assessment or an amendment to rules regarding unit use will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property at least 14 days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association. Notice of any meeting in which regular or special assessments against unit owners are to

be considered must specifically state that assessments will be considered and provide the estimated cost and description of the purposes for such assessments. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium ~~or association~~ property where all notices of board meetings must be posted. If there is no condominium property ~~or association property~~ where notices can be posted, notices shall be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the meeting. In lieu of or in addition to the physical posting of the notice on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice physically posted on condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously

posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. ~~Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the nature, estimated cost, and description of the purposes for such assessments.~~

2. Meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this section, unless those meetings are exempted from this section by the bylaws of the association.

3. Notwithstanding any other law, the requirement that board meetings and committee meetings be open to the unit owners does not apply to:

a. Meetings between the board or a committee and the

association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice; or

b. Board meetings held for the purpose of discussing personnel matters.

(d) Unit owner meetings.—

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

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must ~~shall~~ be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members

may stand for reelection unless prohibited by the bylaws. Each term may not exceed 2 years, unless a shorter term is specified ~~Board members may serve 2-year terms if permitted~~ by the bylaws or articles of incorporation. ~~A board member may not serve more than four consecutive 2-year terms, unless approved by an affirmative vote of two-thirds of the total voting interests of the association or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.~~ If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, coowners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a

candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must include an agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days

before the annual meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property ~~or association property~~ where all notices of unit owner meetings must ~~shall~~ be posted. This requirement does not apply if there is no condominium property ~~or association property~~ for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property.

Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies

may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information

sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not authorize ~~permit~~ any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or

she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

c. Any challenge to the election process must be commenced

within 60 days after the election results are announced.

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

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass emails sent to members on behalf of the association in the course of giving electronic notices.

7. Unit owners have the right to participate in meetings of unit owners with reference to all designated agenda items. However, the association may adopt reasonable rules governing

the frequency, duration, and manner of unit owner participation.

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

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

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

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an association of 10 or fewer units may, by affirmative vote of a majority of the total voting interests, provide for different voting and election procedures in its bylaws, which may be by a proxy specifically delineating the different voting and election procedures. The different voting and election procedures may provide for elections to be conducted by limited or general proxy.

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

1. If the recall is approved by a majority of all voting interests by a vote at a meeting, the recall will be effective as provided in this paragraph. The board shall duly notice and hold a board meeting within 5 full business days after the adjournment of the unit owner meeting to recall one or more board members. Such member or members shall be recalled

effective immediately upon conclusion of the board meeting provided that the recall is facially valid. A recalled member must ~~and shall~~ turn over to the board, within 10 full business days after the vote, any and all records and property of the association in their possession.

2. If the proposed recall is by an agreement in writing by a majority of all voting interests, the agreement in writing or a copy thereof shall be served on the association by certified mail or by personal service in the manner authorized by chapter 48 and the Florida Rules of Civil Procedure. The board of administration shall duly notice and hold a meeting of the board within 5 full business days after receipt of the agreement in writing. Such member or members shall be recalled effective immediately upon the conclusion of the board meeting provided that the recall is facially valid. A recalled member must ~~and shall~~ turn over to the board, within 10 full business days, any and all records and property of the association in their possession.

3. If the board fails to duly notice and hold a board meeting within 5 full business days after service of an agreement in writing or within 5 full business days after the adjournment of the unit owner recall meeting, the recall shall be deemed effective and the board members so recalled shall turn over to the board within 10 full business days after the vote any and all records and property of the association.

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

5. If a vacancy occurs on the board as a result of a recall or removal and less than a majority of the board members are removed, the vacancy may be filled by the affirmative vote of a majority of the remaining directors, notwithstanding any provision to the contrary contained in this subsection. If vacancies occur on the board as a result of a recall and a majority or more of the board members are removed, the vacancies shall be filled in accordance with procedural rules to be adopted by the division, which rules need not be consistent with this subsection. The rules must provide procedures governing the conduct of the recall election as well as the operation of the association during the period after a recall but before the recall election.

6. A board member who has been recalled may file a petition pursuant to s. 718.1255 challenging the validity of the recall. The petition must be filed within 60 days after the

recall. The association and the unit owner representative shall be named as the respondents. The petition may challenge the facial validity of the written agreement or ballots filed or the substantial compliance with the procedural requirements for the recall. If the arbitrator determines the recall was invalid, the petitioning board member shall immediately be reinstated and the recall is null and void. A board member who is successful in challenging a recall is entitled to recover reasonable attorney fees and costs from the respondents. The arbitrator may award reasonable attorney fees and costs to the respondents if they prevail, if the arbitrator makes a finding that the petitioner's claim is frivolous.

7. The division may not accept for filing a recall petition, whether filed pursuant to subparagraph 1., subparagraph 2., subparagraph 4., or subparagraph 6. when there are 60 or fewer days until the scheduled reelection of the board member sought to be recalled or when 60 or fewer days have elapsed since the election of the board member sought to be recalled.

Section 3. Subsection (2) of section 718.113, Florida Statutes, is amended to read:

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

(2)(a) Except as otherwise provided in this section, there

shall be no material alteration or substantial additions to the common elements or to real property which is association property, except in a manner provided in the declaration as originally recorded or as amended under the procedures provided therein. If the declaration as originally recorded or as amended under the procedures provided therein does not specify the procedure for approval of material alterations or substantial additions, 75 percent of the total voting interests of the association must approve the alterations or additions before the material alterations or substantial additions are commenced. This paragraph is intended to clarify existing law and applies to associations existing on July 1, 2018 ~~October 1, 2008~~.

(b) There shall not be any material alteration of, or substantial addition to, the common elements of any condominium operated by a multicondominium association unless approved in the manner provided in the declaration of the affected condominium or condominiums as originally recorded or as amended under the procedures provided therein. If a declaration as originally recorded or as amended under the procedures provided therein does not specify a procedure for approving such an alteration or addition, the approval of 75 percent of the total voting interests of each affected condominium is required before the material alterations or substantial additions are commenced. This subsection does not prohibit a provision in any declaration, articles of incorporation, or bylaws as originally

recorded or as amended under the procedures provided therein requiring the approval of unit owners in any condominium operated by the same association or requiring board approval before a material alteration or substantial addition to the common elements is permitted. This paragraph is intended to clarify existing law and applies to associations existing on July 1, 2018 ~~the effective date of this act~~.

(c) There shall not be any material alteration or substantial addition made to association real property operated by a multicondominium association, except as provided in the declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein. If the declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein do not specify the procedure for approving an alteration or addition to association real property, the approval of 75 percent of the total voting interests of the association is required before the material alterations or substantial additions are commenced. This paragraph is intended to clarify existing law and applies to associations existing on July 1, 2018 ~~the effective date of this act~~.

Section 4. Subsection (3) of section 718.3026, Florida Statutes, is amended to read:

718.3026 Contracts for products and services; in writing; bids; exceptions.—Associations with 10 or fewer units may opt

out of the provisions of this section if two-thirds of the unit owners vote to do so, which opt-out may be accomplished by a proxy specifically setting forth the exception from this section.

~~(3) As to any contract or other transaction between an association and one or more of its directors or any other corporation, firm, association, or entity in which one or more of its directors are directors or officers or are financially interested:~~

~~(a) The association shall comply with the requirements of s. 617.0832.~~

~~(b) The disclosures required by s. 617.0832 shall be entered into the written minutes of the meeting.~~

~~(c) Approval of the contract or other transaction shall require an affirmative vote of two-thirds of the directors present.~~

~~(d) At the next regular or special meeting of the members, the existence of the contract or other transaction shall be disclosed to the members. Upon motion of any member, the contract or transaction shall be brought up for a vote and may be canceled by a majority vote of the members present. Should the members cancel the contract, the association shall only be liable for the reasonable value of goods and services provided up to the time of cancellation and shall not be liable for any termination fee, liquidated damages, or other form of penalty~~

~~for such cancellation.~~

Section 5. Section 718.3027, Florida Statutes, is amended to read:

718.3027 Conflicts of interest.—

(1) Directors and officers of a board of an association that is not a timeshare condominium association, and the relatives of such directors and officers, must disclose to the board any activity that may reasonably be construed to be a conflict of interest. A rebuttable presumption of a conflict of interest exists if any of the following occurs without prior notice, as required in subsection (5) ~~(4)~~:

(a) A director or an officer, or a relative of a director or an officer, enters into a contract for goods or services with the association.

(b) A director or an officer, or a relative of a director or an officer, holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

(2) If a director or an officer, or a relative of a director or an officer, proposes to engage in an activity that is a conflict of interest, as described in subsection (1), the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be

attached to, the meeting agenda. The association shall comply with the requirements of s. 617.0832, and the disclosures required by s. 617.0832 shall be entered into the written minutes of the meeting. Approval of the contract or other transaction requires an affirmative vote of two-thirds of all other directors present. At the next regular or special meeting of the members, the existence of the contract or other transaction shall be disclosed to the members. Upon motion of any member, the contract or transaction shall be brought up for a vote and may be canceled by a majority vote of the members present. If the contract is canceled, the association is only liable for the reasonable value of the goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

(3) If the board votes against the proposed activity, the director or officer, or the relative of the director or officer, must notify the board in writing of his or her intention not to pursue the proposed activity or to withdraw from office. If the board finds that an officer or a director has violated this subsection, the officer or director shall be deemed removed from office. The vacancy shall be filled according to general law.

(4) ~~(3)~~ A director or an officer, or a relative of a director or an officer, who is a party to, or has an interest in, an activity that is a possible conflict of interest, as

described in subsection (1), may attend the meeting at which the activity is considered by the board and is authorized to make a presentation to the board regarding the activity. After the presentation, the director or officer, or the relative of the director or officer, must leave the meeting during the discussion of, and the vote on, the activity. A director or an officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote.

(5) ~~(4)~~ A contract entered into between a director or an officer, or a relative of a director or an officer, and the association, which is not a timeshare condominium association, that has not been properly disclosed as a conflict of interest or potential conflict of interest as required by s. 718.111(12)(g) is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the association.

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

Section 6. Paragraph (b) of subsection (3) of section 718.303, Florida Statutes, is amended to read:

718.303 Obligations of owners and occupants; remedies.—

(3) The association may levy reasonable fines for the failure of the owner of the unit or its occupant, licensee, or

invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. A fine may not become a lien against a unit. A fine may be levied by the board on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before a committee as provided in paragraph (b). However, the fine may not exceed $100 per violation, or $1,000 in the aggregate.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' written notice ~~and an opportunity for a hearing~~ to the unit owner and, if applicable, any ~~its~~ occupant, licensee, or invitee of the unit owner sought to be fined or suspended and an opportunity for a hearing~~. The hearing must be held~~ before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee ~~other unit owners who are neither board members nor persons residing in a board member's household~~. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the committee does not approve ~~agree,~~ the proposed fine or suspension by majority vote, the fine or suspension may not be imposed. If the proposed fine or suspension is approved by the committee, the fine payment is due 5 days after the date of the committee meeting at which the

fine is approved. The association must provide written notice of such fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner.

Section 7. Section 718.707, Florida Statutes, is amended to read:

718.707 Time limitation for classification as bulk assignee or bulk buyer.—A person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010~~, but before July 1, 2018~~. The date of such acquisition shall be determined by the date of recording a deed or other instrument of conveyance for such parcels in the public records of the county in which the condominium is located, or by the date of issuing a certificate of title in a foreclosure proceeding with respect to such condominium parcels.

Section 8. Paragraphs (a) and (b) of subsection (2) of section 719.104, Florida Statutes, are amended to read:

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

(2) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain a copy of each of the following, where applicable, which shall constitute the official records of the association:

1. The plans, permits, warranties, and other items provided by the developer pursuant to s. 719.301(4).

2. A photocopy of the cooperative documents.

3. A copy of the current rules of the association.

4. A book or books containing the minutes of all meetings of the association, of the board of directors, and of the unit owners~~, which minutes shall be retained for a period of not less than 7 years~~.

5. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail ~~electronic mailing~~ addresses and the numbers designated by unit owners for receiving notice sent by electronic transmission of those unit owners consenting to receive notice by electronic transmission. The e-mail ~~electronic mailing~~ addresses and numbers provided by unit owners to receive notice by electronic transmission shall be removed from association records when consent to receive notice by electronic transmission is revoked. However, the association is not liable for an erroneous disclosure of the e-mail ~~electronic mail~~ address or the number for receiving electronic transmission of notices.

6. All current insurance policies of the association.

7. A current copy of any management agreement, lease, or other contract to which the association is a party or under

which the association or the unit owners have an obligation or responsibility.

8. Bills of sale or transfer for all property owned by the association.

9. Accounting records for the association and separate accounting records for each unit it operates, according to good accounting practices. ~~All accounting records shall be maintained for a period of not less than 7 years.~~ The accounting records shall include, but not be limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

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

c. All audits, reviews, accounting statements, and financial reports of the association.

d. All contracts for work to be performed. Bids for work to be performed shall also be considered official records and shall be maintained for a period of 1 year.

10. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which shall be maintained for a period of 1 year after the date of the election, vote, or meeting to which the document relates.

11. All rental records where the association is acting as agent for the rental of units.

12. A copy of the current question and answer sheet as described in s. 719.504.

13. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.

(b) The official records of the association must be maintained within the state for at least 7 years. The records of the association shall be made available to a unit owner within 45 miles of the cooperative property or within the county in which the cooperative property is located within 10 ~~5~~ working days after receipt of written request by the board or its designee. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the cooperative property or the association may offer the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in an electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative pursuant to the compliance requirements of this chapter unless the association has an affirmative duty not to disclose such information pursuant to this chapter.

Section 9. Paragraphs (a), (c), and (d) of subsection (1) of section 719.106, Florida Statutes, are amended, and paragraph (m) is added to that subsection, to read:

719.106 Bylaws; cooperative ownership.—

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

(a) Administration.—

1. The form of administration of the association shall be described, indicating the titles of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and board members. In the absence of such a provision, the board of administration shall be composed of five members, unless the cooperative ~~except in the case of cooperatives~~ has ~~having~~ five or fewer units.~~, in which case in not-for-profit corporations,~~ The board shall consist of not fewer than three members in cooperatives with five or fewer units that are not-for-profit corporations. In a residential cooperative association of more than 10 units, co-owners of a unit may not serve as members of the board of directors at the same time unless the co-owners own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. In the absence of provisions to the contrary, the board of administration shall have a president, a secretary, and a

treasurer, who shall perform the duties of those offices customarily performed by officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them those duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board. Unless otherwise provided in the bylaws, the members of the board shall serve without compensation.

2. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property is suspended from office. The board shall fill the vacancy according to general law until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. However, if the charges are resolved without a finding of guilt or without acceptance of a plea of guilty or nolo contendere, the director or officer shall be reinstated for any remainder of his or her term of office. A member who has such criminal charges pending may not be appointed or elected to a position as a director or officer. A person who has been convicted of any felony in this state or in

any United States District Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony.

3. When a unit owner files a written inquiry by certified mail with the board of administration, the board shall respond in writing to the unit owner within 30 days of receipt of the inquiry. The board's response shall either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the division. If the board requests advice from the division, the board shall, within 10 days of its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the board shall, within 60 days after the receipt of the inquiry, provide in writing a substantive response to the inquirer. The failure to provide a substantive response to the inquirer as provided herein precludes the board from recovering attorney's fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. The association may,

through its board of administration, adopt reasonable rules and regulations regarding the frequency and manner of responding to the unit owners' inquiries, one of which may be that the association is obligated to respond to only one written inquiry per unit in any given 30-day period. In such case, any additional inquiry or inquiries must be responded to in the subsequent 30-day period, or periods, as applicable.

(c) Board of administration meetings.—Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. Meetings of the board of administration at which a quorum of the members is present shall be open to all unit owners. Any unit owner may tape record or videotape meetings of the board of administration. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt reasonable written rules governing the frequency, duration, and manner of unit owner statements. Adequate notice of all meetings shall be posted in a conspicuous place upon the cooperative property at least 48 continuous hours preceding the meeting, except in an emergency. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action shall be noticed and ratified at the next

regular meeting of the board. Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the estimated cost and description of the purpose for such assessments. ~~However,~~ Written notice of any meeting at which nonemergency special assessments, or at which amendment to rules regarding unit use, will be considered shall be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the cooperative property not less than 14 days before the meeting. Evidence of compliance with this 14-day notice shall be made by an affidavit executed by the person providing the notice and filed among the official records of the association. Upon notice to the unit owners, the board shall by duly adopted rule designate a specific location on the cooperative property upon which all notices of board meetings shall be posted. In lieu of or in addition to the physical posting of notice of any meeting of the board of administration on the cooperative property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the cooperative association. However, if broadcast notice is used in lieu of a notice posted physically on the cooperative property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required

under this section. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the cooperative association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the cooperative property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. ~~Notice of any meeting in which regular assessments against unit owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments.~~ Meetings of a committee to take final action on behalf of the board or to make recommendations to the board regarding the association budget are subject to the provisions of this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to

the board regarding the association budget are subject to the provisions of this section, unless those meetings are exempted from this section by the bylaws of the association. Notwithstanding any other law to the contrary, the requirement that board meetings and committee meetings be open to the unit owners does not apply to board or committee meetings held for the purpose of discussing personnel matters or meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice.

(d) Shareholder meetings.—There shall be an annual meeting of the shareholders. All members of the board of administration shall be elected at the annual meeting unless the bylaws provide for staggered election terms or for their election at another meeting. Any unit owner desiring to be a candidate for board membership must comply with subparagraph 1. The bylaws must provide the method for calling meetings, including annual meetings. Written notice, which must incorporate an identification of agenda items, shall be given to each unit owner at least 14 days before the annual meeting and posted in a conspicuous place on the cooperative property at least 14 continuous days preceding the annual meeting. Upon notice to the unit owners, the board must by duly adopted rule designate a specific location on the cooperative property upon which all notice of unit owner meetings are posted. In lieu of or in

addition to the physical posting of the meeting notice, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the cooperative association. However, if broadcast notice is used in lieu of a posted notice, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the shareholders, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the cooperative association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the cooperative property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Unless a unit owner waives in writing the right to receive

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

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

a. At least 60 days before a scheduled election, the association shall mail, deliver, or transmit, whether by separate association mailing, delivery, or electronic transmission or included in another association mailing, delivery, or electronic transmission, including regularly published newsletters, to each unit owner entitled to vote, a first notice of the date of the election. Any unit owner or other eligible person desiring to be a candidate for the board of administration must give written notice to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in this section, the

association shall mail, deliver, or electronically transmit a second notice of election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, the association shall include an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, to be included with the mailing, delivery, or electronic transmission of the ballot, with the costs of mailing, delivery, or transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets provided by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of those ballots cast. There is no quorum requirement. However, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not permit any other person to vote his or her ballot, and any such ballots improperly cast are invalid. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain assistance in casting the ballot. Any unit owner violating this provision may be fined by the association in accordance with s. 719.303. The

regular election must occur on the date of the annual meeting. This subparagraph does not apply to timeshare cooperatives. Notwithstanding this subparagraph, an election and balloting are not required unless more candidates file a notice of intent to run or are nominated than vacancies exist on the board. Any challenge to the election process must be commenced within 60 days after the election results are announced.

b. Within 90 days after being elected or appointed to the board, each new director shall certify in writing to the secretary of the association that he or she has read the association's bylaws, articles of incorporation, proprietary lease, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. Within 90 days after being elected or appointed to the board, in lieu of this written certification, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by an education provider as approved by the division pursuant to the requirements established in chapter 718 within 1 year before or 90 days after the date of election or appointment. The educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director who fails to timely file the written

certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary of the association shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

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

3. Unit owners may waive notice of specific meetings if allowed by the applicable cooperative documents or law. Notice of meetings of the board of administration, shareholder meetings, except shareholder meetings called to recall board members under paragraph (f), and committee meetings may be given

by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that may block receipt of mass emails sent to members on behalf of the association in the course of giving electronic notices.

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

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

6. Unless otherwise provided in the bylaws, a vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of subparagraph 1. unless the association has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this subparagraph shall fill the vacancy for the unexpired term of the seat being

filled. Filling vacancies created by recall is governed by paragraph (f) and rules adopted by the division.

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

(m) Director or officer delinquencies.—A director or officer more than 90 days delinquent in the payment of any monetary obligation due the association shall be deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.

Section 10. Paragraph (b) of subsection (1) of section 719.107, Florida Statutes, is amended to read:

719.107 Common expenses; assessment.—

(1)

(b) If so provided in the bylaws, the cost of communications services as defined in chapter 202, information services or Internet services ~~a master antenna television system or duly franchised cable television service~~ obtained pursuant to a bulk contract shall be deemed a common expense, and if not obtained pursuant to a bulk contract, such cost shall be

considered common expense if it is designated as such in a written contract between the board of administration and the company providing the communications services as defined in chapter 202, information services or Internet services ~~master television antenna system or the cable television service~~. The contract shall be for a term of not less than 2 years.

1. Any contract made by the board after April 2, 1992, for a community antenna system or duly franchised cable television service, communications services as defined in chapter 202, information services or Internet services may be canceled by a majority of the voting interests present at the next regular or special meeting of the association. Any member may make a motion to cancel the contract, but if no motion is made or if such motion fails to obtain the required majority at the next regular or special meeting, whichever is sooner, following the making of the contract, then such contract shall be deemed ratified for the term therein expressed.

2. Any such contract shall provide, and shall be deemed to provide if not expressly set forth, that any hearing impaired or legally blind unit owner who does not occupy the unit with a nonhearing impaired or sighted person may discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and as to such units, the owners shall not be required to pay any common expenses charge related to such service. If less than all members of an association

share the expenses of cable television, the expense shall be shared equally by all participating unit owners. The association may use the provisions of s. 719.108 to enforce payment of the shares of such costs by the unit owners receiving cable television.

Section 11. Paragraph (b) of subsection (3) of section 719.303, Florida Statutes, is amended to read:

719.303 Obligations of owners.—

(3) The association may levy reasonable fines for failure of the unit owner or the unit's occupant, licensee, or invitee to comply with any provision of the cooperative documents or reasonable rules of the association. A fine may not become a lien against a unit. A fine may be levied by the board on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before a committee as provided in paragraph (b). However, the fine may not exceed $100 per violation, or $1,000 in the aggregate.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' written notice ~~and an opportunity for a hearing~~ to the unit owner and, if applicable, any ~~its~~ occupant, licensee, or invitee of the unit owner sought to be fined or suspended and an opportunity for a hearing~~. The hearing must be held~~ before a committee of at least three members appointed by the board who are not officers, directors, or

employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee ~~other unit owners who are neither board members nor persons residing in a board member's household~~. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the committee does not approve ~~agree with~~ the proposed fine or suspension by majority vote, the fine or suspension ~~it~~ may not be imposed. If the proposed fine or suspension is approved by the committee, the fine payment is due 5 days after the date of the committee meeting at which the fine is approved. The association must provide written notice of such fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner.

Section 12. Paragraphs (a) and (c) of subsection (2) of section 720.303, Florida Statutes, are amended, to read:

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

(2) BOARD MEETINGS.—

(a) Members of the board of administration may use e-mail as a means of communication, but may not cast a vote on an association matter via e-mail. A meeting of the board of directors of an association occurs whenever a quorum of the board gathers to conduct association business. Meetings of the

board must be open to all members, except for meetings between the board and its attorney with respect to proposed or pending litigation where the contents of the discussion would otherwise be governed by the attorney-client privilege. A meeting of the board must be held at a location that is accessible to a physically handicapped person if requested by a physically handicapped person who has a right to attend the meeting. The provisions of this subsection shall also apply to the meetings of any committee or other similar body when a final decision will be made regarding the expenditure of association funds and to meetings of any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

(c) The bylaws shall provide the following for giving notice to parcel owners and members of all board meetings and, if they do not do so, shall be deemed to include ~~provide~~ the following:

1. Notices of all board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. Notwithstanding this general notice requirement, for

communities with more than 100 members, the association bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of notice, provision of a schedule of board meetings, or the conspicuous posting and repeated broadcasting of the notice on a closed-circuit cable television system serving the homeowners' association. However, if broadcast notice is used in lieu of a notice posted physically in the community, the notice must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. The association may provide notice by electronic transmission in a manner authorized by law for meetings of the board of directors, committee meetings requiring notice under this section, and annual and special meetings of the members to any member who has provided a facsimile number or e-mail address to the association to be used for such purposes; however, a member must consent in writing to receiving notice by electronic transmission.

2. An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Written notice of any meeting at which special

assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting.

3. Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This subsection also applies to the meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of association funds, and to any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

Section 13. Paragraph (b) of subsection (2) of section 720.305, Florida Statutes, is amended to read:

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

(2) The association may levy reasonable fines. A fine may not exceed $100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in

the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed $1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than $1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.

(b) A fine or suspension levied ~~may not be imposed~~ by the board of administration may not be imposed unless the board first provides ~~without~~ at least 14 days' notice to the parcel owner and, if applicable, any occupant, licensee, or invitee of the parcel owner, ~~person~~ sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, the proposed fine or suspension ~~it~~ may not be imposed. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the proposed ~~board of administration imposes a~~ fine or suspension levied by the board is approved by the committee, the fine payment is due 5 days after the date of the committee meeting at which the fine is approved. The association

must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any tenant, licensee, or invitee of the parcel owner.

Section 14. Paragraph (a) of subsection (9) of section 720.306, Florida Statutes, is amended to read:

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

(9) ELECTIONS AND BOARD VACANCIES.—

(a) Elections of directors must be conducted in accordance with the procedures set forth in the governing documents of the association. Except as provided in paragraph (b), all members of the association are eligible to serve on the board of directors, and a member may nominate himself or herself as a candidate for the board at a meeting where the election is to be held; provided, however, that if the election process allows candidates to be nominated in advance of the meeting, the association is not required to allow nominations at the meeting. An election is not required unless more candidates are nominated than vacancies exist. If an election is not required because there are either an equal number or fewer qualified candidates than vacancies exist, and if nominations from the floor are not required pursuant to this section or the bylaws, write-in nominations are not permitted and such qualified candidates shall commence service on the board of directors, regardless of whether a quorum is attained at the annual meeting. Except as

otherwise provided in the governing documents, boards of directors must be elected by a plurality of the votes cast by eligible voters. Any challenge to the election process must be commenced within 60 days after the election results are announced.

Section 15. Paragraph (b) of subsection (3) of section 720.3085, Florida Statutes, is amended to read:

720.3085 Payment for assessments; lien claims.—

(3) Assessments and installments on assessments that are not paid when due bear interest from the due date until paid at the rate provided in the declaration of covenants or the bylaws of the association, which rate may not exceed the rate allowed by law. If no rate is provided in the declaration or bylaws, interest accrues at the rate of 18 percent per year.

(b) Any payment received by an association and accepted shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, and then to the delinquent assessment. This paragraph applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to the provisions of chapter 687 and is not a fine. The foregoing is applicable notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding

sentence is intended to clarify existing law.

Section 16. This act shall take effect July 1, 2018.

Amendment No.

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

Committee/Subcommittee hearing bill: Civil Justice & Claims Subcommittee

Representative Moraitis offered the following:

Amendment (with title amendment)

Remove lines 220-484 and insert:

e. A list of all executory contracts or documents ~~Any management agreement, lease, or other contract~~ to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed $500 must be maintained on the website for 1 year. In lieu of summaries, complete copies of the bids may be posted.

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

g. The financial report required by subsection (13) and any monthly income or expense statement ~~proposed financial report~~ to be considered at a meeting.

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

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2)(b)6. and 718.3027(3) ~~ss. 468.436(2) and 718.3026(3)~~.

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website, or on a separate subpage of the website labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

1. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice pursuant to s. 718.112(2)(c).

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed ~~permitted~~ to be accessible to unit owners, are not posted on the association's website. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website, the association shall ensure the information is redacted before posting the documents online. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted pursuant to this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

(13) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on a date provided in the bylaws, the association shall prepare and complete, or contract for the preparation and completion of, a financial report for the

preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or other date as provided in the bylaws, the association shall mail to each unit owner at the address last furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the most recent financial report or a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards to be used by all associations and addressing the financial reporting requirements for multicondominium associations. The rules must include, but not be limited to, standards for presenting a summary of association reserves, including a good faith estimate disclosing the annual amount of reserve funds that would be necessary for the association to fully fund reserves for each reserve item based on the straight-line accounting method. This disclosure is not applicable to reserves funded via the pooling method. In adopting such rules, the division shall consider the number of members and annual revenues of an association. Financial reports shall be prepared as follows:

(e) A unit owner may provide written notice to the division of the association's failure to mail or hand deliver

him or her a copy of the most recent financial report within 5 business days after he or she submitted a written request to the association for a copy of such report. If the division determines that the association failed to mail or hand deliver a copy of the most recent financial report to the unit owner, the division shall provide written notice to the association that the association must mail or hand deliver a copy of the most recent financial report to the unit owner and the division within 5 business days after it receives such notice from the division. An association that fails to comply with the division's request may not waive the financial reporting requirement provided in paragraph (d) for the fiscal year in which the unit owner's request was made and the following fiscal year. A financial report received by the division pursuant to this paragraph shall be maintained, and the division shall provide a copy of such report to an association member upon his or her request.

Section 2. Paragraphs (a), (c), (d), and (j) of subsection (2) of section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

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

(a) Administration.—

1. The form of administration of the association shall be

described indicating the title of the officers and board of administration and specifying the powers, duties, manner of selection and removal, and compensation, if any, of officers and boards. In the absence of such a provision, the board of administration shall be composed of five members, unless the ~~except in the case of a~~ condominium ~~which~~ has five or fewer units. The board shall consist of not fewer than three members in condominiums with five or fewer units that are not-for-profit corporations~~, in which case in a not-for-profit corporation the board shall consist of not fewer than three members~~. In the absence of provisions to the contrary in the bylaws, the board of administration shall have a president, a secretary, and a treasurer, who shall perform the duties of such officers customarily performed by officers of corporations. Unless prohibited in the bylaws, the board of administration may appoint other officers and grant them the duties it deems appropriate. Unless otherwise provided in the bylaws, the officers shall serve without compensation and at the pleasure of the board of administration. Unless otherwise provided in the bylaws, the members of the board shall serve without compensation.

2. When a unit owner of a residential condominium files a written inquiry by certified mail with the board of administration, the board shall respond in writing to the unit owner within 30 days after receipt of the inquiry. The board's

response shall either give a substantive response to the inquirer, notify the inquirer that a legal opinion has been requested, or notify the inquirer that advice has been requested from the division. If the board requests advice from the division, the board shall, within 10 days after its receipt of the advice, provide in writing a substantive response to the inquirer. If a legal opinion is requested, the board shall, within 60 days after the receipt of the inquiry, provide in writing a substantive response to the inquiry. The failure to provide a substantive response to the inquiry as provided herein precludes the board from recovering attorney fees and costs in any subsequent litigation, administrative proceeding, or arbitration arising out of the inquiry. The association may through its board of administration adopt reasonable rules and regulations regarding the frequency and manner of responding to unit owner inquiries, one of which may be that the association is only obligated to respond to one written inquiry per unit in any given 30-day period. In such a case, any additional inquiry or inquiries must be responded to in the subsequent 30-day period, or periods, as applicable.

(c) Board of administration meetings.—Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit

owner may tape record or videotape the meetings. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board, within 60 days after receipt of the petition, shall place the item on the agenda at its next regular board meeting or at a special meeting called for that purpose. An item not included on the notice may be taken up on an emergency basis by a vote of at least a majority plus one of the board members. Such emergency action must be noticed and ratified at the next regular board meeting. ~~However,~~ Written notice of a meeting at which a nonemergency special assessment or an amendment to rules regarding unit use will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property at least 14 days before the meeting. Evidence of compliance with this 14-day notice requirement must be made by an affidavit

executed by the person providing the notice and filed with the official records of the association. Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the estimated cost and description of the purposes for such assessments. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium ~~or association~~ property where all notices of board meetings must be posted. If there is no condominium property ~~or association property~~ where notices can be posted, notices shall be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the meeting. In lieu of or in addition to the physical posting of the notice on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice physically posted on condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of

the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. ~~Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the nature, estimated cost, and description of the purposes for such assessments.~~

2. Meetings of a committee to take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to this section, unless those meetings are exempted from this section by the bylaws of the association.

3. Notwithstanding any other law, the requirement that

board meetings and committee meetings be open to the unit owners does not apply to:

a. Meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice; or

b. Board meetings held for the purpose of discussing personnel matters.

(d) Unit owner meetings.—

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

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must ~~shall~~ be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not

expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve ~~2-year~~ terms longer than one year if permitted by the bylaws or articles of incorporation. A board member may not serve more than eight consecutive years ~~four consecutive 2-year terms~~, unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election ~~the total voting interests of the association~~ or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. If the number of board members whose terms expire at

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

Remove line 11 and insert:
revising board term limits; authorizing an association

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 851 Lost or Abandoned Personal Property
SPONSOR(S): Agriculture & Property Rights Subcommittee; Olszewski
TIED BILLS: **IDEN./SIM. BILLS:** SB 1052

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Agriculture & Property Rights Subcommittee	13 Y, 0 N, As CS	Thompson	Smith
2) Civil Justice & Claims Subcommittee		MM MacNamara	Bond MB
3) Commerce Committee			

SUMMARY ANALYSIS

Current law governing the collection, storage and disposition of abandoned or lost tangible personal property located on public property sets forth procedures for persons and law enforcement to follow in order to locate the rightful owner. The law provides exceptions for personal property lost within certain facilities such as institutions of higher learning and public airports.

CS/HB 851 adds theme parks, entertainment complexes, zoos, museums, aquariums, public food service establishments, and public lodging establishments to the list of facilities that are exempt from the existing collection, storage and disposition guidelines if the operators comply with the proposed alternative disposition guidelines. Exempt facilities will hold their own found property for 30 days and if such property is unclaimed after 30 days, the property may be either disposed or donated to charity.

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

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 705, F.S., governs the collection, storage and disposition of abandoned or lost tangible personal property located on public property. When a person finds lost or abandoned property they are required to report the finding to a law enforcement officer.[1] The officer must allow the finder of the property an opportunity to make a claim to recover the property if the rightful owner is not identified or located.[2] If a claim is made, current law directs the title of the unclaimed property to vest in the finder of the property after a 90-day custodial time period.[3] If a claim is not made, the title of the unclaimed property may vest in the law enforcement officer or agency, so long as specified notice requirements are met.[4] Failure to report a finding of lost or abandoned property to law enforcement is considered theft.[5]

The collection, storage and disposition provisions do not apply to the State University System or a public-use international airport.[6] The law provides separate disposal requirements for property found on the premises of the State University System,[7] Florida College System,[8] or public-use airports.[9] In addition, the law sets forth a procedure for handling the abandonment of animals by their owner.[10]

Effect of Proposed Changes

CS/HB 851 adds additional exceptions and disposition guidelines to the law governing the collection, storage and disposition of abandoned or lost tangible personal property. These guidelines are voluntary and contingent upon an election of compliance by the operator of the facility. The bill exempts the following facilities if the operator elects to comply with the proposed guidelines:

- Premises located within a theme park or entertainment complex, as the term is defined in s. 509.013(9), F.S.;[11]
- Premises operated as a zoo, a museum, or an aquarium; and
- Premises of a public food service establishment or public lodging establishment licensed under part I of ch. 509, F.S.

The voluntary alternative disposition guidelines for these additional facilities requires persons controlling any premises located within the facility to deliver the lost or abandoned property to the facility operator, who must take charge of the property and make a record of the date it was found. If the property is not claimed by the owner within 30 days after it is found, or a longer period of time as deemed appropriate by the facility operator, the facility operator is required to dispose of the property or donate it to a charitable institution that is exempt from federal income tax under s. 501(c)(3) of the

[1] s. 705.102(1), F.S.
[2] s. 705.102(2), F.S.
[3] *See* s. 705.103, F.S., providing specific procedural requirements for abandoned property and lost property before its disposition, donation, or sale.
[4] *Id.*
[5] s. 705.102(4), F.S.
[6] s. 705.17, F.S.
[7] s. 705.18, F.S.
[8] *Id.*
[9] ss. 705.182-184, F.S.
[10] s. 705.19, F.S.
[11] s. 509.013(9), F.S., defines "theme park or entertainment complex" as a complex comprised of at least 25 contiguous acres owned and controlled by the same business entity and which contains permanent exhibitions and a variety of recreational activities and has a minimum of 1 million visitors annually.

Internal Revenue Code for sale or disposal as it deems appropriate. The rightful owner of the property is authorized to reclaim the property at any time before the disposition, sale, or donation of the property in accordance with these guidelines and the established policies and procedures of the facility operator.

B. SECTION DIRECTORY:

Section 1 Amends s. 705.17, F.S.; relating to exceptions.

Section 2 Creates s. 705.185, F.S.; relating to the disposal of personal property lost or abandoned on the premises of certain facilities.

Section 3 Provides an effective date of July 1, 2018.

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:

None.

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 23, 2018, the Agriculture & Property Rights Subcommittee adopted one amendment to HB 851 and reported the bill favorably as a committee substitute. The amendment includes public food service establishments and public lodging establishments to the list of facilities that may opt out of the provisions under ss. 705.101-106, F.S., relating to lost or abandoned property.

This analysis is drafted to the CS as reported favorably by the Agriculture & Property Rights Subcommittee.

A bill to be entitled

An act relating to lost or abandoned personal property; amending s. 705.17, F.S.; providing that certain provisions relating to lost or abandoned property do not apply to personal property lost or abandoned on the premises of certain complexes or facilities if certain conditions are met; creating s. 705.185, F.S.; providing for the disposal or donation of personal property lost or abandoned on the premises of certain complexes or facilities in certain circumstances; authorizing the rightful owner of such lost or abandoned personal property to reclaim such property before disposal or donation; providing an effective date.

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

Section 1. Section 705.17, Florida Statutes, is amended to read:

705.17 Exceptions.—Sections ~~The provisions of ss.~~ 705.101-705.106 do not apply ~~of this chapter shall not be applied~~ to any personal property lost or abandoned on the campus of any institution in the State University System; ~~or~~ on premises owned or controlled by the operator of a public-use airport having regularly scheduled international passenger service; or, if the

owner or operator of the premises elects to comply with s. 705.185, on any premises located within a theme park or entertainment complex, as the term is defined in s. 509.013(9), or operated as a zoo, a museum, or an aquarium or on any premises of a public food service establishment or public lodging establishment licensed under part I of chapter 509.

Section 2. Section 705.185, Florida Statutes, is created to read:

705.185 Disposal of personal property lost or abandoned on the premises of certain facilities.—Whenever any lost or abandoned personal property is found on any premises located within a theme park or entertainment complex, as the term is defined in s. 509.013(9), or operated as a zoo, a museum, or an aquarium; or on any premises of a public food service establishment or public lodging establishment licensed under part I of chapter 509, if the owner or operator of the premises elects to comply with this section, any lost or abandoned property must be delivered to the owner or operator of the premises, who shall take charge of the property and make a record of the date such property was found. If the property is not claimed by the owner within 30 days after it is found, or a longer period of time as may be deemed appropriate by the owner or operator of the premises, the owner or operator of the premises must dispose of the property or donate it to a charitable institution that is exempt from federal income tax

under s. 501(c)(3) of the Internal Revenue Code for sale or disposal as that charitable institution deems appropriate. The rightful owner of the property may reclaim the property at any time before the disposition, sale, or donation of the property in accordance with this section and the established policies and procedures of the owner or operator of the premises.

Section 3. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 853 Housing Discrimination
SPONSOR(S): Davis
TIED BILLS: **IDEN./SIM. BILLS:** SB 306

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		Tuszynski	Bond
2) Careers & Competition Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

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

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

Recent judicial decisions interpreting the FFHA have held that a person must first exhaust his or her administrative remedies before pursuing a civil action under the FFHA. A person aggrieved by housing discrimination may commence a civil action at any time under the federal Fair Housing Act, without regard to whether a complaint was filed with HUD or the status of any complaint. Due to this disparity, HUD currently maintains that FFHA, as interpreted by the courts, is not substantially equivalent to the federal Fair Housing Act.

This bill amends the FFHA to provide that a person aggrieved by a discriminatory housing practice is not required to exhaust his or her administrative remedies prior to bringing a civil action under the FFHA.

If passed, the bill does not appear to have a fiscal impact on state government. However, the state may lose federal grants of approximately $850,000 annually should the bill fail to pass. This bill does not appear to have a fiscal impact on local governments.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

BACKGROUND

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

Florida Fair Housing Act

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

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

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

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[1] Part II of Chapter 760, F.S., is the Florida Fair Housing Act. See Florida Fair Housing Commission, *Fair Housing Laws* http://fchr.state.fl.us/fchr/laws (last accessed January 21, 2018).
[2] S. 760.23(1), F.S.
[3] SS. 760.23(6)-(9), F.S.
[4] S. 760.34(1) and (2), F.S.
[5] S. 760.34(1), F.S.
[6] Id.
[7] S. 760.34(4), F.S.
[8] Id.
[9] S. 760.35(1), F.S.
[10] Id.
[11] S. 760.35(2), F.S.
[12] Fines are capped in a tiered system based on the number of prior violations of the Fair Housing Act: up to $10,000 if the respondent has no prior findings of guilt under the Fair Housing Act; up to $25,000 if the respondent has had one prior violation of the Fair Housing Act; and up to $50,000, if the respondent has had two or more violations of the Fair Housing Act. s. 760.34(7)(b), F.S.
[13] S. 760.34(7)(c), F.S.

Federal Fair Housing Act

Substantially Equivalent Agencies

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

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

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

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

The Commission, charged with enforcement of the FFHA which is modeled upon the federal Fair Housing Act, serves as the main, certified "substantially equivalent" HUD agency in Florida.[21] Through annual work-share agreements with HUD, the Commission, in its capacity as a substantially equivalent agency, accepts and investigates housing discrimination cases from HUD. **Figure 1** illustrates the number of housing complaints investigated and closed by the Commission from 2010-2016. According to the Commission's Fiscal Year 2010-11 through Fiscal Year 2015-16 Annual Reports, housing complaints represented on average 15% of all complaints received by the Commission.[22]

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[14] 42 U.S.C. § 3601, *et seq.*
[15] 42 U.S.C. § 3610.
[16] Id.
[17] 24 C.F.R. § 115.201.
[18] 24 C.F.R. § 115.204
[19] 24 C.F.R. § 115.201
[20] 42 U.S.C. 3610
[21] HUD additionally certified as substantially equivalent the Broward County Office of Equal Opportunity, Jacksonville Human Rights Commission, Office of Community Affairs – Human Relations Department (Orlando), Palm Beach County Office of Equal Opportunity, Pinellas County Office of Human Rights, and City of Tampa Office of Community Relations. United States Department of Housing and Urban Development, *Fair Housing Assistance Program (FHAP) Agencies,* http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP/agencies#FL (last accessed January 23, 2018).
[22] Florida Commission on Human Relations, *Annual Reports*, available at http://fchr.state.fl.us/publications/annual_reports (last accessed January 23, 2018).

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

Closure Type	FY 11/12	FY 12/13	FY 13/14	FY 14/15	FY 15/16	FY 16/17
No Cause	126(69%)	92(50%)	138(73%)	123(67%)	106 (58%)	74 (42%)
Administrative	15(8%)	50(27%)	29(15%)	52(28%)	75 (41%)	80 (45%)
Cause	14(8%)	4(2%)	11(6%)	0(0%)	1 (0.5%)	18 (10%)
Settlement	16(9%)	18(10%)	0(0%)	0(0%)	0 (0%)	0 (0%)
Withdrawal with Benefits	11(6%)	19(11%)	12(6%)	10(5%)	9 (5%)	5 (3%)
TOTAL CLOSURES	**182**	**183**	**190**	**185**	**182**	**177**

Fair Housing Assistance Program

A "Substantially equivalent" agency is eligible for federal funding through the Fair Housing Assistance Program (FHAP).[23] FHAP permits HUD to reimburse state and local agencies for services that further the purposes of the federal Fair Housing Act. The financial assistance is designed to provide support for:[24]

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

The Commission is reimbursed by HUD for closing housing cases, through deposit from HUD into the Human Relations Commission Operating Trust Fund within the Commission as illustrated in **Figure 2**. Trust fund monies received from HUD in Fiscal Year 2016-17 totaled $847,280, an increase from the Fiscal Year 2015-16 total of $497,018.

Figure 2: Florida Commission on Human Relations Operating Trust Fund

All Revenues	FY 11/12	FY 12/13	FY 13/14	FY 14/15	FY 15/16	FY 16/17
EEOC Federal Contract	$817,100	$259,850	$540,950	$335,841	$410,714	$597,021
HUD Contract/Grant	$940,219	$677,998	$485,462	$559,469	$490,900	$847,255
HUD Registration	$33,415	$32,149	$23,680	$35,720	$6,100	$0
Interest Earnings	$28,565	$26,665	$15,250	$15,313	$10,576	$7,292
Refunds	$9,117	$57,777	$43,361	$7,848	$583	$0
TOTAL	$1,828,416	$1,054,439	$1,065,342	$954,191	$918,873	$1,451,568
HUD Percentage of Total Funds	**54.37%**	**73.21%**	**48.49%**	**63.93%**	**54.09%**	**58.37%**

Exhaustion of Administrative Remedies

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

In 2004, the Fourth District Court of Appeal held in *Belletete v. Halford*, that an aggrieved person must first exhaust administrative remedies under the FFHA before commencing a civil action in court, citing the doctrine of exhaustion of administrative remedies.[25] The Court's holding was not based upon an

[23] United States Department of Housing and Urban Development, *Fair Housing Assistance Program (FHAP),* http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/partners/FHAP (last accessed January 23, 2018).
[24] 24 C.F.R. § 115.300.
[25] *Belletete v. Halford*, 886 So. 2d 308, 310 (Fla. 4th DCA 2004); S*ee also Fla. Welding & Erection Serv., Inc. v. Am. Mut. Ins. Co. of Boston*, 285 So. 2d 386, 389-90 (Fla. 1973). The doctrine of the exhaustion of administrative remedies is the principle that if an

analysis of the FFHA, which does not explicitly require exhaustion of administrative remedies. Rather, the court provided a cursory analysis of what it considered to be an analogous provision of the Florida Civil Rights Act. The *Belletete* holding has been criticized by the Florida Attorney General, and has been rejected by the U.S. District Court for the Southern District of Florida.[26] Nevertheless, Florida state courts, both in and outside of the Fourth District Court of Appeal have continued to adopt the holding of *Belletete*, and dismiss claims brought under the FFHA where the plaintiff has not exhausted the administrative process.[27]

In ongoing discussions since 2008, HUD has informed the Commission that the judicial interpretation of FFHA in *Belletete* requiring the exhaustion of administrative remedies, "renders the Florida law fundamentally inconsistent with federal law." The Federal Fair Housing Act explicitly allows an aggrieved person to commence a civil action whether or not a complaint has been filed with HUD and without regard to the status of any such complaint.[28] Efforts to amend the FFHA during the 2012,[29] 2013,[30] 2014,[31] and 2016[32] legislative sessions were unsuccessful and courts continue to apply the *Belletete* rule in FFHA civil actions.

On July 2, 2015, HUD notified the Commission that HUD would suspend the Commission's participation in FHAP if the FFHA was not amended by January 25, 2016, to overcome the judicially-created requirement that a plaintiff exhaust their administrative remedies as a condition precedent to filing a housing discrimination claim under the FFHA.[33] In light of the legislative calendar, HUD agreed to extend the deadline to amend the FFHA until March 12, 2016.[34]

On March 16, 2016, HUD recognized pending litigation on this subject in the Third District Court of Appeal[35] and vowed to refrain from making any decision regarding suspension of the Commission's participation in FHAP during the pendency of the judicial proceedings.[36] In December 2016, The Third District Court of Appeal applied the *Belletete* rule and held that a plaintiff must exhaust all administrative remedies before commencing an action in civil court, determining that "[w]hether the [Florida Fair Housing Act] should be amended to conform precisely to the federal [Fair Housing Act] is a matter for the Legislature."[37]

EFFECT OF THE BILL

The bill amends the FFHA to provide that a person aggrieved by a discriminatory housing practice is not required to petition for an administrative hearing or exhaust his or her administrative remedies prior to bringing a civil action under the FFHA. Therefore, a person who alleges that he or she has been

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administrative remedy is provided by statute, a claimant must first seek relief from the administrative body before judicial relief is available. Black's Law Dictionary (2014).

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

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

[28] 42 U.S.C. § 3613.

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

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

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

[32] SB 7008 (Senate Governmental Oversight and Accountability) and HB 339 (Representative Rouson)

[33] Letter from Sara K. Pratt, Deputy Assistance Secretary for Enforcement and Programs, U.S. Department of Housing and Urban Development, to Michelle Wilson, Executive Director, Florida Commission on Human Relations, (July 2, 2015) (on file with Civil Justice & Claims Subcommittee staff).

[34] Letter from Lynn Grosso, Acting Deputy Assistant Secretary for Enforcement and Programs, U.S. Department of Housing and Urban Development, to Michelle Wilson, Executive Director, Florida Commission on Human Relations, *Subject: Florida Fair Housing Act - Exhaustion of Administrative Remedies*, (March 16, 2016) (on file with Civil Justice & Claims Subcommittee staff).

[35] *Housing Opportunities Project v. SPV*, 212 So.3d 419 (Fla. 3rd DCA 2016)

[36] Supra, FN 34.

[37] Supra, FN 35 at 424.

injured by unlawful housing discrimination may file a civil action at any time under the FFHA regardless of whether a complaint has been filed with the Commission or the status of any such complaint.

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

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

The bill is effective upon becoming law.

B. SECTION DIRECTORY:

Section 1: Amends s. 760.07, F.S., regarding remedies for unlawful discrimination.
Section 2: Amends s. 760.34, F.S., regarding enforcement.
Section 3: Amends s. 760.35, F.S., regarding civil actions, relief and administrative procedures.
Section 4: Provides an effective date of upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The Office of the State Courts Administrator indicates that the fiscal impact is indeterminate due to the unavailability of data needed to establish additional revenue expected from an increase in civil filings and increased expenditures due to additional workload.[38]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

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

[38] Information from an Agency Analysis of an Identical Bill: Office of State Courts Administrator, *2016 Judicial Impact Statement SB 7008* (Nov. 2, 2015).

The Commission received $847,280 from HUD in FY 2016-2017.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to housing discrimination; amending s. 760.07, F.S.; removing housing discrimination as a cause of action for certain relief and damages stemming from violations of the Florida Civil Rights Act of 1992; amending s. 760.34, F.S.; revising the conditions under which an aggrieved person may commence a civil action in any appropriate court against a specified respondent to enforce specified rights; providing that the aggrieved person does not need to take specified actions before bringing a civil action; making technical changes; amending s. 760.35, F.S.; authorizing, rather than requiring, a civil action to commence within 2 years after an alleged discriminatory housing practice; authorizing an aggrieved person to commence a civil action regardless of whether a specified complaint has been filed and regardless of the status of any such complaint; prohibiting an aggrieved person from filing a specified action in certain circumstances; providing an exception; prohibiting an aggrieved person from commencing a specified civil action if an administrative law judge has commenced a hearing on the record on the allegation; providing an effective date.

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

Section 1. Section 760.07, Florida Statutes, is amended to read:

760.07 Remedies for unlawful discrimination.—Any violation of any Florida statute that makes ~~making~~ unlawful discrimination because of race, color, religion, gender, pregnancy, national origin, age, handicap, or marital status in the areas of education, employment, ~~housing,~~ or public accommodations gives rise to a cause of action for all relief and damages described in s. 760.11(5), unless greater damages are expressly provided for. If the statute prohibiting unlawful discrimination provides an administrative remedy, the action for equitable relief and damages provided for in this section may be initiated only after the plaintiff has exhausted his or her administrative remedy. The term "public accommodations" does not include lodge halls or other similar facilities of private organizations which are made available for public use occasionally or periodically. The right to trial by jury is preserved in any case in which the plaintiff is seeking actual or punitive damages.

Section 2. Subsections (2) and (4) of section 760.34, Florida Statutes, are amended, and subsections (5) and (6) of that section are republished, to read:

760.34 Enforcement.—

(2) Any person who files a complaint under subsection (1) must do so ~~be filed~~ within 1 year after the alleged discriminatory housing practice occurred. The complaint must be in writing and shall state the facts upon which the allegations of a discriminatory housing practice are based. A complaint may be reasonably and fairly amended at any time. A respondent may file an answer to the complaint against him or her and, with the leave of the commission, which shall be granted whenever it would be reasonable and fair to do so, may amend his or her answer at any time. Both the complaint and the answer must ~~shall~~ be verified.

(4) ~~If, within 180 days after a complaint is filed with the commission or within 180 days after expiration of any period of reference under subsection (3), the commission has been unable to obtain voluntary compliance with ss. 760.20-760.37,~~ The ~~person~~ aggrieved person may commence a civil action in any appropriate court against the respondent named in the complaint or petition for an administrative determination pursuant to s. 760.35 to enforce the rights granted or protected by ss. 760.20-760.37 and is not required to petition for an administrative hearing or exhaust administrative remedies before commencing such action. If, as a result of its investigation under subsection (1), the commission finds there is reasonable cause to believe that a discriminatory housing practice has occurred, at the request of the person aggrieved, the Attorney General may

bring an action in the name of the state on behalf of the aggrieved person to enforce the provisions of ss. 760.20-760.37.

(5) In any proceeding brought pursuant to this section or s. 760.35, the burden of proof is on the complainant.

(6) Whenever an action filed in court pursuant to this section or s. 760.35 comes to trial, the commission shall immediately terminate all efforts to obtain voluntary compliance.

Section 3. Section 760.35, Florida Statutes, is amended to read:

760.35 Civil actions and relief; administrative procedures.—

(1) An aggrieved person may commence a civil action ~~shall be commenced~~ no later than 2 years after an alleged discriminatory housing practice has occurred. However, the court shall continue a civil case brought pursuant to this section or s. 760.34 from time to time before bringing it to trial if the court believes that the conciliation efforts of the commission or local agency are likely to result in satisfactory settlement of the discriminatory housing practice complained of in the complaint made to the commission or to the local agency and which practice forms the basis for the action in court. Any sale, encumbrance, or rental consummated prior to the issuance of any court order issued under the authority of ss. 760.20-760.37 and involving a bona fide purchaser, encumbrancer, or

tenant without actual notice of the existence of the filing of a complaint or civil action under the provisions of ss. 760.20-760.37 shall not be affected.

(2) An aggrieved person may commence a civil action under this section regardless of whether a complaint has been filed under s. 760.34(1) and regardless of the status of any such complaint. If the commission has obtained a conciliation agreement with the consent of an aggrieved person under s. 760.36, the aggrieved person may not file any action under this section regarding the alleged discriminatory housing practice that forms the basis for the complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this section regarding an alleged discriminatory housing practice if an administrative law judge has commenced a hearing on the record on the allegation.

(4) ~~(2)~~ If the court finds that a discriminatory housing practice has occurred, it shall issue an order prohibiting the practice and providing affirmative relief from the effects of the practice, including injunctive and other equitable relief, actual and punitive damages, and reasonable attorney ~~attorney's~~ fees and costs.

(5)(a) ~~(3)(a)~~ If the commission is unable to obtain voluntary compliance with ss. 760.20-760.37 or has reasonable cause to believe that a discriminatory practice has occurred:

1. The commission may institute an administrative proceeding under chapter 120; or

2. The person aggrieved may request administrative relief under chapter 120 within 30 days after receiving notice that the commission has concluded its investigation under s. 760.34.

(b) Administrative hearings shall be conducted pursuant to ss. 120.569 and 120.57(1). The respondent must be served written notice by certified mail. If the administrative law judge finds that a discriminatory housing practice has occurred or is about to occur, he or she shall issue a recommended order to the commission prohibiting the practice and recommending affirmative relief from the effects of the practice, including quantifiable damages and reasonable attorney ~~attorney's~~ fees and costs. The commission may adopt, reject, or modify a recommended order only as provided under s. 120.57(1). Judgment for the amount of damages and costs assessed pursuant to a final order by the commission may be entered in any court having jurisdiction thereof and may be enforced as any other judgment.

(c) The district courts of appeal may, upon the filing of appropriate notices of appeal, review final orders of the commission pursuant to s. 120.68. Costs or fees may not be assessed against the commission in any appeal from a final order issued by the commission under this subsection. Unless specifically ordered by the court, the commencement of an appeal does not suspend or stay an order of the commission.

(d) This subsection does not prevent any other legal or administrative action provided by law.

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

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 853 (2018)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Civil Justice & Claims Subcommittee

Representative Davis offered the following:

Amendment (with title amendment)

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

Remove line 10 and insert:

rights; providing that an aggrieved person does not

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 909 Free Expression on Campus
SPONSOR(S): Rommel; Clemons and others
TIED BILLS: none **IDEN./SIM. BILLS:** SB 1234

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Post-Secondary Education Subcommittee	9 Y, 5 N	McAlarney	Bishop
2) Civil Justice & Claims Subcommittee		Jones WJJ	Bond MB
3) Education Committee			

SUMMARY ANALYSIS

The bill creates s. 1004.097, F.S, the "Campus Free Expression Act" (Act), which addresses the issue of free speech on Florida university and college campuses.

The bill defines the terms free speech zone, outdoor areas of campus, and public institutions of higher education. It clarifies that an individual or institution may not infringe upon the expressive rights of others, and an institution is prohibited from restricting expressive activities to a particular area of campus and designating free speech zones.

Protected activities include speeches and writings that an individual uses to communicate ideas to others. These include:

- Peaceful assembly.
- Peaceful protests.
- Speeches.
- Guest speakers.
- Distributing literature.
- Carrying signs.
- Circulating petitions.
- Video or audio recording in outdoor areas of campus.

Reasonable limits on expressive activities are permitted. However, students, faculty, or staff may not materially and substantially disrupt activities on campus. An institution may restrict expressive activities only if the restrictions are reasonable. The restrictions must be content-neutral on time, place, and manner of expression, and must be narrowly tailored to a significant institutional interest. All restrictions must be clear, published, and provide for ample alternative means of expression.

The bill empowers individuals and the Attorney General to defend free speech rights by creating a state cause of action. Remedies for violations include monetary damages, reasonable court costs, and attorney fees. A one-year statute of limitations is set.

The bill has an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Intellectual Diversity and Freedom of Expression

In 2013, the American Council of Trustees and Alumni (ACTA), with the James Madison Institute (JMI), produced a comprehensive report that reviewed state university policies in Florida relating to the right to free expression on campus.[1] The report found that, while Florida institutions have broad policy statements that declare the right to free expression on campus, they also have broad policies that punish "offensive" speech or restrict expression to designated "free speech zones."[2] The Foundation for Individual Rights in Education (FIRE) also conducted a review of the state of free speech on college campuses.[3] FIRE conducted a survey of the publicly available policies at 449 4-year postsecondary institutions (345 public and 104 private) and found that 39.6 percent of those institutions maintain severely restrictive speech codes that prohibit constitutionally protected speech.[4] FIRE rated colleges and universities as either "red light,"[5] "yellow light,"[6] or "green light"[7] based on the amount of restrictions their written policies place on protected speech. Over a 9-year period, the number of public postsecondary institutions that received a "red light" rating dropped from 79 percent to 33.9 percent.[8]

As of 2017, the only Florida public universities that have received a "green light" campus free speech rating are the University of Florida and the University of North Florida.[9]

In January 2015, the Committee on Freedom of Expression at the University of Chicago produced a free speech policy statement (referred to as the "Chicago Statement") that affirmed the centrality of unfettered debate to the university's mission.[10] Below is an excerpt from this statement:[11]

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[1] American Council of Trustees and Alumni (with the James Madison Institute), *Florida Rising: An assessment of Public Universities in the Sunshine State* (June 2013). *Available at:* https://www.goacta.org/publications/florida_rising (last visited Jan. 11, 2018).
[2] *Id.*
[3] Foundation for Individual Rights in Education, *Spotlight on Free Speech Codes 2017. Available at:* https://www.thefire.org/spotlight-on-speech-codes-2017/ (last visited Jan. 17, 2018).
[4] *Id.*
[5] Foundation for Individual Rights in Education, *Spotlight on Free Speech Codes 2017. Available at:* https://www.thefire.org/spotlight-on-speech-codes-2017/ (last visited Jan. 17, 2018). A "red light" institution is one that has at least one policy both clearly and substantially restricting freedom of speech, or that bars public access to its speech-related policies by requiring a university login and password for access. A "clear" restriction is one that unambiguously infringes on protected expression.
[6] Foundation for Individual Rights in Education, *Spotlight on Free Speech Codes 2017. Available at:* https://www.thefire.org/spotlight-on-speech-codes-2017/ (last visited Jan. 17, 2018). A 'yellow light" institution is one that maintains policies that could be interpreted to suppress protected speech or policies that, while clearly restricting freedom of speech, restrict narrow categories of speech.
[7] Foundation for Individual Rights in Education, *Spotlight on Free Speech Codes 2017. Available at:* https://www.thefire.org/spotlight-on-speech-codes-2017/ (last visited Jan. 17, 2018). A 'green light" institution is one whose written policies do not seriously threaten campus expression. It does not indicate whether an institution actively supports free expression in practice.
[8] Foundation for Individual Rights in Education, *Spotlight on Free Speech Codes 2017. Available at:* https://www.thefire.org/spotlight-on-speech-codes-2017/ (last visited Jan. 17, 2018).
[9] James Madison Institute, *Free expression and Intellectual Diversity: How Florida Universities Currently Measure Up.* (December 14, 2017). *Available at:* https://www.jamesmadison.org/Library/docLib/PolicyBrief-FreeSpeech-v05.pdf (last visited Jan. 11, 2018).
[10] *Id.*
[11] University of Chicago, *Report of the Committee on Free Expression* (2015). Available at: https://freeexpression.uchicago.edu/sites/freeexpression.uchicago.edu/files/FOECommitteeReport.pdf (last visited Jan. 11, 2018).

> Because the University is committed to free and open inquiry in all matters, it guarantees all members of the University community the broadest possible latitude to speak, write, listen, challenge, and learn. Except insofar as limitations on that freedom are necessary to the functioning of the University, the University of Chicago fully respects and supports the freedom of all members of the University community "to discuss any problem that presents itself."
>
> Of course, the ideas of different members of the University community will often and quite naturally conflict. But it is not the proper role of the University to attempt to shield individuals from ideas and opinions they find unwelcome, disagreeable, or even deeply offensive. Although the University greatly values civility, and although all members of the University community share in the responsibility for maintaining a climate of mutual respect, concerns about civility and mutual respect can never be used as a justification for closing off discussion of ideas, however offensive or disagreeable those ideas may be to some members of our community.

Several other postsecondary institutions have adopted some version of the "Chicago Statement" since 2015.[12]

US Constitutional Right to Free Speech

The First Amendment to the U.S. Constitution states that:

> *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*[13]

What Does Free Speech Mean?

The Supreme Court of the United States (SCOTUS) historically determines what exactly constitutes protected speech. The following are examples of speech, both direct (words) and symbolic (actions), that the SCOTUS has decided are, or are not, entitled to First Amendment protections.[14]

Freedom of speech includes the right:[15]

- Not to speak (specifically, the right not to salute the flag).[16]
- Of students to wear black armbands to school to protest a war ("Students do not shed their constitutional rights at the schoolhouse gate.").[17]
- To use certain offensive words and phrases to convey political messages.[18]
- To contribute money to political campaigns.[19]
- To advertise commercial products and professional services.[20]
- To engage in symbolic speech such as burning the American flag in protest.[21]

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[12] Foundation for Individual Rights in Education, *Spotlight on Free Speech Codes 2017. Available at:* https://www.thefire.org/spotlight-on-speech-codes-2017/ (last visited Jan. 11, 2018).

[13] Congress.gov, The Constitution of the United States of America: Analysis and Interpretation, Amendments to the Constitution, Bill of Rights, 1st Amendment, p. 1071, https://www.congress.gov/content/conan/pdf/GPO-CONAN-2017-10-2.pdf (last visited Jan. 11, 2018).

[14] Administrative Office of the U.S. Courts, About Federal Courts, Educational Resources, What Does Free Speech Mean?, http://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does (last visited Jan. 11, 2018).

[15] *Id.*

[16] *West Virginia Board of Education v. Barnette*, 319 U.S. 624 (1943).

[17] *Tinker v. Des Moines*, 393 U.S. 503 (1969).

[18] *Cohen v. California*, 403 U.S. 15 (1971).

[19] *Buckley v. Valeo*, 424 U.S. 1 (1976).

[20] *Virginia Board of Pharmacy v. Virginia Consumer Council*, 425 U.S. 748 (1976); *Bates v. State Bar of Arizona*, 433 U.S. 350 (1977).

[21] *Texas v. Johnson*, 491 U.S. 397 (1989); *United States v. Eichman*, 496 U.S. 310 (1990).

Freedom of speech does not include the right:[22]

- To incite actions that would harm others such as shouting 'fire' in a crowded theater."[23]
- To make or distribute obscene materials.[24]
- To burn draft cards as an anti-war protest.[25]
- To permit students to print articles in a school newspaper over the objections of the school administration.[26]
- Of students to make an obscene speech at a school-sponsored event.[27]
- Of students to advocate illegal drug use at a school-sponsored event.[28]

Free Speech at Higher Education Institutions

The SCOTUS stated that the "college classroom with its surrounding environs is peculiarly the 'marketplace of ideas.'"[29] If public universities stifle student speech and prevent the open exchange of ideas on campus "our civilization will stagnate and die."[30] In college classrooms young adults learn to exercise these constitutional rights necessary to participate in our system of government and to tolerate others' exercise of the same rights. There is "no room for the view that . . . First Amendment protections should apply with less force on college campuses than in the community at large . . . Quite to the contrary, the vigilant protection of constitutional freedoms is nowhere more vital than in the community of American schools."[31]

Effect of Proposed Changes

This bill creates the "Campus Free Expression Act" (Act), s. 1004.097, F.S, which addresses the issue of free speech on the campuses of public postsecondary institutions.

The Act defines the terms free speech zone, outdoor areas of campus, and public institutions of higher education as follows:

- Free speech zone is defined as a designated area on a public institution of higher education's campus for the purpose of political protesting.
- Outdoor areas of campus are defined generally as accessible areas of the campus where members of the campus community are commonly allowed, including grassy areas, walkways, or other similar common areas. The term does not include outdoor areas where access is restricted.
- Public institution of higher education (institution) is defined as any public technical center, state college, state university, law school, medical school, dental school, or other Florida College System institution as defined in s. 1000.21, F.S.

Free speech rights are protected by enforcing the right to peacefully protest or distribute literature on campus, and clarifying that an individual or institution may not infringe upon the expressive rights of others. Protected activities include speeches and writings that an individual uses to communicate ideas to others.

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[22] Administrative Office of the U.S. Courts, About Federal Courts, Educational Resources, What Does Free Speech Mean?, http://www.uscourts.gov/about-federal-courts/educational-resources/about-educational-outreach/activity-resources/what-does (last visited Jan. 11, 2018).
[23] *Schenck v. United States*, 249 U.S. 47 (1919).
[24] *Roth v. United States*, 354 U.S. 476 (1957).
[25] *United States v. O'Brien*, 391 U.S. 367 (1968).
[26] *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988).
[27] *Bethel School District #43 v. Fraser*, 478 U.S. 675 (1986).
[28] *Morse v. Frederick*, 551 U.S. 393 (2007).
[29] *Healy v. James*, 408 U.S. 169, 180 (1972).
[30] *Sweezy v. New Hampshire*, 354 U.S. 234, 250 (1957)
[31] *Healy v. James*, 408 U.S. 169, 180 (1972).

These include:

- Peaceful assembly.
- Peaceful protests.
- Speeches.
- Guest speakers.
- Distributing literature.
- Carrying signs.
- Circulating petitions.
- Video or audio recording in outdoor areas of campus.

Reasonable limits on expressive activities are permitted; however, students, faculty, or staff may not materially disrupt activities on campus. An individual may exercise rights freely as long as his or her conduct is lawful and does not materially and substantially disrupt the functioning of the public institution of higher education.

Restrictions must be reasonable and content-neutral on time, place, and manner of expression. These restrictions must be narrowly tailored to a significant institutional interest. This clarifies the legal standard for courts to apply and ensures that regulations are truly necessary to prevent disruption. All restrictions must be clear, published, and provide for ample alternative means of expression. Additionally, institutions are prohibited from creating policies restricting expressive activities to a particular area of campus and designating free speech zones.

A state cause of action with a one-year statute of limitation is created. If an individual is prevented from speaking or writing, or is forced to do so in a free-speech zone, that individual or the Attorney General can file a lawsuit in state court. Remedies for violations include monetary damages, reasonable court costs, and attorneys' fees. However, the total compensatory damages available, excluding reasonable court costs and attorney fees, may not exceed $100,000. If there are multiple plaintiffs, the court divides the damages equally among the plaintiffs until the maximum award is exhausted. The court is required to award a minimum of $500, plus an additional $50 for each day the violation remains ongoing. The $50 per day starts the day after the Institution is properly served under the Florida Rules of Civil Procedure.

By allowing individuals to recover attorneys' fees, the bill ensures access to courts and makes it feasible for an individual to bring a case where significant, nonmonetary, constitutional rights are at stake.

B. SECTION DIRECTORY:

Section 1. Explains that the act may be cited as the "Campus Free Expression Act".

Section 2. Creates s. 1004.097, F.S., the "Campus Free Expression Act," authorizing public institutions of higher education to create and enforce restrictions on expressive activities on campus; provides cause of action for violation of the act; provides for specific damages; and provides a statute of limitations.

Section 3. Provides an effective date of July 1, 2018.

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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

Not applicable.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

A bill to be entitled

An act relating to free expression on campus; providing a short title; creating s. 1004.097, F.S.; providing definitions; providing applicability; authorizing a public institution of higher education to create and enforce certain restrictions relating to expressive activities on campus; providing for a cause of action against a public institution of higher education for violations of the act; providing for damages; providing a statute of limitations; providing an effective date.

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

Section 1. This act may be cited as the "Campus Free Expression Act."

Section 2. Section 1004.097, Florida Statutes, is created to read:

1004.097 Free expression on campus.—

(1) DEFINITIONS.—

(a) "Free speech zone" means a designated area on a public institution of higher education's campus for the purpose of political protesting.

(b) "Outdoor areas of campus" means generally accessible areas of the campus where members of the campus community are

commonly allowed, including grassy areas, walkways, or other similar common areas. The term does not include outdoor areas where access is restricted.

(c) "Public institution of higher education" means any public technical center, state college, state university, law school, medical school, dental school, or other Florida College System institution as defined in s. 1000.21.

(2) RIGHT TO FREE SPEECH ACTIVITIES.—

(a) Expressive activities protected under this section include, but are not limited to, any lawful verbal or written means by which an individual may communicate ideas to others, including all forms of peaceful assembly, protests, speeches, and guest speakers; distributing literature; carrying signs; circulating petitions; and the recording and publication, including Internet publication, of video or audio recorded in outdoor areas of campus of public institutions of higher education.

(b) A person who wishes to engage in an expressive activity in the outdoor areas of campus of a public institution of higher education may do so freely, spontaneously, and contemporaneously as long as the person's conduct is lawful and does not materially and substantially disrupt the functioning of the public institution of higher education.

(c) The outdoor areas of campus of a public institution of higher education that accept federal funding are considered

traditional public forums. A public institution of higher education may create and enforce restrictions that are reasonable and content-neutral on time, place, and manner of expression and that are narrowly tailored to a significant institutional interest. Restrictions must be clear, published, and provide for ample alternative means of expression.

(d) A public institution of higher education may not designate any area of campus as a free speech zone or otherwise create policies restricting expressive activities to a particular area of campus.

(e) Students, faculty, or staff of a public institution of higher education may not materially disrupt previously scheduled or reserved activities on campus occurring at the same time.

(3) CAUSE OF ACTION; DAMAGES.—

(a) The Attorney General or a person whose expressive rights are violated by an action prohibited under this section may bring an action in a court of competent jurisdiction to recover compensatory damages, reasonable court costs, and attorney fees.

(b) If the court finds that a violation of this section occurred, the court shall award the aggrieved party a minimum of $500 for the initial violation plus an additional $50 for each day the violation remains ongoing starting the day after the date the complaint is served on the public institution of higher education.

(c) Excluding reasonable court costs and attorney fees, the total compensatory damages available to a plaintiff in a case arising from a single violation of this section may not exceed $100,000. If there are multiple plaintiffs, the court shall divide the damages equally among the plaintiffs until the maximum award is exhausted.

(4) STATUTE OF LIMITATIONS.—A person aggrieved by a violation of this section must bring suit no later than 1 year after the date the cause of action accrues. For the purpose of calculating the 1-year limitation period, each day that a violation of this section persists or each day that a policy in violation of this section remains in effect constitutes a new violation and, therefore, a new day that the cause of action accrues.

Section 3. This act shall take effect July 1, 2018.

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 909 (2018)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Civil Justice & Claims Subcommittee

Representative Rommel offered the following:

Amendment

Remove lines 67-76 and insert:

may bring an action in a court of competent jurisdiction against the public institution of higher education to recover compensatory damages plus court costs and a reasonable attorney fee. If the court finds that a violation of this section occurred, the court shall award the aggrieved party the greater of $500 for each violation or compensatory damages.

(b) Excluding reasonable court costs and attorney fees,

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 979 Uniform Voidable Transactions Act
SPONSOR(S): Moraitis, Jr.
TIED BILLS: **IDEN./SIM. BILLS:** SB 1316

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		MM MacNamara	Bond MB
2) Judiciary Committee			

SUMMARY ANALYSIS

The Uniform Fraudulent Transfer Act (UFTA) provides a creditor with a means to reach assets a debtor has transferred to another person or entity. Florida adopted UFTA in 1987.

In 2014, the Uniform Law Commission amended UFTA for the first time since its creation in 1984. The amendments replaced UFTA with the Uniform Voidable Transactions Act (UVTA), which address issues with UFTA such as providing a choice of law provision, specifying the burden of proof on creditors and debtors in actions under the UVTA, and making clear that fraudulent intent is not required when seeking to set aside a transfer of property.

HB 979 adopts the Uniform Voidable Transaction Act to replace the UFTA. The bill provides that a creditor making a claim has the burden of proving the elements of their claim by a preponderance of the evidence. The bill removes the way partnerships are considered insolvent and instead subjects partnerships to the same solvency standard as other debtors. The bill adds a choice of law provision by providing a claim for relief is governed by the claims law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred. The bill also outlines how the UVTA applies to a business organization structured as a series organization, a form of business organization recognized in some other states.

The statute of limitations for filing an action to set aside a transfer or obligation is the later of 4 years from the transfer or obligation, or one year from when the transfer or obligation was or could have been discovered. The bill changes the one year provision to provide that it starts when the wrongful nature of the transfer or obligation was or could reasonably have been discovered.

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

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Uniform Fraudulent Transfer Act

According to the National Conference of Commissioners on Uniform State Laws, the Uniform Fraudulent Transfer Act (UFTA) was enacted by 44 states, as well as the District of Columbia and the U.S. Virgin Islands.[1] Florida adopted the UFTA in 1987.[2] Chapter 726, F.S., the Florida Uniform Fraudulent Transfer Act (FUFTA), gives a present or future creditor the ability to reach assets that a debtor has transferred to another person or entity if the transfer was made to shield the assets from being used to satisfy a debt to the creditor.

For present and future creditors, s. 726.105, F.S., provides that a transfer made or an obligation incurred by a debtor is fraudulent if the debtor made the transfer or incurred the obligation:

- With actual intent to hinder, delay, or defraud any creditor; or
- Without receiving reasonably equivalent value in exchange for the transfer or obligation, and the debtor:
    - Engaged, or about to engage, in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or
    - Intended to incur or believed that he or she would incur debts beyond his or her ability to pay as they became due.[3]

For present creditors only, a transfer made or an obligation incurred by a debtor is fraudulent if the debtor made the transfer or incurred the obligation without receiving reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent or became insolvent because of the transfer or obligation.[4]

The FUFTA provides a statutory remedy for creditors primarily through a "clawback" action in which a creditor may have a debtor's transfer or obligation voided and surrendered back to the creditor.[5] This remedy is subject to a 4-year statute of limitations.[6]

Uniform Voidable Transactions Act

In 2014, the Uniform Law Commission amended the Uniform Fraudulent Transfer Act for the first time since its creation in 1984.[7] The Commission changed the name of UFTA to the Uniform Voidable Transaction Act (UVTA) to clarify its purpose and application. According to the Commission, fraud has never been a necessary element of a claim under UFTA and UFTA has always applied to the incurrence of obligations as well as transfers to property.[8] Additionally, UVTA makes the following changes:

- Adds a choice of law rule for claims governed by UVTA;
- Creates uniform rules allocating the burden of proof;

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[1] Uniform Law Commission, Legislative Fact Sheet – Fraudulent Transfer Act, *available at* http://uniformlaws.org/LegislativeFactSheet.aspx?title=Fraudulent Transfer Act (1984)(1984) (last visited January 16, 2018).
[2] Ch. 1987-79, Laws of Fla. The short title for ch. 726, F.S., is the "Uniform Fraudulent Transfer Act."
[3] S. 726.105, F.S.
[4] S. 726.106(1), F.S.
[5] See s. 726.108, F.S.
[6] S. 726.110, F.S.
[7] Uniform Law Commission, "The Uniform Voidable Transactions Act (2014 Amendments)", http://www.uniformlaws.org/shared/docs/fraudulent%20transfer/UVTA%20-%20Summary.pdf (last visited January 16, 2018).
[8] *Id.*

- Deletes the special definition of insolvency for partnerships; and
- Revises the defenses available to a transferee or obligee.[9]

UVTA has been enacted in 16 states and legislation has been introduced in 5 states in 2018.[10]

Effect of the Bill

HB 979 adopts UVTA in Florida and replaces FUFTA, and renames ch. 726, F.S., from "Fraudulent Transfers" to "Voidable Transactions." The bill amends s. 726.101, F.S., to be cited as the "Uniform Voidable Transactions Act," and removes the term "fraudulent" from ch. 726, F.S., and replaces it with "voidable." The bill further states that the 2014 official comments to the UVTA, adopted by the National Conference of Commissioners on Uniform State Laws, are not part of ch. 726, F.S., and do not reflect the laws of the state.

Definitions

The bill amends s. 726.102, F.S, regarding definitions for ch. 726, F.S. The bill adds the following definitions:

- "Claims law" means a fraudulent conveyance, fraudulent transfer, or voidable transfer laws or other laws of similar effect.
- "Electronic" means technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.
- "Organization" means a person other than an individual.
- "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
- "Sign" means to execute or adopt a tangible symbol, or attach to or logically associate with the record an electronic symbol, sound, or process, with present intent to authenticate or adopt a record .

The bill also amends the definition of person to include limited partnership, business corporation, nonprofit business corporation, public corporation, limited liability company, limited cooperative association, unincorporated nonprofit association, common law business trust, statutory trust, and association joint venture.

Insolvency

Current law provides that a debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets.[11] A debtor who is generally not paying his or her debts as they become due is presumed to be insolvent.[12] FUFTA treats the calculation of insolvency for partnerships different than the way a person is calculated as being insolvent. A partnership is considered insolvent if the sum of the partnership's debts is greater than the aggregate, at fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.[13]

The bill amends s. 726.103, F.S, to remove the special definition of insolvency for partnerships and treats a partnership like a person. Thus, under the bill, a partnership is insolvent if, at a fair valuation, the sum of the partnership's debts is greater than the sum of the partnerships' assets. The bill limits the

[9] Id.
[10] Uniform Law Commission, Legislative Fact Sheet-Voidable Transactions Act Amendments (2014)-Formerly Fraudulent Transfer Act, http://www.uniformlaws.org/LegislativeFactSheet.aspx?title=Voidable Transactions Act Amendments (2014) - Formerly Fraudulent Transfer Act (last visited January 16, 2018).
[11] S. 726.103(1), F.S.
[12] S. 726.103(2), F.S.
[13] S. 726.103(3), F.S.

presumption of insolvency to provide where a debt is not being paid because of a dispute, that non-payment does not trigger a finding of insolvency. Additionally, the bill provides that the presumption of insolvency is placed on the debtor to prove he or she is not insolvent.

Burden of Proof

Section 726.105(1), F.S., provides that a creditor who is a victim of fraud may have some recourse against the recipient of a transfer from the debtor if the transfer was made with actual intent to hinder, delay, or defraud any creditor of the debtor, or if the transfer was made without receiving reasonably equivalent value in exchange for the transfer. In determining actual intent of the debtor, a court may consider a number of factors, including whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred.[14] Section 726.106(1), F.S., provides a transfer by a debtor is per se fraudulent when the debtor made the transfer without receiving a reasonably equivalent value in exchange and the debtor was insolvent at the time or the transfer made the debtor insolvent.[15] Also, s. 726.106(2), F.S., provides a transfer made by a debtor is fraudulent as to a creditor if the transfer was made to an insider for an antecedent debt,[16] the debtor was insolvent at that time, and the insider had reasonable cause to believe that debtor was insolvent.

The bill amends ss. 726.105-.106, F.S., to provide that a creditor making a claim for relief under ss. 726.105 or 726.106, F.S., has the burden of proving the voidable transaction by a preponderance of the evidence.[17] Additionally, the bill provides that when a court considers the intent of the debtor under s. 726.105(1), F.S., the court may consider the value of the consideration received and the value by way of asset substitution to ensure conversion of assets alone is not seen as an attempt to defraud creditors.

Defenses

A creditor may obtain a judgment on a claim against a debtor and may, if the court so orders, levy execution on the asset transferred or its proceeds if such transfer is voidable pursuant to ch. 726, F.S.[18] However, s. 726.109, F.S., provides a number of defenses or protections to a transferee. For example, a transfer or obligation is not voidable against a person who took in good faith and for a reasonably equivalent value.[19] Additionally, a good faith transferee is entitled to a lien on or a right to retain any interest in the asset transferred.[20]

The bill provides recovery pursuant to a judgment of the asset transferred or its proceeds is available only against the first transferee of the asset and an immediate transferee and exempts good faith transferees and their immediate good faith transferees, from having judgments enforced against them.

Another defense provided in ch. 726, F.S., is that a transfer is not voidable if the transfer results from a termination of a lease upon default by the debtor when the termination is pursuant to the lease terms or by enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code.

The bill outlines who carries the burden of proving the defenses or right to attach judgments against transferees. Anyone seeking to invoke the defenses in s. 726.109, F.S., has the burden of proving the applicability of that defense. A creditor has the burden of proving applicability of judgments against a first transferee or an immediate transferee. A good faith transferee has the burden of proving they are a

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[14] S. 726.105(2)(h), F.S.
[15] S. 726.106(1), F.S.; *Gass v. Comreal Miami*, 653 So. 2d 1069, 1071 (Fla. 3d DCA 1995).
[16] Antecedent debt means "a debtor's prepetition obligation that existed before a debtor's transfer of an interest in property." BLACK'S LAW DICTIONARY (8th ed. 2004).
[17] Preponderance of the evidence means "the greater weight of the evidence, not necessarily established by the greater number of witnesses testifying to a fact but by evidence that has the most convincing force." BLACK'S LAW DICTIONARY (8th ed 2004).
[18] S. 726.108, F.S.
[19] S. 726.109(1), F.S.
[20] S. 726.109(4), F.S.

good faith transferee or a mediate good faith transferee. The standard of proof is a preponderance of the evidence.

Statute of Limitations

Section 726.110(1), F.S., provides a cause of action relating to a fraudulent transfer or obligation is barred unless brought within 4 years after the transfer was made or obligation was incurred or, if later, within 1 year after the transfer or obligation was discovered by claimant. The bill adds the element of discovery of the wrongful nature of the transfer or obligation to the 1 year statute of limitations that applies once the transfer is discovered.

Choice of Law

The bill creates s. 726.113, F.S., to provide that a claim for relief under ch. 726, F.S., is governed by the claims law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred. For purposes of determining a debtor's physical location, the bill provides:

- An individual debtor's physical location is at his or her principal residence;
- A debtor's physical location, if the debtor is an organization with only one place of business, is at the debtor's place of business; and
- A debtor's physical location, if the debtor is an organization and has more than one place of business, is at its chief executive office.

The bill provides this choice of law provision does not govern any claims between the parties arising outside of ch. 726, F.S. The bill also provides that if a foreign jurisdiction applies, it will not affect the debtor's entitlement to any protections under the debtor's homestead under the Florida Constitution.

Application to Series Organizations

A series organization is a business organization concept in which a limited partnership or a limited liability company may designate their separate assets in specific series.[21] Once designated, the creditors to an individual series may not look to the assets of another series, even if both series are owned by the same limited liability company or partnership.[22] In the context of limited partnerships, the series is intended to emulate the existence of multiple limited partnerships without creating separate entities.[23]

The bill creates s. 726.114, to outline how ch. 726, F.S., applies to a series organization. A series organization and each protected series organization is a separate person for purposes of ch. 726, F.S., even if for other purposes a protected series is not a person separate from the organization. The bill defines a series organization as an organization that, pursuant to the law under which it is organized, has the following characteristics:

- The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of, or associated with, the protected series.
- Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only and not against the property of or associated with the organization or other protected series of the organization.

[21] Adam Hiller, *But Series-ly, Folks--The Series Laws, and How They (May) Intersect with Bankruptcy Law*, 20 AM. BANKR. INST. L. REV. 353, 354 (2012).
[22] For example, if an investor group wished to purchase a chain of thirty-five fast food restaurants, the investors can create a single limited liability company, isolate each restaurant into its own series, and divert creditors of one restaurant from reaching assets of other owned restaurants. Id. at 355.
[23] Id. at 354.

- Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

The bill defines protected series as an arrangement, however denominated, created by a series organization that meets the requirements of a series organization. By enacting this application on series organizations even when Florida law does not contemplate a series organization, a Florida court may find a voidable transaction of a series organization organized in a state which has adopted series organization laws.

Electronic Signatures in Global and National Commerce Act

The Electronic Signatures in Global and National Commerce Act of 2000 (E-Sign Act) provides electronic signatures, contracts, and records with respect to a transaction are valid as a written document.[24] The E-Sign Act does not require contracts, records, or signatures in electronic form.[25] It also provides that if a statute requires a transaction to a consumer be made in writing, then the use of electronic record satisfies the requirement if the consumer consents or is informed of the right to have it in non-electronic form.[26] Additionally, the E-Sign Act does not apply to court orders, notice of cancellation of utility services, foreclosure or eviction, cancellation of health insurance, or a recall of a product.[27]

The bill provides ch. 726, F.S., modifies, limits, and supersedes the E-Sign Act but does not modify limit or supersede the portion of the Act regarding consumer disclosures, or authorize electronic delivery of any of the prohibited notices described in the E-Sign Act.

The effective date of the bill is July1, 2018.

B. SECTION DIRECTORY:

Section 1: Renames ch. 726, F.S., as "Voidable Transactions."
Section 2: Amends s. 726.101, F.S., relating to the Uniform Fraudulent Transfer Act.
Section 3: Amends s. 726.102, F.S., relating to definitions.
Section 4: Amends s. 726.103, F.S., relating to insolvency.
Section 5: Amends s. 726.105, F.S., relating to transfers fraudulent as to present and future creditors.
Section 6: Amends s. 726.106, F.S., relating to transfers fraudulent as to present creditors.
Section 7: Amends s. 726.107, F.S., relating to when transfer made or obligation incurred.
Section 8: Amends s. 726.108, F.S., relating to remedies of creditors.
Section 9: Amends s. 726.109, F.S., relating to defenses, liability, and protection of transferee.
Section 10: Amends s. 726.110, F.S., relating to extinguishment of cause of action.
Section 11: Amends s. 726.111, F.S., relating to supplementary provisions.
Section 12: Amends s. 726.112, F.S., relating to uniformity of application and construction.
Section 13: Creates s. 726.113, F.S., relating to governing law.
Section 14: Creates s. 726.114, F.S., relating to application to series organization.
Section 15: Creates s. 726.115, F.S., relating to relation to Electronic Signatures in Global and National Commerce Act.
Section 16: Creates s. 726.116, F.S., relating to legislative findings regarding comments of the Uniform Law Commission.
Section 17: Provides an effective date of July 1, 2018.

[24] 15 U.S.C. s. 7001(a).
[25] 15 U.S.C. s. 7001(b).
[26] 15 U.S.C. s. 7001(c).
[27] 15 U.S.C. s. 7003(b).

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:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

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

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Uniform Voidable Transactions Act; providing a directive to the Division of Law Revision and Information; amending s. 726.101, F.S.; revising a short title; amending s. 726.102, F.S.; revising and providing definitions; amending s. 726.103, F.S.; removing conditions under which a partnership is insolvent; imposing the burden of proving insolvency upon certain debtors; amending ss. 726.105 and 726.106, F.S.; imposing the burden of proving elements of a claim for relief upon certain creditors; amending s. 726.107, F.S.; conforming provisions to changes made by the act; amending s. 726.108, F.S.; providing conditions under which attachments or other provisional remedies are available to creditors; amending s. 726.109, F.S.; revising the parties subject to judgments for recovery of a creditor's claim; revising conditions under which a transfer is not voidable; imposing the burden of proving certain applicability, claim elements, and adjustments; providing requirements for standard of proof; amending ss. 726.110, 726.111, and 726.112, F.S.; conforming provisions to changes made by the act; creating s. 726.113, F.S.; providing that claims for relief are governed by specified claims law;

creating s. 726.114, F.S.; providing definitions; providing applicability of specified provisions for series organizations and the protected series of such organizations; creating s. 726.115, F.S.; providing applicability for a specified federal act; creating s. 726.116, F.S.; providing legislative findings regarding certain comments issued by the Uniform Law Commission; providing an effective date.

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

Section 1. The Division of Law Revision and Information is directed to rename chapter 726, Florida Statutes, entitled "FRAUDULENT TRANSFERS," as "VOIDABLE TRANSACTIONS."

Section 2. Section 726.101, Florida Statutes, is amended to read:

726.101 Short title.—This act may be cited as the "Uniform Voidable Transactions ~~Fraudulent Transfer~~ Act."

Section 3. Section 726.102, Florida Statutes, is amended to read:

726.102 Definitions.—As used in this chapter ~~ss. 726.101-726.112~~:

(1) "Affiliate" means:

(a) A person that ~~who~~ directly or indirectly owns, controls, or holds with power to vote, 20 percent or more of the

outstanding voting securities of the debtor, other than a person that ~~who~~ holds the securities:

1. As a fiduciary or agent without sole discretionary power to vote the securities; or

2. Solely to secure a debt, if the person has not in fact exercised the power to vote.

(b) A corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor or a person that ~~who~~ directly or indirectly owns, controls, or holds, with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than a person that ~~who~~ holds the securities:

1. As a fiduciary or agent without sole discretionary power to vote the securities; or

2. Solely to secure a debt, if the person has not in fact exercised the power to vote.

(c) A person whose business is operated by the debtor under a lease or other agreement, or a person substantially all of whose assets are controlled by the debtor; or

(d) A person that ~~who~~ operates the debtor's business under a lease or other agreement or controls substantially all of the debtor's assets.

(2) "Asset" means property of a debtor, but the term does not include:

(a) Property to the extent it is encumbered by a valid

lien;

(b) Property to the extent it is generally exempt under nonbankruptcy law; or

(c) An interest in property held in tenancy by the entireties to the extent it is not subject to process by a creditor holding a claim against only one tenant.

(3) "Charitable contribution" means a charitable contribution as that term is defined in s. 170(c) of the Internal Revenue Code of 1986, if that contribution consists of:

(a) A financial instrument as defined in s. 731(c)(2)(C) of the Internal Revenue Code of 1986; or

(b) Cash.

(4) "Claim," except as used in "claim for relief," means a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.

(5) "Claims law" means fraudulent conveyance, fraudulent transfer, or voidable transfer laws or other laws of similar effect.

(6) ~~(5)~~ "Creditor" means a person that ~~who~~ has a claim.

(7) ~~(6)~~ "Debt" means liability on a claim.

(8) ~~(7)~~ "Debtor" means a person that ~~who~~ is liable on a claim.

(9) "Electronic" means technology having electrical,

digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(10) ~~(8)~~ "Insider" includes:

(a) If the debtor is an individual:

1. A relative of the debtor or of a general partner of the debtor;

2. A partnership in which the debtor is a general partner;

3. A general partner in a partnership described in subparagraph 2.; or

4. A corporation of which the debtor is a director, officer, or person in control;

(b) If the debtor is a corporation:

1. A director of the debtor;

2. An officer of the debtor;

3. A person in control of the debtor;

4. A partnership in which the debtor is a general partner;

5. A general partner in a partnership described in subparagraph 4.; or

6. A relative of a general partner, director, officer, or person in control of the debtor.

(c) If the debtor is a partnership:

1. A general partner in the debtor;

2. A relative of a general partner in, a general partner of, or a person in control of the debtor;

3. Another partnership in which the debtor is a general

partner;

4. A general partner in a partnership described in this paragraph ~~subparagraph 3.~~; or

5. A person in control of the debtor.

(d) An affiliate, or an insider of an affiliate as if the affiliate were the debtor.

(e) A managing agent of the debtor.

(11) ~~(9)~~ "Lien" means a charge against or an interest in property to secure payment of a debt or performance of an obligation, and includes a security interest created by agreement, a judicial lien obtained by legal or equitable process or proceedings, a common-law lien, or a statutory lien.

(12) "Organization" means a person other than an individual.

(13) ~~(10)~~ "Person" means an individual, partnership, limited partnership, business corporation, nonprofit business corporation, public corporation, limited liability company, limited cooperative association, unincorporated nonprofit association, ~~organization,~~ government or governmental subdivision, instrumentality, or agency, business trust, common law business trust, statutory trust, estate, trust, association, joint venture, or any other legal or commercial entity.

(14) ~~(11)~~ "Property" means anything that may be the subject of ownership.

(15) ~~(12)~~ "Qualified religious or charitable entity or

organization" means:

(a) An entity described in s. 170(c)(1) of the Internal Revenue Code of 1986; or

(b) An entity or organization described in s. 170(c)(2) of the Internal Revenue Code of 1986.

(16) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(17) ~~(13)~~ "Relative" means an individual related by consanguinity within the third degree as determined by the common law, a spouse, or an individual related to a spouse within the third degree as so determined, and includes an individual in an adoptive relationship within the third degree.

(18) "Sign" means with present intent to authenticate or adopt a record to:

(a) Execute or adopt a tangible symbol; or

(b) Attach to or logically associate with the record an electronic symbol, sound, or process.

(19) ~~(14)~~ "Transfer" means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, license, and creation of a lien or other encumbrance.

(20) ~~(15)~~ "Valid lien" means a lien that is effective against the holder of a judicial lien subsequently obtained by

legal or equitable process or proceedings.

Section 4. Section 726.103, Florida Statutes, is amended to read:

726.103 Insolvency.—

(1) A debtor is insolvent if, at a fair valuation, the sum of the debtor's debts is greater than the sum ~~all~~ of the debtor's assets ~~at a fair valuation~~.

(2) A debtor that ~~who~~ is generally not paying their ~~his or her~~ debts as they become due for reasons other than as a result of a bona fide dispute is presumed to be insolvent. The party against which the presumption is directed, has the burden of proving that the nonexistence of insolvency is more probable than its existence.

~~(3) A partnership is insolvent under subsection (1) if the sum of the partnership's debts is greater than the aggregate, at a fair valuation, of all of the partnership's assets and the sum of the excess of the value of each general partner's nonpartnership assets over the partner's nonpartnership debts.~~

(3) ~~(4)~~ Assets under this section do not include property that has been transferred, concealed, or removed with intent to hinder, delay, or defraud creditors or that has been transferred in a manner making the transfer voidable under this chapter ~~ss. 726.101-726.112~~.

(4) ~~(5)~~ Debts under this section do not include an obligation to the extent it is secured by a valid lien on

property of the debtor not included as an asset.

Section 5. Section 726.105, Florida Statutes, is amended to read:

726.105 Transfers or obligations voidable ~~fraudulent~~ as to present and future creditors.—

(1) A transfer made or obligation incurred by a debtor is voidable ~~fraudulent~~ as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

(a) With actual intent to hinder, delay, or defraud any creditor of the debtor; or

(b) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

1. Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

2. Intended to incur, or believed or reasonably should have believed that the debtor ~~he or she~~ would incur, debts beyond the debtor's ~~his or her~~ ability to pay as they became due.

(2) In determining actual intent under paragraph (1)(a), consideration may be given, among other factors, to whether:

(a) The transfer or obligation was to an insider.

(b) The debtor retained possession or control of the property transferred after the transfer.

(c) The transfer or obligation was disclosed or concealed.

(d) Before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit.

(e) The transfer was of substantially all the debtor's assets.

(f) The debtor absconded.

(g) The debtor removed or concealed assets.

(h) The value of the consideration received by the debtor, including value by way of asset substitution or otherwise, was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred.

(i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

(j) The transfer occurred shortly before or shortly after a substantial debt was incurred.

(k) The debtor transferred the essential assets of the business to a lienor that ~~who~~ transferred the assets to an insider of the debtor.

(3) A creditor making a claim for relief under subsection (1) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Section 6. Section 726.106, Florida Statutes, is amended to read:

726.106 Transfers or obligations voidable ~~fraudulent~~ as to present creditors.—

(1) A transfer made or obligation incurred by a debtor is voidable ~~fraudulent~~ as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.

(2) A transfer made by a debtor is voidable ~~fraudulent~~ as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(3) Subject to s. 726.103(2), a creditor making a claim for relief under subsection (1) or subsection (2) has the burden of proving the elements of the claim for relief by a preponderance of the evidence.

Section 7. Section 726.107, Florida Statutes, is amended to read:

726.107 When transfer made or obligation incurred.—For the purposes of this chapter ~~ss. 726.101-726.112~~:

(1) A transfer is made:

(a) With respect to an asset that is real property other

than a fixture, but including the interest of a seller or purchaser under a contract for the sale of the asset, when the transfer is so far perfected that a good faith purchaser of the asset from the debtor against which ~~whom~~ applicable law permits the transfer to be perfected cannot acquire an interest in the asset that is superior to the interest of the transferee.

(b) With respect to an asset that is not real property or that is a fixture, when the transfer is so far perfected that a creditor on a simple contract cannot acquire a judicial lien otherwise than under this chapter ~~ss. 726.101-726.112~~ that is superior to the interest of the transferee.

(2) If applicable law permits the transfer to be perfected as provided in subsection (1) and the transfer is not so perfected before the commencement of an action for relief under this chapter ~~ss. 726.101-726.112~~, the transfer is deemed made immediately before the commencement of the action.

(3) If applicable law does not permit the transfer to be perfected as provided in subsection (1), the transfer is made when it becomes effective between the debtor and the transferee.

(4) A transfer is not made until the debtor has acquired rights in the asset transferred.

(5) An obligation is incurred:

(a) If oral, when it becomes effective between the parties; or

(b) If evidenced by a record ~~writing~~, when the record

signed ~~writing executed~~ by the obligor is delivered to or for the benefit of the obligee.

Section 8. Section 726.108, Florida Statutes, is amended to read:

726.108 Remedies of creditors.—

(1) In an action for relief against a transfer or obligation under this chapter ~~ss. 726.101-726.112~~, a creditor, subject to the limitations in s. 726.109 may obtain:

(a) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim, including as contemplated by s. 605.0503(7)(b);

(b) An attachment or other provisional remedy against the asset transferred or other property of the transferee if available under ~~in accordance with~~ applicable law;

(c) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:

1. An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or of other property;

2. Appointment of a receiver to take charge of the asset transferred or of other property of the transferee; or

3. Any other relief the circumstances may require.

(2) If a creditor has obtained a judgment on a claim against the debtor, the creditor, if the court so orders, may levy execution on the asset transferred or its proceeds.

Section 9. Section 726.109, Florida Statutes, is amended to read:

726.109 Defenses, liability, and protection of transferee or obligee.—

(1) A transfer or obligation is not voidable under s. 726.105(1)(a) against a person that ~~who~~ took in good faith and for a reasonably equivalent value given the debtor or against any subsequent transferee or obligee.

(2)(a) ~~Except as otherwise provided in this section,~~ To the extent a transfer is voidable in an action by a creditor under s. 726.108(1)(a), the creditor may recover judgment for the value of the asset transferred, as adjusted under subsection (3), or the amount necessary to satisfy the creditor's claim, whichever is less. The judgment may be entered against:

1.~~(a)~~ The first transferee of the asset or the person for whose benefit the transfer was made; or

2.~~(b)~~ An immediate or mediate transferee of the first ~~Any subsequent~~ transferee other than:

a. A good faith transferee that ~~who~~ took for value; or

b. An immediate or mediate good faith transferee of a person described in sub-subparagraph a ~~from any subsequent transferee~~.

(b) Recovery pursuant to s. 726.108(1)(a) or (2) of or from the asset transferred or its proceeds, by levy or otherwise, is available only against a person described in

subparagraph (a)1. or subparagraph(a)2.

(3) If the judgment under subsection (2) is based upon the value of the asset transferred, the judgment must be for an amount equal to the value of the asset at the time of the transfer, subject to adjustment as the equities may require.

(4) Notwithstanding voidability of a transfer or an obligation under this chapter ~~ss. 726.101-726.112~~, a good faith transferee or obligee is entitled, to the extent of the value given the debtor for the transfer or obligation, to:

(a) A lien on or a right to retain an ~~any~~ interest in the asset transferred;

(b) Enforcement of an ~~any~~ obligation incurred; or

(c) A reduction in the amount of the liability on the judgment.

(5) A transfer is not voidable under s. 726.105(1)(b) or s. 726.106 if the transfer results from:

(a) Termination of a lease upon default by the debtor when the termination is pursuant to the lease and applicable law; or

(b) Enforcement of a security interest in compliance with Article 9 of the Uniform Commercial Code other than acceptance of collateral in full or partial satisfaction of the obligation it secures.

(6) A transfer is not voidable under s. 726.106(2):

(a) To the extent the insider gave new value to or for the benefit of the debtor after the transfer was made, except to the

extent ~~unless~~ the new value was secured by a valid lien;

(b) If made in the ordinary course of business or financial affairs of the debtor and the insider; or

(c) If made pursuant to a good faith effort to rehabilitate the debtor and the transfer secured present value given for that purpose as well as an antecedent debt of the debtor.

(7)(a) The transfer of a charitable contribution that is received in good faith by a qualified religious or charitable entity or organization is not a voidable ~~fraudulent~~ transfer under s. 726.105(1)(b) or s. 726.106(1).

(b) However, a charitable contribution from a natural person is a voidable ~~fraudulent~~ transfer if the transfer was received on, or within 2 years before, the earlier of the date of commencement of an action under this chapter, the filing of a petition under the federal Bankruptcy Code, or the commencement of insolvency proceedings by or against the debtor under any state or federal law, including the filing of an assignment for the benefit of creditors or the appointment of a receiver, unless:

1. The transfer was consistent with the practices of the debtor in making the charitable contribution; or

2. The transfer was received in good faith and the amount of the charitable contribution did not exceed 15 percent of the gross annual income of the debtor for the year in which the

transfer of the charitable contribution was made.

(8)(a) A party that seeks to invoke subsection (1), subsection (4), subsection (5), or subsection (6) has the burden of proving the applicability of that subsection.

(b) Except as otherwise provided in paragraphs (c) and (d), the creditor has the burden of proving each applicable element of subsection (2) or subsection (3).

(c) The transferee has the burden of proving the applicability to the transferee under subparagraph (2)(a)2.

(d) A party that seeks adjustment under subsection (3) has the burden of proving the adjustment.

(9) The standard of proof required to establish matters referred to in this section is preponderance of the evidence.

Section 10. Section 726.110, Florida Statutes, is amended to read:

726.110 Extinguishment of claim for relief ~~cause of action~~.—A claim for relief ~~cause of action~~ with respect to a ~~fraudulent~~ transfer or obligation under this chapter ~~ss. 726.101-726.112~~ is extinguished unless action is brought:

(1) Under s. 726.105(1)(a), within 4 years after the transfer was made or the obligation was incurred or, if later, within 1 year after the transfer or obligation and its wrongful nature was or could reasonably have been discovered by the claimant;

(2) Under s. 726.105(1)(b) or s. 726.106(1), within 4

years after the transfer was made or the obligation was incurred; or

(3) Under s. 726.106(2), within 1 year after the transfer was made or the obligation was incurred.

Section 11. Section 726.111, Florida Statutes, is amended to read:

726.111 Supplementary provisions.—Unless displaced by the provisions of this chapter ~~ss. 726.101-726.112~~, the principles of law and equity, including the law merchant and the law relating to principal and agent, estoppel, laches, fraud, misrepresentation, duress, coercion, mistake, insolvency, or other validating or invalidating cause, supplement those provisions.

Section 12. Section 726.112, Florida Statutes, is amended to read:

726.112 Uniformity of application and construction.—Chapter 87-79, Laws of Florida, shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of the law among states enacting the law ~~it~~.

Section 13. Section 726.113, Florida Statutes, is created to read:

726.113 Governing law.—

(1) For the purposes of this section, the following provisions shall determine a debtor's physical location:

(a) A debtor that is an individual is located at his or her principal residence.

(b) A debtor that is an organization and has only one place of business is located at its place of business.

(c) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(2) A claim for relief in the nature of a claim for relief under this chapter is governed by the claims law of the jurisdiction in which the debtor is located when the transfer is made or the obligation is incurred.

(3) This section only applies to determine the claims law governing a claim for relief under this chapter. This section does not affect the governing law for any other claims, issues, or relief between the parties arising outside of this chapter.

(4) If this section requires the application of the claims law of a foreign jurisdiction, such a determination does not affect which jurisdiction's exemption laws apply, the availability of exemptions under applicable law, or the debtor's entitlement to any protections afforded to the debtor's homestead under the Florida Constitution.

Section 14. Section 726.114, Florida Statutes, is created to read:

726.114 Application to series organization.-

(1) As used in this section, the term:

(a) "Protected series" means an arrangement, however

denominated, created by a series organization that, pursuant to the law under which the series organization is organized, meets the criteria set forth in paragraph (b).

(b) "Series organization" means an organization that, pursuant to the law under which it is organized, has the following characteristics:

1. The organic record of the organization provides for creation by the organization of one or more protected series, however denominated, with respect to specified property of the organization, and for records to be maintained for each protected series that identify the property of, or associated with, the protected series.

2. Debt incurred or existing with respect to the activities of, or property of or associated with, a particular protected series is enforceable against the property of or associated with the protected series only, and not against the property of or associated with the organization or other protected series of the organization.

3. Debt incurred or existing with respect to the activities or property of the organization is enforceable against the property of the organization only, and not against the property of or associated with a protected series of the organization.

(2) A series organization and each protected series of the organization is a separate person for purposes of this chapter,

even if for other purposes a protected series is not a person separate from the organization or other protected series of the organization. Provisions of law other than this chapter determines whether and to what extent a series organization and each protected series of the organization is a separate person for purposes other than the purposes of this chapter.

Section 15. Section 726.115, Florida Statutes, is created to read:

726.115 Relation to Electronic Signatures in Global and National Commerce Act.—This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. ss. 7001, et seq., but does not modify, limit, or supersede section 101(c) of that act, 15 U.S.C. s. 7001(c), or authorize electronic delivery of any of the notices described in s. 103(b) of that act, 15 U.S.C. s. 7003(b).

Section 16. Section 726.116, Florida Statutes, is created to read:

726.116 Legislative findings regarding comments of the Uniform Law Commission.—The Legislature finds that although this act is in agreement with and will improve the laws of this state, the 2014 official comments to the Uniform Voidable Transactions Act, formerly known as the Uniform Fraudulent Transfer Act, adopted in 2014 by the National Conference of Commissioners on Uniform State Laws, also known as the Uniform

Law Commission, are not part of this chapter and may not reflect the laws of this state.

Section 17. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1187 Guardianship
SPONSOR(S): Spano
TIED BILLS: **IDEN./SIM. BILLS:** SB 1002

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	11 Y, 0 N	Langston	Brazzell
2) Civil Justice & Claims Subcommittee		MM MacNamara	Bond MB
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Guardianship is a concept whereby a "guardian" acts for another, called a "ward," whom the law regards as incapable of managing his or her own affairs due to age or incapacity. The Office of Public and Professional Guardians (OPPG) oversees, investigates, and disciplines all public and professional guardians. Complaints against a guardian must be filed with OPPG.

A guardian must file with the court an initial guardianship report, an annual guardianship report, and an annual accounting of the ward's property. In addition to the duty to serve as the custodian of the guardianship files, the clerk reviews each initial and annual guardianship report to ensure that it contains required information about the ward. If the clerk believes further review is appropriate, the clerk may request and review records and documents that reasonably impact guardianship assets. A guardian or OPPG may disclose confidential information about a ward in limited circumstances.

HB 1187 identifies specific actions that the circuit court clerks may take when reviewing guardianship reports. Specifically, the bill permits the clerk to conduct audits and may cause the initial and annual guardianship reports to be audited, when the clerk has reason to believe further review is appropriate. If the clerk identifies an act of wrongdoing on the part of the guardian based on the audit, the bill prohibits the guardian from being paid or reimbursed using the ward's assets for any fees incurred in responding to the audit.

The bill requires the clerk to advise the court of the results of such audits. The bill states that the clerk's communication to the court regarding the clerk's duties to review and audit guardianship reports and accountings may not be considered an ex parte communication.

The bill provides that the clerk may disclose confidential information to the Department of Children and Families or law enforcement agencies "for other purposes," as provided by a court order. The bill authorizes a guardian to provide the confidential information to the court clerk or an investigator with OPPG for investigations that arise under a review of records and documents involving assets, the beginning inventory balance, and fees charged to the guardianship.

The bill allows a complaint against a guardian to be filed with either OPPG or its designee.

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

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Guardianship

Guardianship is a concept whereby a "guardian" acts for another, called a "ward," whom the law regards as incapable of managing his or her own affairs due to age or incapacity.[1] There are two main forms of guardianship: guardianship over the person or guardianship over the property, which may be limited or plenary.[2] A person serving as a public guardian is considered a professional guardian for purposes of regulation, education, and registration.[3] For adults, a guardianship may be established when a person has demonstrated that he or she is unable to manage his or her own affairs. If the adult is competent, this can be accomplished voluntarily. However, when an individual's mental competence is in question, an involuntary guardianship may be established through the adjudication of incompetence, which is determined by a court appointed examination committee.[4]

Fiduciary Relationship

The relationship between a guardian and his or her ward is a fiduciary one.[5] A fiduciary relationship exists between two persons when one of them is under a duty to act for or to give advice for the benefit of another upon matters within the scope of that relationship.[6] Section 744.362, F.S., imposes specific duties upon a guardian consistent with the basic duties of a fiduciary. As such, the guardian must act in the best interest of the ward and carry out his or her responsibilities in an informed and considered manner. Additionally, a guardian may not use the relationship with the ward for his or her private gain other than the remuneration for fees and expenses provided by law.[7]

Initial and Annual Guardianship Reports

Every guardian must file an initial report within 60 days after the letters of guardianship, which appoint the guardian, are signed and file an annual report with the court consisting of an annual accounting and/or an annual guardianship plan.[8]

Initial Guardianship Report

The initial guardianship plan continues in effect until amended or replaced by the approval of an annual guardianship plan; the restoration of capacity or death of the ward; or the ward, if a minor, reaches the age of 18 years.[9] The initial guardianship plan includes:[10]

- The provision of medical, mental, or personal care services for the welfare of the ward;
- The provision of social and personal services for the welfare of the ward;
- The place and kind of residential setting best suited for the needs of the ward;

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[1] S. 744.102(9), F.S.
[2] S. 744.2005, F.S.
[3] S. 744.102(17), F.S.
[4] S. 744.102(12), F.S.
[5] S. 744.361(1), F.S. Additionally, Florida courts have long recognized the relationship between a guardian and his or her ward as a classic fiduciary relationship. *Lawrence v. Norris,* 563 So. 2d 195, 197 (Fla. 1st DCA 1990); s. 744.361(1), F.S.
[6] *Doe v. Evans,* 814 So. 2d 370, 374 (Fla. 2002).
[7] S. 744.446, F.S.
[8] S. 744.3678(1), F.S.
[9] S. 744.363(5), F.S.
[10] S. 744.363(1), F.S.

- The application of health and accident insurance and any other private or governmental benefits to which the ward may be entitled to meet any part of the costs of medical, mental health, or related services provided to the ward; and
- Any physical and mental examinations necessary to determine the ward's medical and mental health treatment needs.

Additionally, an initial guardianship plan for an incapacitated person must be based on the recommendations of the examining committee's examination, as incorporated into the order determining incapacity.[11]

Annual Guardianship Report and Accounting

The annual guardianship report of a guardian of the property must consist of an annual accounting, and the annual report of a guardian of the person must consist of an annual guardianship plan.[12] Unless the court requires filing on a calendar-year basis, each guardian of the person must file an annual guardianship plan with the court within 90 days after the last day of the anniversary month that the letters of guardianship were signed; the plan must cover the coming fiscal year, ending on the last day in such anniversary month.[13]

The annual accounting must include:[14]

- A full and correct account of the receipts and disbursements of all of the ward's property over which the guardian has control and a statement of the ward's property on hand at the end of the accounting period; and
- A copy of the annual or year-end statement of all of the ward's cash accounts from each of the institutions where the cash is deposited.

Additionally, the guardian must obtain and preserve a receipt, cancelled check, or other proof of payment for all expenditures and disbursements made on behalf of the ward, along with any substantiating papers, for three years after his or her discharge as a guardian.[15] The guardian is not required to file these documents with the court but must make them available for inspection and review as the court may order.[16]

Responsibilities of the Clerk of the Circuit Court

In addition to the duty to serve as the custodian of the guardianship files, the clerk reviews each initial and annual guardianship report to ensure that it contains required information about the ward.[17] The clerk must:[18]

- Within 30 days after the date of filing of the initial or annual report of the guardian of the person, complete his or her review of the report.
- Within 90 days after the filing of the verified inventory and accountings by a guardian of the property, the clerk shall audit the verified inventory and the accountings and advise the court of the results of the audit.
- Report to the court when a report is not timely filed.

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[11] S. 744.363(2), F.S.
[12] S. 744.367(3), F.S.
[13] S. 744.367(1), F.S. If the court requires calendar-year filing, the guardian must file the guardianship plan on or before April 1 of each year.
[14] S. 744.3678(2), F.S.
[15] S. 744.3678(3), F.S.
[16] Id.
[17] S. 744.368, F.S. This includes information about the ward that addresses mental and physical health care, physical and mental health examinations, personal and social services, residential setting, the application of insurance, private and government benefits, and the initial verified inventory or the annual accounting.
[18] S. 744.368(2)-(4), F.S.

If the clerk believes further review is appropriate, he or she may request and review records and documents that reasonably impact guardianship assets, including, but not limited to, the beginning inventory balance and any fees charged to the guardianship.[19] If a guardian does not produce records and documents to the clerk upon request, the clerk may request the court to enter an order compelling the guardian to produce the requested records and documents.[20]

The guardian must pay a fee to the clerk of the circuit court for its audit.[21] This fee is paid from the ward's estate, and is scaled based on the value of his or her estate. The maximum fees the clerk may charge are:[22]

- $20 for estates with a value of $25,000 or less;
- $85 for estates with a value of more than $25,000 up to and including $100,000;
- $170 for estates with a value of more than $100,000 up to and including $500,000; and
- $250 for estates with a value in excess of $500,000.

Office of the Public and Professional Guardians

The Legislature created the Statewide Public Guardianship Office in 1999 to provide oversight for all public guardians.[23] In 2016, the Legislature renamed the Statewide Public Guardianship Office within the Department of Elder Affairs (DOEA) as the Office of Public and Professional Guardians (OPPG) and expanded the OPPG's responsibilities.[24] The expansion of the Office's oversight of professional guardians followed reports of abuse and inappropriate behavior by professional guardians.[25] The OPPG now regulates professional guardians with certain disciplinary and enforcement powers.[26] Specifically, s. 744.2004, F.S., requires OPPG to review and, if determined legally sufficient, investigate any complaint that a professional guardian has violated the standards of practice established by OPPG.

OPPG has entered into a Memorandum of Understanding (MOU) with the Clerks' Statewide Investigations Alliance[27] to conduct independent and objective investigations when OPPG refers complaints to them.[28] There are seven county clerk offices with units accredited to perform investigations of legally sufficient complaints regarding the conduct of professional guardians.[29] Since

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[19] Id.
[20] S. 744.368(6), F.S.
[21] S. 744.3678(4). F.S.
[22] Id.
[23] Chapter 99-277 L.O.F.
[24] *See* CS/CS/CS/SB 232 (2016) and ch. 2016-40, L.O.F.
[25] *See, e.g.*, Florida Supreme Court Commission on Fairness, Committee on Guardianship Monitoring, 2003, *available at* http://flcourts.org/core/fileparse.php/260/urlt/guardianshipmonitoring.pdf (last visited March 9, 2017) (reviewed how effectively guardians were fulfilling their duties and obligations. The committee received input from citizens that there was abuse, neglect, and misuse of ward's funds. As a result, the committee stated that, though the majority of guardians are law-abiding and are diligently fulfilling their complex responsibilities, a small percentage are not properly handling guardianship matters, and as a result, monitoring is necessary.); Department of Elder Affairs, Guardianship Task Force – 2004 Final Report, *available at* http://elderaffairs.state.fl.us/doea/pubguard/GTF2004FinalReport.pdf (last visited January 19, 2018) (advocated for additional oversight of professional guardians); Michael E. Miller, *Florida's Guardians Often Exploit the Vulnerable Residents They're Supposed to Protect*, MIAMI NEWTIMES, May 8, 2014, *available at* http://www.miaminewtimes.com/2014-05-08/news/florida-guardian-elderly-fraud/full/ (last visited January 19, 2018) (provided anecdotal evidence of fraud within the guardianship system, noting that the appointed court monitor for Broward County has uncovered hundreds of thousands of dollars that guardians have misappropriated from their wards, and, over the course of two years, Palm Beach County's guardianship fraud hotline has investigated over 100 cases; and Barbara Peters Smith, *the Kindness of Strangers – Inside Elder Guardianship in Florida,* SARASOTA HERALD-TRIBUNE, December 6, 2014, *available at* http://guardianship.heraldtribune.com/default.aspx (last visited January 19, 2018) (three-part series published in December 2014 details abuses occurring in guardianships based on an evaluation of guardianship court case files and interviews with wards, family and friends caught in the system against their will.).
[26] Section 744.2004, F.S.
[27] Department of Elder Affairs, Agency Analysis 2018 House Bill 1187, p. 3 (Jan. 9, 2018) (on file with Children, Families, and Seniors Subcommittee). These clerks have specialized investigatory training related to guardianship.
[28] Id.
[29] Id. The Palm Beach County Clerk serves as the administrative coordinator and chief investigator. The remaining clerk offices are Pinellas County, Polk County, Okaloosa County, Lake County, Lee County, and Sarasota County

OPPG began receiving complaints on October 1, 2017, it has referred 83 legally sufficient complaints to the Clerks' Statewide Investigative Alliance for further investigation.[30]

Confidentiality of Guardianship Records

Typically, guardianship records are confidential; this includes initial, annual, and final guardianship reports, as well as any amendments thereto.[31] These reports and any court record relating to the settlement of a claim[32] on behalf of the ward are only subject to inspection by:[33]

- The court:
- The clerk or the clerk's representative:
- The guardian and the guardian's attorney:
- The guardian ad litem with regard to the settlement of the claim; and
- The ward, in certain circumstances, and the ward's attorney.

If anyone other than the statutorily identified individuals above wishes to inspect guardianship records, he or she must petition the court for access and show good cause as to why access should be granted.[34] Additionally, the court may direct disclosure of guardianship records in connection with a real property transaction or for such other purpose as the court allows.[35]

Disclosure of Confidential Information without Court Approval to Ombudsman Council Members

Without obtaining court approval, a guardian acting within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may provide confidential information about a ward, such as medical or financial information, that is related to an investigation arising under part I of ch. 400, F.S., to a local or state ombudsman[36] council member conducting such an investigation.[37]

Confidentiality of Records Held by OPPG Related to Investigations

Any medical, financial, or mental health records or financial audits of guardianship records that are held by certain agencies must be provided to OPPG upon its request, if necessary to investigate a guardian as a result of a complaint filed with OPPG or for OPPG to fulfil its statutory duties.[38] All records held by OPPG relating to the medical, financial, or mental health of vulnerable adults,[39] persons with a

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[30] Florida Senate Bill Analysis and Fiscal Impact Statement of 2017 Senate Bill 1002, (Jan. 9, 2018) In 30 of those cases, letters of concern were issued or discipline was imposed or the cases were determined to be unfounded. The remaining 53 cases are still open and ongoing.

[31] S. 744.3701(1), F.S.

[32] A court record relating to the settlement of a ward's or minor's claim, including a petition for approval of a settlement on behalf of a ward or minor, a report of a guardian ad litem relating to a pending settlement, or an order approving a settlement on behalf of a ward or minor, is confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution and may not be disclosed except as specifically authorized. S. 744.3701(3), F.S.

[33] S. 744.3701(1), F.S.

[34] Id.

[35] S. 744.3701(2), F.S

[36] This is a volunteer-based system of local units that act as advocates for residents of long-term care facilities. Council members work with staff to identify, investigate, and resolve complaints made by, or on behalf of, residents of nursing homes, assisted living facilities, adult family-care homes, and continuing care retirement communities. *See* Department of Elder Affairs, *State Long-Term Ombudsman Council*, http://elderaffairs.state.fl.us/doea/ltcop_council.php (last visited January 20, 2018).

[37] S. 744.444(17), F.S.

[38] S. 744.2104(1), F.S. OPPG's statutory duties include evaluating the public guardianship system, assessing the need for additional public guardianship, and developing required reports.

[39] S. 415.102(28), F.S., defines a "vulnerable adult" as a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for his or her own care or protection is impaired due to a mental, emotional, sensory, long-term physical, or developmental disability or dysfunction, or brain damage, or the infirmities of aging.

developmental disability,[40] or persons with a mental illness,[41] are confidential and exempt from s. 119.07(1), F.S., and Article I, section 24(a) of the State Constitution.[42] Additionally, s. 744.2111, F.S., provides that the following are confidential and exempt from the provisions of s. 119.07(1) and s. 24(a), Art. I of the State Constitution, when held by DOEA in connection with a complaint filed and any subsequent investigation conducted by OPPG, unless the disclosure is required by court order:

- Personal identifying information of a complainant or ward;
- All personal health and financial records of a ward; and
- All photographs and video recordings.

Any confidential or exempt information provided to OPPG must continue to be held confidential or exempt as otherwise provided by law.[43] However, the confidentiality requirements in s. 744.2111, F.S. do not prevent DOEA or OPPG from disclosing the protected records to any law enforcement agency, any other regulatory agency in the performance of its official duties and responsibilities, or the clerk of circuit court when reviewing an initial or annual guardianship report.

Ex Parte Communications

An ex parte communication occurs when one party to a case communicates directly with the judge about something related to the factual or legal issues of the case without the other parties' knowledge.[44] Similarly, an ex parte proceeding is one that does not require one of the parties in the case to be present or respond to the motion; these proceedings are limited urgent matters where requiring notice would subject one party to irreparable harm, such as a request for a temporary restraining order. Ex parte communications are prohibited except in limited circumstances, because they remove the appearance of the court's impartiality in a proceeding and may prejudice a pending matter against the party not represented.[45]

Effect of Proposed Changes

Review of Guardianship Reports by the Clerk

HB 1187 identifies specific actions that the circuit court clerks may take when reviewing guardianship reports. Specifically, the bill permits the clerk to conduct audits and may cause the initial and annual guardianship reports to be audited, when the clerk has reason to believe further review is appropriate under s. 744.368(5), F.S. If the clerk finds an act of wrongdoing on the part of the guardian when he or she responds to the review or audit, any fees the guardian incurred in responding to the audit may not be paid or reimbursed using the ward's assets.

The bill requires the clerk to advise the court of the results of such audits. The bill states that the clerk's communication to the court regarding such audits may not be considered an ex parte communication.

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[40] S. 393.063(12), F.S., defines "developmental disability" as a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, Down syndrome, Phelan-McDermid syndrome, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely.

[41] S. 394.455(28), F.S., defines "mental illness" as an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person's ability to meet the ordinary demands of living. The term does not include a developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse.

[42] S. 744.2104(2), F.S.

[43] Id.

[44] Hawai'i State Judiciary, *Self-Help: Ex Parte*, http://www.courts.state.hi.us/self-help/exparte/ex_parte_contact (last visited January 19, 2018). "Ex parte" is a Latin phrase meaning "on one side only; by or for one party."

[45] *Supra*, note 27.

Disclosure of Confidential Information

The bill allows the clerk to disclose confidential information to the Department of Children and Families (DCF) or law enforcement agencies "for other purposes," as provided by a court order. Currently, if DCF or law enforcement agencies want access to confidential guardianship records, they must petition the court and show good cause. "Other purposes" is not defined in the bill; is unclear what these purposes would be. Additionally it is unclear if the clerk would have to show good cause to obtain a court order for such disclosure.

The bill also expands to whom a guardian may disclose confidential information about a ward without court approval beyond the state or local ombudsman council members currently authorized in law. The bill authorizes guardians to disclose confidential information to:

- The court clerk for investigations that arise from a review of guardianship reports, guardianship records and documents, and related audits conducted pursuant to s. 744.368, F.S.; and
- The OPPG for investigations related to the regulation and oversight of professional guardians pursuant to Part II of ch. 744, F.S.

The bill requires the clerk or the OPPG's investigator to maintain the confidentiality of such disclosed information.

Complaints Against Guardians

The bill allows a complaint against a guardian to be filed with a designee of OPPG. The Clerks' Statewide Investigations Alliance currently performs investigative services for the OPPG.[46] This change would allow complaints to be filed with the Clerks' Statewide Investigations Alliance, who is the current OPPG designee pursuant to an MOU, or any other designee of the OPPG in addition to with the OPPG.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 744.2104(1), F.S., relating to access to records by the Office of Public and Professional Guardians; confidentiality.
Section 2: Amends s. 744.368, F.S., relating to responsibilities of the clerk of the circuit court.
Section 3: Amends s. 744.3701, F.S., relating to confidentiality.
Section 4: Amends s. 744.444, F.S., relating to power of a guardian to act without court approval.
Section 5: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

[46] Id. at 4.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None. Any additional audits conducted by county clerks are optional.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Guardians will be liable for any costs incurred responding to a clerk's review of guardianship records and documents or audits conducted pursuant to s. 744.368, F.S., if the court finds wrongdoing on the part of the guardian. The guardian will not be able to pay or reimburse any such fees from the ward's assets.

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:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to guardianship; amending s. 744.2104, F.S.; requiring certain medical, financial, or mental health records or financial audits that are necessary as part of an investigation of a guardian as a result of a complaint filed for certain purposes with a designee of the Office of Public and Professional Guardians to be provided to the Office of Public and Professional Guardians upon that office's request; amending s. 744.368, F.S.; authorizing the clerk of the court to conduct audits and cause the initial and annual guardianship reports to be audited under certain circumstances; requiring the clerk to advise the court of the results of any such audit; prohibiting any fee or cost incurred by the guardian in responding to the review or audit from being paid or reimbursed by the ward's assets if there is a finding of wrongdoing by the court; prohibiting the clerk's advice to the court from being considered an ex parte communication; amending s. 744.3701, F.S.; authorizing the clerk to disclose confidential information to the Department of Children and Families or law enforcement agencies for certain purposes as provided by court order; amending s. 744.444, F.S.; authorizing certain guardians of property to provide

confidential information about a ward which is related to an investigation arising under specified provisions to a clerk or to an Office of Public and Professional Guardians investigator conducting such an investigation; providing that any such clerk or Office of Public and Professional Guardians investigator has a duty to maintain the confidentiality of such information; providing an effective date.

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

Section 1. Subsection (1) of section 744.2104, Florida Statutes, is amended to read:

744.2104 Access to records by the Office of Public and Professional Guardians; confidentiality.—

(1) Notwithstanding any other provision of law to the contrary, any medical, financial, or mental health records held by an agency, or the court and its agencies, or financial audits prepared by the clerk of the court pursuant to s. 744.368 and held by the court, which are necessary as part of an investigation of a guardian as a result of a complaint filed with the Office of Public and Professional Guardians or its designee to evaluate the public guardianship system, to assess the need for additional public guardianship, or to develop required reports, shall be provided to the Office of Public and

Professional Guardians upon that office's request. Any confidential or exempt information provided to the Office of Public and Professional Guardians shall continue to be held confidential or exempt as otherwise provided by law.

Section 2. Subsection (5) of section 744.368, Florida Statutes, is amended, and subsection (8) is added to that section, to read:

744.368 Responsibilities of the clerk of the circuit court.—

(5) If the clerk has reason to believe further review is appropriate, the clerk may request and review records and documents that reasonably impact guardianship assets, including, but not limited to, the beginning inventory balance and any fees charged to the guardianship. As a part of this review, the clerk may conduct audits and may cause the initial and annual guardianship reports to be audited. The clerk shall advise the court of the results of any such audit. Any fee or cost incurred by the guardian in responding to the review or audit may not be paid or reimbursed by the ward's assets if there is a finding of wrongdoing by the court.

(8) The clerk's advice to the court may not be considered an ex parte communication.

Section 3. Subsection (4) is added to section 744.3701, Florida Statutes, to read:

744.3701 Confidentiality.—

(4) The clerk may disclose confidential information to the Department of Children and Families or law enforcement agencies for other purposes as provided by court order.

Section 4. Subsection (17) of section 744.444, Florida Statutes, is amended to read:

744.444 Power of guardian without court approval.—Without obtaining court approval, a plenary guardian of the property, or a limited guardian of the property within the powers granted by the order appointing the guardian or an approved annual or amended guardianship report, may:

(17) Provide confidential information about a ward which ~~that~~ is related to an investigation arising under s. 744.368 to the clerk, part II of this chapter to an Office of Public and Professional Guardians investigator, or part I of chapter 400 to a local or state ombudsman council member conducting such an investigation. Any such clerk, Office of Public and Professional Guardians investigator, or ombudsman shall have a duty to maintain the confidentiality of such information.

Section 5. This act shall take effect July 1, 2018.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1369 Long-Term Care Facility Responsibility
SPONSOR(S): Mariano
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1408

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice & Claims Subcommittee		Painter JMP	Bond MB
2) Health Care Appropriations Subcommittee			
3) Judiciary Committee			

SUMMARY ANALYSIS

Long-term care facilities include nursing homes and assisted living facilities. HB 1369 addresses several provisions related to claims and lawsuits against nursing homes and assisted living facilities, to include:

The Quality of Long-Term Care Facility Improvement Fund was created in 2001, within the Agency of Health Care Administration, to support activities and programs directly related to the care of nursing home and assisted living facility residents. Current law requires the punitive damages awarded in a claim against a nursing home or assisted living facility to be split equally between the claimant and the Fund. The bill provides that ten percent of such punitive damages awards must be paid to the Fund.

A nursing home licensee must pay a claimant the entire amount of a judgment, award, or settlement within 60 days of that judgment, award, or settlement becoming final. This deadline may be extended by a written agreement by the parties. Current law has no limit on the extension that the parties may agree to. The bill prohibits such agreements from extending payment beyond six months after the date the judgement, award, or settlement becomes final.

Current law requires a nursing home to maintain general and professional liability insurance coverage, but does not specify the minimum amount of coverage. The bill requires a nursing home to maintain professional liability only in an amount no less than $2 million per claim with a minimum annual aggregate of not less than $4 million. An insurance policy that deducts defense costs from the coverage is prohibited.

Current law requires insurers of medical professionals, hospitals, clinics and lawyers to report to the Office of Insurance Regulation, any written claim or action for damages for personal injuries claimed to have been caused by error, omission, or negligence in the performance of the insured's professional services. The bill requires insurers of nursing homes and assisted living facilities to also report such claims to the Office of Insurance Regulation.

The bill appears to have an unknown positive fiscal impact on state revenues. The bill does not appear to have a fiscal impact on local government.

The bill is effective July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Part II of ch. 400, F.S., provides for the development, establishment, and enforcement of basic standards for the health, care and treatment of people in nursing homes and related health care facilities.[1] The Agency for Health Care Administration (Agency) has the responsibility of developing rules related to the operation of nursing homes.

Requiring Nursing Home Facilities to Maintain a Certain Level of Liability Coverage

Litigation against Nursing Homes

Section 400.022, F.S., sets forth various legal rights of nursing home residents. Included in those rights is the right to receive "adequate and appropriate health care and protective and support services." Section 400.02, F.S., provides that any resident whose rights are violated by a nursing home has a cause of action against the nursing home.[2] Sections 400.023-400.0238, F.S., create a comprehensive framework for litigation and recovery against a nursing home, including provisions for presuit notice, mediation, availability of records, and punitive damages.

Named Defendants in Nursing Home Cases

Prior to filing a claim for a violation of a nursing home resident's rights resulting in death or injury, the claimant is required to notify each prospective defendant by certified mail.[3]

Any cause of action for a violation of a nursing home resident's rights which allege direct or vicarious liability for personal injury or death of the nursing home resident may only be brought against:

- The licensee;
- The licensee's management or consulting company;
- The licensee's management employees; and
- Any direct caregivers, whether employees or contractors.
- A cause of action cannot be brought against a passive investor.

The statue defines the potential defendants as follows:

- "Licensee" means an individual, corporation, partnership, firm, association, governmental entity, or other entity that is issued a permit, registration, certificate, or license by the Agency, and that is legally responsible for all aspects of the operation of the nursing home facility.[4]
- "Management or consulting company" means an individual or entity who contracts with, or receives a fee from a licensee to provide any of the following services for a nursing home facility:
    - Hiring or firing of the administrator or director of nursing;
    - Controlling or having control over the staffing levels at the facility;
    - Having control over the budget of the facility; or
    - Implementing and enforcing the policies and procedures of the facility.[5]

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[1] S. 400.011, F.S.

[2] The action may be brought by the resident or his or her guardian, by a person or organization acting on behalf of a resident with the consent of the resident or his or her guardian, or by the personal representative of the estate of the deceased resident regardless of the cause of death. *See* s. 400.023(1), F.S.

[3] S. 400.0233(2), F.S.

[4] S. 400.023(2)(a), F.S.

[5] S. 400. 023(2)(b), F.S.

- "Passive investor" means an individual or entity that has an interest in a facility but does not participate in the decision making or operations of the facility.[6]

The statute further provides that before a person other than the licensee, the licensee's management or consulting company, the licensee's managing employees, or a direct caregiver employee can be named as a defendant in a lawsuit alleging violation of a resident's rights, the court or arbitration panel must find that there is sufficient evidence that: The individual or entity owed a duty of reasonable care to the resident and the individual or entity breached that duty, and the breach of that duty is a legal cause of loss, injury, or damage to or death of the resident. If the court or arbitration panel makes this finding, and a proposed amended pleading it is asserts that such cause of action arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the proposed amendment is considered to relate back to the original pleading.[7]

Where a violation of rights resulted in the death of a resident, current law requires the resident's estate to elect either survival damages under s. 46.021, F.S., or wrongful death damages under s. 768.21, F.S. The election of remedies must be made after the verdict and before the judgment is entered.[8]

In a claim brought under the statute, the claimant has the burden of proving, by a preponderance of the evidence, that:

- The defendant owed a duty to the resident;
- The defendant breached the duty to the resident;
- The breach of the duty is a legal cause of loss, injury ,death, or damage to the resident; and
- The resident sustained loss, injury, death, or damage as a result of the breach. [9]

Punitive Damages and Limitations

Punitive damages are not compensation for injury. Instead, they are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence.[10] A nursing home may be liable for punitive damages only if the judge or jury find, by clear and convincing evidence, that the nursing home actively and knowingly participated in intentional misconduct or engaged in conduct that constituted gross negligence, and contributed to the loss, damages, or injury by the claimant.[11]

- Intentional misconduct means that the nursing home had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage.[12]
- Gross negligence means that a nursing home's conduct was so reckless or wanting in care that it constituted a conscious disregard or indifference to the line, safety, or rights of persons exposed to such conduct.[13]

Punitive damages are generally limited to three times the amount of compensatory damages or $1 million, whichever is greater.[14] However, if the jury finds that the wrongful conduct was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was actually known by the managing agent, director, officer, or other person responsible for making policy decisions on behalf of the defendant, then it may reward an amount of punitive damages not to exceed the greater of:[15]

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[6] S. 400.023(2)(c), F.S.
[7] An amended pleading that relates back is considered to have been filed when the original lawsuit was filed for purposes of determining compliance with the statute of limitations.
[8] S. 400.023,(1)(b), F.S.
[9] S. 400.023(4), F.S.
[10] *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350 (1974).
[11] S. 400.0237(2), F.S.
[12] S. 400.0237(2)(a), F.S.
[13] S. 400.0237(2)(b), F.S.
[14] S. 400.0238(1)(a), F.S.
[15] S. 400.0238(4)(b), F.S.

- Four times the amount of compensatory damages; or
- $4 million.

If the jury determines that the defendant has a specific intent to harm the claimant and determines that the defendant's conduct did in fact harm the claimant, there is no cap on punitive damages.[16]

Nursing Homes and Liability Insurance

In 2001, the state enacted legislation requiring every licensed nursing facility to maintain general and professional liability insurance coverage.[17] However, the statute does not require any minimum amount of such coverage.

In 2003, a joint committee was formed to reconsider issues regarding the continuing liability insurance and lawsuit crises facing Florida's long-term care facilities and to assess the impact of the reform enacted two years earlier.[18] Because state law does not require specific coverage types or amounts, testimony at the committee hearings said that many skilled nursing facilities had chosen to carry the least amount of general and professional liability insurance available in order to comply with statute.[19] As a consequence, facilities had been sued for professional liability claims and were unable to defend the case.[20]

In order to find out about the availability of long-term care liability insurance in Florida, the committee solicited information from the Office of Insurance Regulation (OIR) within the Department of Financial Services.[21] OIR is responsible for regulating insurance in the state. OIR re-evaluated the liability insurance market and reported that there had been no appreciable change in the availability of private liability insurance over that past year.[22] Attorneys for the nursing homes testified at the committee that since the passage of s. 400.141(q), F.S., requiring liability coverage, nursing homes had less ability to get liability insurance, which meant they were leaving Florida.[23] However, there was no evidence presented that any nursing homes closed solely as a result of failure to obtain insurance.[24]

It was reported that surplus lines carriers were taking advantage of the requirements of nursing homes maintaining coverage with no minimum by structuring their low limit policies in such a way that they were taking no risk of loss on the policy.[25] "When a serious claim occurs, these insurers pay the low limit amount offered under the policy (for example, $25,000) and keep any premium over and above the policy limit the insured have paid as pure profit (for example, the difference between a premium of $32,000 and the policy limit of $25,000)."[26] As a result, these policies provide no meaningful coverage in the event of a legitimate claim by a resident.[27] It was recommended to the legislature that all long-term care facilities carry aggregate professional liability coverage with a minimum coverage amount of at least $300,000.[28] The requirement would prevent excess and surplus insurers from offering single occurrence policies for the purpose of "gaming" state law and provide meaningful coverage for legitimate claims.

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[16] S. 400.0238(4)(c), F.S.
[17] S. 400.141(1)(q), F.S.
[18] Report of the Joint Select Committee on Nursing Homes, March 1, 2004, available at: http://www.fhca.org/members/legis/legis2004/2004jscnh.pdf.
[19] Id. at 3.
[20] Id.
[21] Id.
[22] Id. at 4.
[23] Id.
[24] Id.
[25] Id. at 5.
[26] Id.
[27] Id.
[28] Id.

The Committee invited nursing home representatives to discuss their experience with insurance and liability protection. The representatives consistently discussed the difficulty in getting acceptable insurance coverage for Florida nursing homes.[29] A representative of the Florida Health Care Association testified that insurance liability coverage is either unaffordable or available only in limited amounts from surplus lines carriers.[30]

In conclusion, the Joint Committee recommended nursing homes needed incentives to carry a specific minimum amount of professional liability insurance coverage, based on a per bed calculation.[31]

Defense Within Limits Insurance Policies

Defense within limits insurance policies are commonly referred to as "wasting policies." It is an insurance policy that includes the cost of defense representation in the limit of liability which is normally available to indemnify against losses.[32] A wasting policy potentially may pay the claimant nothing where defense costs have consumed the amount of the coverage.

Nursing Homes in Florida

There are 684 nursing homes in Florida licensed pursuant to part II of ch. 400.[33]

The following charts show how many homes carry coverage at various levels, the first chart showing per occurrence limits, the second showing annual aggregate coverage.[34]

Per Occurance	
Policy Amount Per Occurrence	**Number of Nursing Homes**
$25,000	34
$35,000	6
$50,000	55
$75,000	29
$100,000	180
$125,000	45
$150,000	5
$200,000	5
$250,000	42
$300,000	8
$500,000	10
$1,000,000	193
$2,000,000 and more	64

[29] Id. at 6.
[30] Id.
[31] Id. at 15.
[32] Gregory S. Munro, *Defense within Limits: The Conflicts of "Wasting" or "Cannibalizing" Insurance Policies*, 62 Mont. L. Rev. 131 (2001), available at: https://scholarship.law.umt.edu/cgi/viewcontent.cgi?referer=http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=6&ved=0ahUKEwja1qWh4-zYAhVRI6wKHdivB4gQFghIMAU&url=http%3A%2F%2Fscholarship.law.umt.edu%2Fcgi%2Fviewcontent.cgi%3Farticle%3D1015%26context%3Dfaculty&usg=AOvVaw2HfGASa296ndbJtAXDrzpl&httpsredir=1&article=1015&context=faculty (last visited January 22, 2018).
[33] Email from Agency of Health Care Administration, January 22, 2018 (on file with House Civil Justice Subcommittee).
[34] Id.

Annual Aggregate	
Policy Amount Annual Aggregate	**Number of Nursing Homes**
$25,000	27
$50,000	25
$100,000	4
$150,000	5
$200,000	7
$250,000	17
$300,000	26
$350,000	8
$375,000	45
$400,000	4
$500,000	35
$750,000	15
$1,000,000	55
$2,000,000	39
$3,000,000	180
$4,000,000 or more	47

64 nursing homes have professional liability insurance of $2 million or more per occurrence or claim. Out of those 64 nursing homes, 47 have aggregate professional liability insurance coverage over $4 million.[35]

Quality of Long-Term Care Facility Improvement Trust Fund

Section 400.0239, F.S., created the Quality of Long-Term Care Facility Improvement Trust Fund within the Agency for Health Care Administration (AHCA).[36] This fund was created in 2001 to support activities and programs directly related to the care of nursing home and assisted living facility residents.[37] Expenditures from the trust fund can be made for direct support of the following:[38]

- Development and operation of a mentoring program for increasing the competence, professionalism, and career preparation of long-term care facility direct care staff, including nurses, nursing assistances, and social service and dietary personnel.
- Development and implementation of specialized training programs for long-term care facility personnel who provide direct care of residents with Alzheimer's Disease and other dementias, residents at risk of developing pressure sores, and residents with special nutrition and hydration needs.
- Provisions of economic and other incentives to enhance the stability and career development of the nursing home direct care workforce, including paid sabbaticals for exemplary direct care career staff to visit facilities throughout the state to train and motivate younger workers to commit to careers in long-term care.
- Promotion and support for the formation and active involvement of resident and family councils in the improvement of nursing home care.

It is funded through a combination of general revenues, Civil Money Penalty Fund, and fifty-percent of any punitive damages awarded as part of lawsuit against nursing homes or related healthcare facilities.[39]

[35] Id.
[36] S. 400.0239(1), F.S.
[37] Office of the Assistant Secretary for Planning and Evaluation, *State Nursing Home Quality Improvement Programs*, https://aspe.hhs.gov/report/state-nursing-home-quality-improvement-programs-site-visit-and-synthesis-report/funding-quality-long-term-care-facility-improvement-trust-fund (last visited January 24, 2018).
[38] S. 400.0239(2), F.S.
[39] S. 400.0238(4), F.S.

Punitive Damages

Sections 400.0238, F.S., and 429.298, F.S., both require the amount of punitive damages awarded in a claim against a nursing home and assisted living facility, respectively, to be split equally between the claimant and the Quality of Long-Term Care Facility Improvement Trust Fund.

Civil Money Penalty Funds

Civil Money Penalties (CMP) are fines imposed by the Centers for Medicare and Medicaid Services (CMS) against nursing facilities that have failed to maintain compliance with federal requirements.[40] A portion of these funds are returned to states and may be used for projects supporting activities that benefit nursing facility residents or that protect and improve their quality of life or care.[41]

Current Balance of the Trust Fund

As of January 18, 2018, there is a total balance in the fund of $22,579,079.10.[42] This amount includes $350,386.78 deposited from punitive damages and $22,228,792.32 deposited from Civil Money Penalty Funds.[43] The total amount of expenditures for Fiscal Year 2017-2018 is $111,755.32.[44]

Since 2008, only $350,386.78 has been deposited in the Fund from a single punitive damages award.[45] To date, none of the funds from the punitive damages have been expended.[46] The punitive claim award deposited in the account makes up about 2% of the overall balance of the Fund, with 98% coming from Civil Money Penalty Funds.

Authorizing AHCA to Revoke License or Deny License Renewal

Current law provides that when an adverse judgment, arbitration award or settlement agreement is entered against a licensee as defined in s. 400.023(2), F.S., relating to a claim of negligence or violation of a resident's rights under s. 400.023, F.S., the licensee must pay the judgment creditor the entire amount of the judgment and all accrued interest within 60 days, unless otherwise mutually agreed to in writing by the parties.[47] If the licensee does not do so, the Agency may use such failure as additional grounds for suspending or denying renewal of the nursing home's license, to deny a license renewal application, or to deny a related party change of ownership application.

The Agency is deemed notified of the unsatisfied judgment when a certified copy of both the judgment and a valid lien certificate are served by process server, or received via certified mail.[48] Upon notification of the existence of an unsatisfied judgment or settlement, the Agency must notify the licensee by certified mail that within 30 days after receipt of the notification the licensee is subject to disciplinary action unless it proves the Agency with proof of compliance with one of five conditions pertaining to the judgment or settlement. The five conditions are:

- The judgment or settlement has been paid;
- A mutually agreed upon payment plan exists;
- A notice of appeal has been timely filed;
- A court order staying execution of the final judgment exists; or

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[40] Agency for Health Care Administration, *Nursing Home Civil Homey Penalty Projects*, available at: http://ahca.myflorida.com/MCHQ/Health_Facility_Regulation/Long_Term_Care/CMP.shtml (last visited January 22, 2018).
[41] Id.
[42] Email from Agency of Health Care Administration, received January 22, 2018 (on file with Civil Justice Subcommittee).
[43] Id.
[44] Id.
[45] Email from the Agency of Health Care Administration, received January 24 (on file with Civil Justice Subcommittee).
[46] Id.
[47] S. 400.024(1), F.S.
[48] S. 400.024(2), F.S.

- The court or arbitration panel that is overseeing the action documents that the licensee is seeking indemnification from an insurance carrier or other party that may be required to pay the award.[49]

If the licensee fails to provide proof of one of the five conditions within the 30 days, the Agency must issue an emergency order finding that the nursing home facility lacks financial ability to operate and that the Agency is in the process of suspending the facility's license.[50] Following or during the period of suspension, a controlling interest in that facility may not seek licensure for the facility at issue.[51] Additionally, if the judgment results from a trial or arbitration, the Agency may not approve a chance of ownership until one of the five conditions is met with respect to the judgment.[52]

Requiring Nursing Homes and Assisted Living Facilities to Report Professional Liability Claims

Section 627.357, F.S., requires all commercial self-insurance funds, surplus lines insurers, risk retention groups, and joint underwriting associations to report to the Office of Insurance (OIR) any written claim or action for damages for personal injury claimed to have been caused by error, omission, or negligence in the performance of such insured's professional services if the insurer covers any of the following:

- Physician.
- Osteopathic physician.
- Podiatric physician.
- Dentist.
- Hospital.
- Crises stabilization unit.
- Health maintenance organization.
- Clinic.
- Ambulatory surgical center.
- Member of the Florida Bar.

Insurers of nursing homes and assisted living facilities are not required to report to OIR any claims or action for damages.

Effect of the Proposed Changes

Requiring Nursing Homes to Maintain a Certain Level of Liability Coverage

HB 1369 amends s. 400.141(q), F.S., to require all licensed nursing home facilities to maintain professional liability insurance in an amount not less than $2 million per an occurrence and with a minimum annual aggregate of not less than $4 million. The requirement to maintain general liability insurance coverage is repealed. Furthermore, the bill provides that any insurance policy that includes the cost of defense within its limits ("wasting policies"), will not satisfy the requirements of the professional insurance minimums. Out of the 684 nursing homes currently licensed in Florida, 47 nursing homes (approximately 7%) currently comply with the changes of the bill (assuming those 47 homes do not have "wasting policies").

Quality of Long-Term Care Facility Improvement Trust Fund

HB 1369 amends sections 400.0238, F.S., and 429.298, F.S., to replace the 50/50 share of punitive damages between the claimant and the trust fund with a 90/10 share. This change applies to nursing homes and assisted living facilities. Ninety-percent of the punitive damage award will be kept by the

[49] Id.
[50] S. 400.024(3), F.S.
[51] S. 400.024(4), F.S.
[52] Id.

claimant and the remaining ten-percent will be deposited in to the Quality of Long-Term Care Facility Improvement Trust Fund.

Authorizing AHCA to Revoke License or Deny License Renewal

HB 1369 amends s. 400.024, F.S., to provide that regardless of any agreement by the parties, an extension for payment of a judgment, award, or settlement owed by a nursing home may not exceed 6 months from the day such judgment, award, or settlement became final and subject to execution.

Requiring Nursing Homes and Assisted Living Facilities to Report Professional Liability Claims

HB 1369 amends s. 627.357, F.S., to require insurers of nursing home and assisted living facilities to report to OIR all written claims for damages and personal injuries claimed to have been caused by error, omission, or negligence in the performance of such insured's professional services.

The bill is effective July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amending s. 400.0238, F.S., relating to punitive damages; limitations.
Section 2: Amending s. 400.024, F.S., relating to failure to satisfy a judgment or settlement agreement.
Section 3: Amending s. 400.141, F.S., relating to administration and management of nursing home facilities.
Section 4: Amending s. 429.298, F.S., relating to punitive damages; limitations.
Section 5: Amending s. 627.912, F.S., relating to professional liability claims and actions; reports by insurers and health care providers; annual report by office.
Section 6: Providing an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill appears to have an unknown positive recurring fiscal impact on state revenues resulting from increased insurance premium tax revenues.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The portion of the bill that requires certain minimum insurance coverages appears to have a significant fiscal impact on nursing homes in the private sector. Data is not available to project the cost of acquiring such insurance. At least 93% of existing nursing homes would have to obtain increased insurance coverage. Insurance companies will see a corresponding increase in premium revenues.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not impact counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to long-term care facility responsibility; amending s. 400.024, F.S.; authorizing the Agency for Health Care Administration to revoke the license or deny a license renewal or change of ownership application of a nursing home facility that fails to pay a judgment or settlement agreement within a specified timeframe; amending s. 400.141, F.S.; requiring a nursing home facility to maintain a certain level of liability insurance coverage; excluding certain types of coverage; amending ss. 400.0238 and 429.298, F.S.; revising percentages of punitive damages awarded to the claimant and deposited in the Quality of Long-Term Care Facility Improvement Trust Fund; amending s. 627.912, F.S.; requiring nursing homes and assisted living facilities to report professional liability claims and actions to the Office of Insurance Regulation; providing an effective date.

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

Section 1. Subsection (4) of section 400.0238, Florida Statutes, is amended to read:

400.0238 Punitive damages; limitation.—

(4) Notwithstanding any other law to the contrary, the amount of punitive damages awarded pursuant to this section shall be ~~equally~~ divided between the claimant and the Quality of Long-Term Care Facility Improvement Trust Fund. The claimant shall receive 90 percent of the award and the Quality of Long-Term Care Facility Improvement Trust Fund shall receive 10 percent of the award, in accordance with the following provisions:

(a) The clerk of the court shall transmit a copy of the jury verdict to the Chief Financial Officer by certified mail. In the final judgment, the court shall order the percentages of the award, payable as provided herein.

(b) A settlement agreement entered into between the original parties to the action after a verdict has been returned must provide a proportionate share payable to the Quality of Long-Term Care Facility Improvement Trust Fund specified herein. For purposes of this paragraph, a proportionate share is a 10-percent ~~50-percent~~ share of that percentage of the settlement amount which the punitive damages portion of the verdict bore to the total of the compensatory and punitive damages in the verdict.

(c) The Department of Financial Services shall collect or cause to be collected all payments due the state under this section. Such payments are made to the Chief Financial Officer and deposited in the appropriate fund specified in this

subsection.

(d) If the full amount of punitive damages awarded cannot be collected, the claimant and the other recipient designated pursuant to this subsection are each entitled to a proportionate share of the punitive damages collected.

Section 2. Subsection (1) of section 400.024, Florida Statutes, is amended to read:

400.024 Failure to satisfy a judgment or settlement agreement.—

(1) Upon the entry by a Florida court of an adverse final judgment against a licensee as defined in s. 400.023(2) which arises from an award pursuant to s. 400.023, including an arbitration award, for a claim of negligence or a violation of residents' rights, in contract or tort, or from noncompliance with the terms of a settlement agreement as determined by a court or arbitration panel, which arises from a claim pursuant to s. 400.023, the licensee shall pay the judgment creditor the entire amount of the judgment, award, or settlement and all accrued interest within 60 days after the date such judgment, award, or settlement becomes final and subject to execution unless otherwise mutually agreed to in writing by the parties. <u>However, no such agreement shall allow for payment more than 6 months after the date such judgment, award, or settlement becomes final and subject to execution.</u> Failure to make such payment shall result in additional grounds that may be used by

the agency for revoking a license or for denying a renewal application or a related party change of ownership application as provided in this section.

Section 3. Paragraph (q) of subsection (1) of section 400.141, Florida Statutes, is amended to read:

400.141 Administration and management of nursing home facilities.—

(1) Every licensed facility shall comply with all applicable standards and rules of the agency and shall:

(q) Maintain ~~general and~~ professional liability insurance coverage that is in force at all times in an amount not less than $2 million per claim and with a minimum annual aggregate of not less than $4 million. Any professional liability insurance that provides for the payment of litigation costs or attorney fees for the defense of a claim against a nursing home pursuant to s. 400.023, s. 400.0233, or the common law of this state as a deduction from the liability limits of the policy or that in any way reduces the liability coverage limits available under the policy for a settlement or judgment by any amount attributable to litigation costs or attorney fees incurred during the course of the defense of the insured does not fulfill the insurance requirement of this section. In lieu of such coverage, a state-designated teaching nursing home and its affiliated assisted living facilities created under s. 430.80 may demonstrate proof of financial responsibility as provided in s. 430.80(3)(g).

Section 4. Subsection (4) of section 429.298, Florida Statutes, is amended to read:

429.298 Punitive damages; limitation.—

(4) Notwithstanding any other law to the contrary, the amount of punitive damages awarded pursuant to this section shall be ~~equally~~ divided between the claimant and the Quality of Long-Term Care Facility Improvement Trust Fund. The claimant shall receive 90 percent of the award and the Quality of Long-Term Care Facility Improvement Trust Fund shall receive 10 percent of the award, in accordance with the following provisions:

(a) The clerk of the court shall transmit a copy of the jury verdict to the Chief Financial Officer by certified mail. In the final judgment, the court shall order the percentages of the award, payable as provided herein.

(b) A settlement agreement entered into between the original parties to the action after a verdict has been returned must provide a proportionate share payable to the Quality of Long-Term Care Facility Improvement Trust Fund specified herein. For purposes of this paragraph, a proportionate share is a 10-percent ~~50-percent~~ share of that percentage of the settlement amount which the punitive damages portion of the verdict bore to the total of the compensatory and punitive damages in the verdict.

(c) The Department of Financial Services shall collect or

cause to be collected all payments due the state under this section. Such payments are made to the Chief Financial Officer and deposited in the appropriate fund specified in this subsection.

(d) If the full amount of punitive damages awarded cannot be collected, the claimant and the other recipient designated pursuant to this subsection are each entitled to a proportionate share of the punitive damages collected.

Section 5. Subsection (1) of section 627.912, Florida Statutes, is amended to read:

627.912 Professional liability claims and actions; reports by insurers and health care providers; annual report by office.—

(1)(a) Each self-insurer authorized under s. 627.357 and each commercial self-insurance fund authorized under s. 624.462, authorized insurer, surplus lines insurer, risk retention group, and joint underwriting association providing professional liability insurance to a practitioner of medicine licensed under chapter 458, to a practitioner of osteopathic medicine licensed under chapter 459, to a podiatric physician licensed under chapter 461, to a dentist licensed under chapter 466, to a hospital licensed under chapter 395, to a crisis stabilization unit licensed under part IV of chapter 394, <u>to a nursing home licensed under part II of chapter 400, to an assisted living facility licensed under part I of chapter 429,</u> to a health maintenance organization certificated under part I of chapter

641, to clinics included in chapter 390, or to an ambulatory surgical center as defined in s. 395.002, and each insurer providing professional liability insurance to a member of The Florida Bar shall report to the office as set forth in paragraph (c) any written claim or action for damages for personal injuries claimed to have been caused by error, omission, or negligence in the performance of such insured's professional services or based on a claimed performance of professional services without consent.

(b) For purposes of this section, the term "claim" means the receipt of a notice of intent to initiate litigation, a summons and complaint, or a written demand from a person or his or her legal representative stating an intention to pursue an action for damages against a person described in paragraph (a).

(c) The duty to report specified in paragraph (a) arises upon the occurrence of the first of:

1. The entry of any judgment against any provider identified in paragraph (a) for which all appeals as a matter of right have been exhausted or for which the time period for filing such an appeal has expired;

2. The execution of an agreement between a provider identified in paragraph (a) or an entity required to report under that paragraph and a claimant to settle damages purported to arise from the provision of professional services, which agreement includes the indemnity payment of at least $1;

however, if any applicable law requires any such agreement to be approved by the court, the duty arises when the agreement is approved;

3. The final payment of any indemnity money by any of the entities required to report under paragraph (a) on behalf of any provider identified in that paragraph for damages purported to arise from professional services rendered; or

4. The final disposition of a claim for which no indemnity payment was made on behalf of the insured but for which loss adjustment expenses were paid in excess of $5,000. As used in this subparagraph, the term "final disposition" means the insurer has brought down all reserves and closed its file.

(d) After any calendar year in which no claim or action for damages was closed, the entity shall file a no claim submission report. Such report shall be filed with the office no later than April 1 of each calendar year for the immediately preceding calendar year. If a reporting entity submits such a report for a particular calendar year and subsequently discovers that its report was submitted in error, the reporting entity shall promptly notify the office of the error and take steps as directed by the office to make the needed corrections.

(e) If a claim is initially opened and then closed, and is subsequently reopened, the reopened claim shall be treated as a new claim and reported after the occurrence of the first of any event listed in paragraph (c).

(f) Each health care practitioner and health care facility listed in paragraph (a) must report any claim or action for damages as described in paragraph (a), if the claim is not otherwise required to be reported by an insurer or other insuring entity.

(g) Reports under this subsection shall be filed with the office no later than 30 days following the occurrence of the first of any event listed in paragraph (c). An insurer is not required to file a new or amended report on a claim more than 1 year after submitting an initial report.

Section 6. This act shall take effect July 1, 2018.

STORAGE NAME: h6523.CJC
DATE: 1/26/18

January 26, 2018

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6523 - Representative Raburn
Relief/Ashraf Kamel & Marguerite Dimitri/Palm Beach County School Board

THIS IS A CLAIM FOR $360,000 BASED ON A SETTLEMENT AGREEMENT BETWEEN ASHRAF KAMEL AND MARGUERITE DIMITRI, AS THE PARENTS OF JEAN PIERRE KAMEL, AND THE PALM BEACH COUNTY SCHOOL BOARD, RELATING TO THE WRONGFUL DEATH OF JEAN PIERRE KAMEL BECAUSE OF THE SCHOOL BOARD'S NEGLIGENCE. THE SCHOOL BOARD HAS PAID $200,000 PURSUANT TO SECTION 768.28, F.S.

FINDINGS OF FACT:

This matter concerns the death of Jean Pierre Kamel, a 13-year-old. On Monday, January 27, 1997, Jean Pierre was standing on the sidewalk in front of Conniston Middle School in Palm Beach County, Florida, where he attended as a student. About 8:40 a.m., he was shot to death by Tronneal Mangum, a 13-year-old classmate.

The shooting allegedly occurred because of a dispute over Jean Pierre's expensive watch which had been obtained by Tronneal, and which Jean Pierre decided he wanted back. On the Thursday before the shooting, Tronneal kicked Jean Pierre in his prosthetic leg, and a teacher referred the matter to school administration. The assistant principal, in turn, met with both students. The matter was resolved when Tronneal agreed to

bring the watch to school on Monday and deliver it to a school administrator.

Earlier in the school year, Jean Pierre had asked his math teacher to move his seat away from Tronneal because they did not get along, and the math teacher had obliged. Jean Pierre told his math teacher on the Friday before the shooting that Tronneal was "after" Jean Pierre. The math teacher later testified that Jean Pierre had told her he had already spoken to an assistant principal about the matter and did not want to do so again, and that he did not seem scared or upset. The math teacher did not report the conversation to school administration.

When Jean Pierre was shot, he was standing in front of the school on a 9-foot-wide sidewalk. There was a dispute as to whether Jean Pierre was technically on school property when he was killed, with Respondent arguing that although it did own part of the sidewalk, the part closest to the street was owned by the city, not Respondent. However, evidence showed that students and school officials believed the entire sidewalk to be school property. The record indicates that Respondent had exercised control over the entire sidewalk, with school officials patrolling the area during and before school hours, including the time of day when the shooting occurred.

As a result of the shooting, Tronneal Mangum was suspended from school, tried as an adult, and sentenced to life in prison.[1]

LITIGATION HISTORY:

Ashraf Kamel, on his own behalf and as personal representative of the estate of Jean Pierre Kamel, filed a wrongful death suit against the Palm Beach County School Board in the Fifteenth Judicial Circuit.

In 2002, a jury returned a verdict for a total of $2,003,000 in damages and found Respondent 80% responsible for Jean Pierre's death and Jean Pierre 20% responsible for his own death. The $2,003,000 was further broken down as follows: $3,000 for funeral expenses and $1,000,000 for past and future pain and suffering for each parent. Tronneal Mangum, the shooter, was not included on the verdict form; thus, the jury had no opportunity to apportion any liability to him as the intentional tortfeasor.[2]

The court reduced the total amount to take into account Jean Pierre's portion of fault and entered a final judgment for $1,602,400. Respondent appealed to the Fourth District Court of Appeal, arguing that the jury's award was inappropriate because the incident did not occur on school property and because the shooting was unforeseeable. The appellate court affirmed the

[1] In 2016, Tronneal's life sentence was reduced to forty years' imprisonment as a result of *Miller v. Alabama*, 567 U.S. 460 (2012) (holding that the Eighth Amendment forbids a sentencing scheme for juvenile homicide offenders that requires life imprisonment without the possibility of parole), and section 775.082(1)(b)1., F.S. (requiring at least a forty-year sentence).
[2] *See* s. 768.81(4)(b), F.S. (1996); *Merrill Crossings Assocs. v. McDonald*, 705 So. 2d 560 (Fla. 1997).

judgment in favor of Claimants on February 12, 2003.[3] Respondent has paid the sovereign immunity cap of $200,000. In 2005, after the Special Master final hearing, Claimants and Respondent entered into a settlement agreement to resolve all outstanding claims for $360,000.

CLAIMANTS' POSITION: Claimants argue that Respondent bears blame for the death of their son and that the settlement agreement should be given full weight by the Legislature. Specifically, Claimants argue that Respondent owed a duty as the Palm Beach County School Board to protect its students and that Respondent breached that duty when its employees (including a math teacher, assistant principal, and school personnel) failed to take proper actions to prevent the shooting. As to the issue about the location where Jean Pierre was shot, Claimants argue that Respondent knew that the entire sidewalk was its responsibility and that Respondent had maintained dominion and control over the sidewalk. Claimants also argue that previous gun possession incidents at their son's middle school made the shooting foreseeable.

Claimants submitted as an expert Mr. Henry Branche, a building security consultant and former Chief of Security for the New York City School System. He opined that Respondent's employees were negligent by not preparing an incident report when Jean Pierre asked to be moved away from Tronneal in math class; for the assistant principal's use of conflict resolution rather than the school's discipline policy for what he described as an assault when Tronneal kicked Jean Pierre in his prosthetic leg; and for the math teacher's failure to write a referral when Jean Pierre told her that Tronneal was after him. Claimants' expert also testified that the shooting was foreseeable since there had been two previous incidents of gun possession at Conniston Middle School, and that the school's security plan was lacking in that only one teacher was near the area where the shooting occurred.

RESPONDENT'S POSITION: Respondent vigorously contested this claim bill when it was first filed in the Legislature in 2004, arguing that it did not owe a duty to Jean Pierre because he was on a portion of the sidewalk not technically on school grounds when he was murdered, and that the shooting was unforeseeable. Now that there is a settlement agreement, Respondent no longer vigorously contests the bill. However, Respondent does assert that it would adversely affect its operations to have to pay the settlement amount of $360,000.

Respondent submitted as an expert Mr. Gregg McCrary, a security consultant and former FBI agent. He opined that Conniston Middle School had sufficient security and included a program that emphasized early intervention, looked for troubled students, and monitored the campus. Conniston Middle School had a uniformed police officer on campus. The expert further

[3] *Palm Beach Cnty. Sch. Bd. v. Kamel*, 840 So. 2d 253 (Fla. 4th DCA 2003) (unpublished table decision).

opined that there were no warning signs that would have made a homicide foreseeable, that the school could not have deterred the murder, and that even having an armed officer at the precise spot where the shooting occurred would probably not have ultimately prevented the murder.

CONCLUSIONS OF LAW:

Regardless of whether there is a jury verdict or settlement, every claim bill must be reviewed *de novo* in light of the elements of negligence.

Duty

Florida law imposes on school officials a duty to supervise students' activities while students are at school.[4] Here, the shooting occurred during hours when the school was entrusted with the care of students on property that school officials and students reasonably believed was school property, and which Respondent had supervised and patrolled as such.[5] Therefore, I find Respondent owed a duty to Jean Pierre Kamel.

Breach & Causation

This case was vigorously contested at trial, with the parties disagreeing as to whether Respondent breached a duty of care and whether Respondent's breach caused Jean Pierre's death. Each side presented an expert to support its position. Ultimately, a jury weighed the evidence and concluded that Respondent was negligent and that such negligence contributed in part to Jean Pierre's death. Having considered the circumstances of this case, I decline to disturb the jury's finding that Respondent bears some fault for Jean Pierre's death.

Damages

The jury found damages totaling $2,003,000. The court reduced those damages in accordance with the jury's finding of 20% comparative negligence by Jean Pierre and entered a final judgment for $1,602,400. Claimants have received $200,000 and now seek an additional $360,000 in fulfillment of their settlement agreement with Respondent. Given the pain and suffering experienced by Claimants because of the death of their son, I find that damages in the amount of $360,000—which is about 18% of the original jury verdict—is reasonable. I further find that this amount is reasonable even if some (or most) of the fault should be allocated to the shooter himself.[6]

ATTORNEY'S/ LOBBYING FEES:

Claimants' attorneys will limit their fees to 25 percent of any amount awarded by the Legislature. Out of these fees, a lobbyist fee for 6% of the total award and an appellate fee for 5% of the

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[4] *See, e.g., Rupp v. Bryant*, 417 So. 2d 658, 666 (Fla. 1982) (finding a duty of care where a school-related club was "operated under the auspices of the school" and where the school had "assumed control and supervision of all club activities"); *Broward Cnty. Sch. Bd. v. Ruiz*, 493 So. 2d 474, 477 (Fla. 4th DCA 1986) ("The school's duty to provide supervision does not end when the bell rings").

[5] *See Rupp*, 417 So. 2d at 666.

[6] The Senate Special Master reallocated fault as follows: 50% to the shooter; 30% to Respondent as the school board; and 20% to the victim. Since the amount Claimants seek—$360,000—is only about 18% of the total jury verdict, it is a reasonable award if the Legislature believes Respondent was at least 18% at fault for the shooting.

total award will be paid. Outstanding costs are $1,935.66.

RESPONDENT'S ABILITY TO PAY: Respondent is self-insured and has no liability insurance to cover tort claims. Respondent states that if this claim bill were awarded, it would be paid from Respondent's general operating budget, affecting Respondent's "ability to fund needed educational programs, teachers' salaries and schools."

LEGISLATIVE HISTORY: This claim bill, first introduced in the House in 2004 as HB 1353, has not been filed in the House since 2010. It was filed most recently in the Senate as 2012 SB 66 but was withdrawn prior to introduction.

SUGGESTED AMENDMENTS: The section addressing the limitation on attorneys' fees should be amended to provide for specific fee amounts; and Tronneal Mangum's age at the time of the shooting should be corrected to reflect that Tronneal was 13 years old when the shooting occurred, not 14.

RECOMMENDATION: I recommend that House Bill 6523 be reported **FAVORABLY**.

Respectfully submitted,

W. Jordan Jones

JORDAN JONES

House Special Master

cc: Representative Raburn, House Sponsor
Senator Gibson, Senate Sponsor
Tom Cibula, Senate Special Master

A bill to be entitled

An act for the relief of Ashraf Kamel and Marguerite Dimitri by the Palm Beach County School Board; providing for an appropriation to compensate Ashraf Kamel and Marguerite Dimitri for the wrongful death of their minor child, Jean A. Pierre Kamel, as a result of the negligence of the Palm Beach County School Board; providing a limitation on the payment of attorney fees; providing an effective date.

WHEREAS, Jean A. Pierre Kamel, age 13, was wrongfully killed on January 27, 1997, when he was shot by 14-year-old Tronneal Mangum in front of Conniston Middle School, a Palm Beach County public school, and

WHEREAS, Jean A. Pierre Kamel's father, Ashraf Kamel, brought a wrongful-death action against the Palm Beach County School Board seeking damages for Jean Kamel's mother, Marguerite Dimitri, and himself for their grief, anguish, and mental pain and suffering due to the repeated bullying and tragic death of their minor son, Jean Kamel, while he was in the care and custody of the Palm Beach County School Board, and

WHEREAS, Jean Kamel was born with a birth defect that required his right leg to be amputated, and

WHEREAS, Jean Kamel wore a prosthetic leg and suffered various physical disabilities as a result, and

WHEREAS, Jean Kamel attended Conniston Middle School in West Palm Beach in January of 1997, and

WHEREAS, Tronneal Mangum also attended Conniston Middle School in January of 1997, and

WHEREAS, before the shooting occurred, Jean Kamel had told school officials that Tronneal Mangum was bullying him, including taunting him, kicking his prosthetic leg, and threatening him, and

WHEREAS, various school officials had witnessed some of these events, namely Tronneal Mangum's kicking Jean Kamel in his prosthetic leg, and

WHEREAS, Jean Kamel and Tronneal Mangum had one class together, and Jean Kamel repeatedly asked school officials to be moved to another class because he was afraid of Tronneal Mangum and that Tronneal Mangum was constantly making fun of him in front of other students, and

WHEREAS, days before the shooting, Jean Kamel reported that his watch had been taken from him by Tronneal Mangum, and

WHEREAS, Jean Kamel and Tronneal Mangum were brought to a guidance counselor, Jean Kamel told the counselor that Tronneal Mangum had taken his watch from him, and the counselor instructed Tronneal Mangum to return the watch at the school with no supervision and did not contact Tronneal Mangum's parents or guardian, and

WHEREAS, when Tronneal Mangum did not show up for school

the next day, Jean Kamel told a school official that "Tronneal is out to get me," and

WHEREAS, the school took no action under the circumstances, including contacting Tronneal Mangum's family or guardian, nor did the school contact Jean Kamel's parents and advise them of the situation, and

WHEREAS, on the next school day, January 27, 1997, Tronneal Mangum traveled to Conniston Middle School on the school bus with a loaded firearm and entered school property carrying the weapon, and

WHEREAS, the Palm Beach County School Board was on notice that students had brought firearms to Conniston Middle School on previous occasions, but the board did not enact any security measures to prevent such acts, and

WHERAS, on January 27, 1997, the school failed to have personnel assigned to posts to adequately supervise the safety of the children as they entered the school, and

WEHREAS, on January 27, 1997, the school district police officer whose post was on the sidewalk directly in front of the school where the shooting occurred was not at his post that morning, and

WHEREAS, because of the multiple acts of negligence, carelessness, and a lack of concern for the risks of harm that confronted Jean Kamel by the Conniston Middle School staff, on January 27, 1997, Jean Kamel was brutally shot to death by

Tronneal Mangum in the front of the school, and

WHEREAS, on February 8, 2002, a Palm Beach County jury found that the Palm Beach County School Board was negligent and 80 percent liable for the death of Jean Kamel, and

WHEREAS, the jury determined that the amount of damages Ashraf Kamel and Marguerite Dimitri, the parents of Jean Kamel, received was $2 million to compensate them for their grief, anguish, and mental pain and suffering as a result of the negligence of the school and the Palm Beach County School Board, and

WHEREAS, on February 22, 2002, the Circuit Court for the 15th Judicial Circuit in and for Palm Beach County reduced the jury verdict to a final judgment of $1,602,400, based on the offset for 20 percent comparative negligence, and

WHEREAS, on May 14, 2002, the circuit court entered a cost judgment in favor of Ashraf Kamel in the amount of $13,490, and

WHEREAS, the Palm Beach County School Board appealed the final judgment, and the Fourth District Court of Appeal rejected the appeal in a per curiam affirmed opinion issued on February 12, 2003, and

WHEREAS, on February 27, 2003, the Palm Beach County School Board filed a Motion for Rehearing and Certification of Issues of Great Public Importance, which was denied by the Fourth District Court of Appeal on March 20, 2003, and

WHEREAS, on April 17, 2003, the Palm Beach County School

Board tendered to Ashraf Kamel, as personal representative of the Estate of Jean A. Pierre Kamel, a payment of $200,000 in accordance with the statutory limits of liability set forth in s. 768.28, Florida Statutes, and

WHEREAS, Ashraf Kamel and Marguerite Dimitri and the Palm Beach County School Board agreed to settle the parents' claim for an additional $360,000, and

WHEREAS, Ashraf Kamel, as personal representative of the Estate of Jean A. Pierre Kamel, seeks satisfaction of the $360,000 balance of the settlement agreement, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The Palm Beach County School Board is authorized and directed to appropriate from funds of the school board not otherwise encumbered the total amount of $360,000, and to draw warrants payable to Ashraf Kamel in the sum of $180,000 and to Marguerite Dimitri in the sum of $180,000 to compensate them for their injuries and damages sustained due to the death of their son, Jean A. Pierre Kamel, as a result of the negligence of the school board.

Section 3. The amount paid by the Palm Beach County School Board pursuant to s. 768.28, Florida Statutes, and the amounts

awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the death of Jean A. Pierre Kamel. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the amount awarded under this act.

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

IN THE MATTER FOR RELIEF OF

Ashraf Kamel & Marguerite Dimitri,

Petitioners,

v.

Palm Beach County School Board,

Respondent.
_____/

SENATE BILL: 48

DOAH Case No.: 11-4110CB

AFFIDAVIT

STATE OF FLORIDA

COUNTY OF PALM BEACH

COMES NOW, Adam S. Doner, Esq., as counsel for Petitioners, and swears under oath that the attorney's fee in above-captioned matter is 25% including a 6% lobbying fee being paid to Lance Block, P.A. and Corcoran & Johnston and a 5% appellate fee to Lynn Waxman, P.A.

FURTHER AFFIANT SAYETH NAUGHT.

_____
Adam S. Doner, Esq.

Sworn to and subscribed before me
this 10th day of October, 2017.

_____
NOTARY PUBLIC

My Commission Expires:

JENNIFER GIZOWSKI
MY COMMISSION # GG 136300
EXPIRES: August 20, 2021
Bonded Thru Notary Public Underwriters

Amendment No.

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

Committee/Subcommittee hearing bill: Civil Justice & Claims Subcommittee

Representative Raburn offered the following:

Amendment

Remove lines 11-131 and insert:

WHEREAS, Jean A. Pierre Kamel, age 14, was wrongfully killed on January 27, 1997, when he was shot by 14-year-old Tronneal Mangum in front of Conniston Middle School, a Palm Beach County public school, and

WHEREAS, Jean A. Pierre Kamel's father, Ashraf Kamel, brought a wrongful-death action against the Palm Beach County School Board seeking damages for Jean Kamel's mother, Marguerite Dimitri, and himself for their grief, anguish, and mental pain and suffering due to the repeated bullying and tragic death of their minor son, Jean Kamel, while he was in the care and

custody of the Palm Beach County School Board, and

WHEREAS, Jean Kamel was born with a birth defect that required his right leg to be amputated, and

WHEREAS, Jean Kamel wore a prosthetic leg and suffered various physical disabilities as a result, and

WHEREAS, Jean Kamel attended Conniston Middle School in West Palm Beach in January of 1997, and

WHEREAS, Tronneal Mangum also attended Conniston Middle School in January of 1997, and

WHEREAS, before the shooting occurred, Jean Kamel had told school officials that Tronneal Mangum was bullying him, including taunting him, kicking his prosthetic leg, and threatening him, and

WHEREAS, various school officials had witnessed some of these events, namely Tronneal Mangum's kicking Jean Kamel in his prosthetic leg, and

WHEREAS, Jean Kamel and Tronneal Mangum had one class together, and Jean Kamel repeatedly asked school officials to be moved to another class because he was afraid of Tronneal Mangum and that Tronneal Mangum was constantly making fun of him in front of other students, and

WHEREAS, days before the shooting, Jean Kamel reported that his watch had been taken from him by Tronneal Mangum, and

WHEREAS, Jean Kamel and Tronneal Mangum were brought to a guidance counselor, Jean Kamel told the counselor that Tronneal

Mangum had taken his watch from him, and the counselor instructed Tronneal Mangum to return the watch at the school with no supervision and did not contact Tronneal Mangum's parents or guardian, and

WHEREAS, when Tronneal Mangum did not show up for school the next day, Jean Kamel told a school official that "Tronneal is out to get me," and

WHEREAS, the school took no action under the circumstances, including contacting Tronneal Mangum's family or guardian, nor did the school contact Jean Kamel's parents and advise them of the situation, and

WHEREAS, on the next school day, January 27, 1997, Tronneal Mangum traveled to Conniston Middle School on the school bus with a loaded firearm and entered school property carrying the weapon, and

WHEREAS, the Palm Beach County School Board was on notice that students had brought firearms to Conniston Middle School on previous occasions, but the board did not enact any security measures to prevent such acts, and

WHERAS, on January 27, 1997, the school failed to have personnel assigned to posts to adequately supervise the safety of the children as they entered the school, and

WHEREAS, on January 27, 1997, the school district police officer whose post was on the sidewalk directly in front of the school where the shooting occurred was not at his post that

morning, and

WHEREAS, because of the multiple acts of negligence, carelessness, and a lack of concern for the risks of harm that confronted Jean Kamel by the Conniston Middle School staff, on January 27, 1997, Jean Kamel was brutally shot to death by Tronneal Mangum in the front of the school, and

WHEREAS, on February 8, 2002, a Palm Beach County jury found that the Palm Beach County School Board was negligent and 80 percent liable for the death of Jean Kamel, and

WHEREAS, the jury determined that the amount of damages Ashraf Kamel and Marguerite Dimitri, the parents of Jean Kamel, received was $2 million to compensate them for their grief, anguish, and mental pain and suffering as a result of the negligence of the school and the Palm Beach County School Board, and

WHEREAS, on February 22, 2002, the Circuit Court for the 15th Judicial Circuit in and for Palm Beach County reduced the jury verdict to a final judgment of $1,602,400, based on the offset for 20 percent comparative negligence, and

WHEREAS, on May 14, 2002, the circuit court entered a cost judgment in favor of Ashraf Kamel in the amount of $13,490, and

WHEREAS, the Palm Beach County School Board appealed the final judgment, and the Fourth District Court of Appeal rejected the appeal in a per curiam affirmed opinion issued on February 12, 2003, and

WHEREAS, on February 27, 2003, the Palm Beach County School Board filed a Motion for Rehearing and Certification of Issues of Great Public Importance, which was denied by the Fourth District Court of Appeal on March 20, 2003, and

WHEREAS, on April 17, 2003, the Palm Beach County School Board tendered to Ashraf Kamel, as personal representative of the Estate of Jean A. Pierre Kamel, a payment of $200,000 in accordance with the statutory limits of liability set forth in s. 768.28, Florida Statutes, and

WHEREAS, Ashraf Kamel and Marguerite Dimitri and the Palm Beach County School Board agreed to settle the parents' claim for an additional $360,000, and

WHEREAS, Ashraf Kamel, as personal representative of the Estate of Jean A. Pierre Kamel, seeks satisfaction of the $360,000 balance of the settlement agreement, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The Palm Beach County School Board is authorized and directed to appropriate from funds of the school board not otherwise encumbered the total amount of $360,000, and to draw warrants payable to Ashraf Kamel in the sum of $180,000 and to Marguerite Dimitri in the sum of $180,000 to compensate

them for their injuries and damages sustained due to the death of their son, Jean A. Pierre Kamel, as a result of the negligence of the school board.

Section 3. The amount paid by the Palm Beach County School Board pursuant to s. 768.28, Florida Statutes, and the amounts awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the death of Jean A. Pierre Kamel. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $68,400.00, the total amount paid for lobbying fees may not exceed $21,600.00, and the total amount paid for costs and other similar expenses relating to this claim may not exceed $1,935.66.

STORAGE NAME: h6527.CJC.DOCX
DATE: 1/26/2018

January 26, 2018

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6527 - Representative Alexander
Relief/Christopher Cannon/City of Tallahassee

THIS IS AN UNCONTESTED SETTLED CLAIM FOR $500,000 AGAINST THE CITY OF TALLAHASSEE FOR INJURIES AND DAMAGES SUFFERED BY CHRISTOPHER V. CANNON WHEN HIS MOTORCYCLE WAS STRUCK BY A CITY BUS ON DECEMBER 16, 2015. THE CITY HAS PAID $200,000.

FINDINGS OF FACT:

This claim arises out of a motorcycle accident that occurred on December 16, 2015, in Tallahassee, Florida, at the intersection of Old Bainbridge Road and Capital Circle Northwest. At the intersection, Old Bainbridge Road runs north/south and dead-ends into Capital Circle, which runs northeast/southwest at the intersection. Vehicles traveling north on Old Bainbridge are only able to turn either right or left onto Capital Circle. The left turn off Old Bainbridge is especially sharp.

As the single northeast-bound lane of Capital Circle nears the intersection with Old Bainbridge, it splits into two lanes—one for turning right at the intersection and one for continuing straight through the intersection. Crucially, drivers on Capital Circle have the right-of-way at the intersection. Old Bainbridge is controlled by a stop sign, while Capital Circle has no traffic controls.

Around 5:15 p.m. on December 16, 2015, during busy traffic

flow, a Dial-A-Ride[1] passenger bus owned and operated by the City of Tallahassee ("Respondent") was traveling north on Old Bainbridge Road, approaching the intersection with Capital Circle. At the same time, 20-year-old Christopher Cannon ("Claimant") was riding his motorcycle on his way home from work, traveling northeast on Capital Circle, approaching the same intersection with the right-of-way. It was cloudy at the time of the accident, and although it was not visibly raining, the roadway was wet. Claimant was wearing a helmet and protective clothing.

The ensuing collision was caught on tape by the internal cameras on board Respondent's bus. The video footage shows Respondent's bus stopping well behind the stop bar at the intersection, waiting about one minute, and then proceeding into the intersection, turning left across traffic. When the bus had completed about half of the turn, Claimant's motorcycle can be seen swerving to try to avoid the bus, and then being obliterated upon impact. Claimant was catapulted off his motorcycle and sent airborne across the other lane of traffic and over the guardrail.

Claimant was stabilized and transported to the emergency room at Tallahassee Memorial Hospital. He was treated for pulmonary contusion, a rib fracture, right renal/kidney laceration and hematomas, adrenal gland contusion, a right tibia fracture, a right fibula fracture, a right mid-shaft femoral fracture, and a tiny spleen laceration. While at the emergency room, Claimant went into atrial fibrillation and had to be defibrillated in order to be stabilized.

Claimant underwent a closed displaced right tibia and right fibular shaft fracture procedure. A rod was placed in his leg and secured with four screws. Claimant later had another procedure where a plate was secured to his humerus in his arm with eight screws. About two weeks after that surgery, Claimant suffered from a leg infection that required another five-day stay in the hospital. About eight months after the accident, Claimant followed up with physical therapy.

Claimant lost his job after the accident. His accident and post-accident medical bills totaled about $211,000. His property damage was about $5,500 and lost wages about $4,500. At the time of the accident, Claimant did not have any medical insurance or insurance for his motorcycle. The hospital imposed medical liens that have since been reduced through negotiation.

On April 4, 2016, a county judge found Respondent's bus driver guilty of failing to yield to oncoming traffic when making a left turn, in violation of s. 316.122, F.S., and guilty of causing serious bodily injury to the victim. The court suspended the bus driver's

[1] Dial-A-Ride refers to an on-demand bus service for mobility-impaired persons.

CDL license for 90 days.

Claimant is now 22 years old. Although he can walk, running and jumping are difficult, and when he tries to run, he begins to limp. Claimant still experiences some numbness on his shin and has some ongoing issues with the nerves in his foot.

LITIGATION HISTORY: On January 11, 2017, Claimant filed an amended complaint against Respondent in the Second Judicial Circuit, alleging two counts: first, that Respondent was negligent in its hiring, training, discipline, supervision, and retention of its bus driver; and second, that Respondent was responsible under the doctrine of respondeat superior for the negligence of its bus driver.

On March 3, 2017, the parties filed an agreed motion for partial summary judgment on liability against Respondent. Respondent admitted liability based on the negligent operation of the bus by its driver; and Claimant agreed to dismiss its first count alleging negligent hiring, training, discipline, supervision, and retention. The issue of damages was subsequently mediated and settled for $700,000. Respondent has paid $200,000 to Claimant, and pursuant to the settlement agreement, Respondent supports the claim bill for the additional $500,000.

CLAIMANT'S POSITION: Claimant argues Respondent is liable for the injuries he sustained from the accident and seeks the unpaid portion of the settlement agreement.

RESPONDENT'S POSITION: Respondent acknowledges that it is liable for Claimant's damages in the full amount sought by Claimant under the doctrine of respondeat superior. Respondent does not oppose the claim bill. However, Respondent does not agree that it was negligent in its hiring, training, disciplining, supervision, and retention of the bus driver who caused the accident.

CONCLUSIONS OF LAW: Regardless of whether there is a jury verdict or settlement, each claim bill is reviewed *de novo* in light of the elements of negligence.

Duty, Breach, & Causation

It is clear that Respondent breached a duty to Claimant. Under Florida law, a driver approaching an intersection with a stop sign must stop, and after stopping, must "yield the right of way to any vehicle" in the intersection or which is approaching so closely as to constitute a hazard.[2] The driver of the city bus owed a duty to Claimant, as Claimant's motorcycle had no stop sign and enjoyed the right-of-way. The driver of the bus breached her duty to Claimant when she proceeded through the intersection even though she had a stop sign and did not have the right-of-way.

When the city's bus driver breached this duty, she was driving a

[2] S. 316.123(2)(a), F.S.

Tallahassee Dial-A-Ride bus as a city employee on her bus route. Thus, Respondent is liable for its bus driver's actions under the doctrine of respondeat superior. Claimant's injuries, which he sustained at the scene of the accident as well as in the months afterward due to an infection, were the proximate causes of Respondent's breach of duty.

Damages
The accident caused about $211,000 in medical bills (though some of that amount was negotiated down), $5,500 in property damage, and $4,500 in lost wages. Moreover, Claimant has undergone multiple procedures and had an additional five-day hospital stay due to an infection that formed after his surgery. The accident also caused Claimant to have to undergo defibrillation at the emergency room. In light of Claimant's economic and noneconomic damages, including the residual negative effects of his injury, which Claimant still lives with to this day, I find that the amount agreed upon by Claimant and Respondent and sought in the claim bill is reasonable.

ATTORNEY'S/ LOBBYING FEES: Claimants' attorneys will limit their fees to 25 percent of any legislative award. Out of these fees, a lobbyist fee for 5 percent of the total award will be paid. There are no outstanding costs.

RESPONDENT'S ABILITY TO PAY: Respondent states that it has no insurance and that any funds paid to Claimant will be paid out of Respondent's self-insurance fund. Respondent states that the amount sought by Claimant is "fully funded and reserved" in Respondent's fund.

LEGISLATIVE HISTORY: This is the first time this claim bill has been presented to the Legislature.

SUGGESTED AMENDMENTS: The section addressing the limitation on attorney's fees should be amended to provide for specific fee amounts.

RECOMMENDATION: I recommend that House Bill 6527 be reported **FAVORABLY**.

Respectfully submitted,

W. Jordan Jones

JORDAN JONES

House Special Master

cc: Representative Alexander, House Sponsor
Senator Montford, Senate Sponsor
Cindy Brown, Senate Special Master

A bill to be entitled

An act for the relief of Christopher Cannon; providing an appropriation to compensate him for injuries and damages sustained as a result of the alleged negligence of the City of Tallahassee; providing that the appropriation satisfies all present and future claims arising out of the alleged negligent acts; providing a limitation on the payment of attorney fees; providing an effective date.

WHEREAS, on December 16, 2015, Christopher Cannon was driving his motorcycle home from work, and

WHEREAS, a City of Tallahassee Dial-A-Ride driver, believing that an intersection where she was preparing to make a turn was clear of traffic, made a left-hand turn in front of Christopher Cannon, who crashed into the left front of the Dial-A-Ride vehicle, causing him to be ejected from his motorcycle across two lanes of traffic, and

WHEREAS, Christopher Cannon was transported to Tallahassee Memorial Hospital where he was treated for a pulmonary contusion, a right sixth rib fracture, a right scapular fracture, a right kidney laceration, an adrenal gland contusion, a right tibia fracture, a right fibula fracture, a right mid-shaft femoral fracture, and a spleen laceration, and

WHEREAS, surgeons placed a rod secured by four screws

through Christopher Cannon's tibia and inserted a plate and four screws to realign his right humerus fracture, and

WHEREAS, Christopher Cannon was discharged approximately 2 weeks after the accident, but was readmitted 1 week after his initial discharge due to a wound infection that required additional surgery for debridement, and

WHEREAS, on March 30, 2016, a mandatory hearing was conducted by the Leon County Court pursuant to ss. 318.14 and 318.19, Florida Statutes, for the purpose of making a determination as to whether the Dial-A-Ride driver committed a violation of s. 316.122, Florida Statutes, related to yield of right-of-way, vehicle turning left, and

WHEREAS, on April 4, 2016, the Leon County Court entered an order finding that the Dial-A-Ride driver violated s. 316.122, Florida Statutes, and that the victim suffered serious bodily harm as a direct result of the resulting accident, and

WHEREAS, on July 11, 2016, counsel for Christopher Cannon filed a claim against the City of Tallahassee seeking compensation for the injuries and damages arising out of the accident in the Circuit Court of the Second Judicial Circuit in and for Leon County, Case No. 2016 CA 1560, alleging the negligence per se of the Dial-A-Ride driver and the negligent hiring, training, disciplining, supervision, and retention of the Dial-A-Ride driver by the City of Tallahassee, and

WHEREAS, counsel for Christopher Cannon alleged that the

Dial-A-Ride driver committed negligence per se by failing to yield to oncoming traffic when making a left turn in violation of s. 316.122, Florida Statutes, during the accident, and

WHEREAS, counsel for Christopher Cannon alleged that the City of Tallahassee had a duty to exercise reasonable care in the hiring, training, disciplining, supervision, and retention of the Dial-A-Ride driver, and

WHEREAS, counsel for Christopher Cannon alleged that the City of Tallahassee breached its duty of reasonable care by failing to exercise its duty of reasonable care to effectively and reasonably train, discipline, supervise, and retain or discharge the Dial-A-Ride driver, who incurred multiple traffic citations during the period from 1994 through 2012, and

WHEREAS, counsel for Christopher Cannon alleged that as a direct and proximate result of the negligence of the City of Tallahassee in failing to exercise a reasonable duty of care, and but for that negligence, Christopher Cannon suffered bodily injury that resulted in pain and suffering; disability; disfigurement; mental anguish; loss of capacity for the enjoyment of life; costs associated with his hospitalization, medical and nursing care, and treatment; loss of earnings; and loss of the ability to earn money, and

WHEREAS, Christopher Cannon's past medical expenses and lost wages are in excess of $225,000 and it is anticipated that he will incur additional medical expenses in the future as a

result of his injuries, and

WHEREAS, following mediation, a final order was entered in the case approving a settlement in the sum of $700,000 between Christopher Cannon and the City of Tallahassee to satisfy all present and future claims arising out of the factual situation described in this act, and

WHEREAS, pursuant to the final order, the City of Tallahassee has paid $200,000 to Christopher Cannon under the statutory limits of liability set forth in s. 768.28, Florida Statutes, and $500,000 remains unpaid, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The City of Tallahassee is authorized and directed to appropriate from funds not otherwise encumbered and to draw a warrant in the sum of $500,000 payable to Christopher Cannon as compensation for injuries and damages sustained.

Section 3. The amount paid by the City of Tallahassee pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in injuries and damages to Christopher Cannon. The total amount paid for

attorney fees relating to this claim may not exceed 25 percent of the amount awarded under this act.

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

AFFIDAVIT OF SIDNEY L. MATTHEW

STATE OF FLORIDA
COUNTY OF LEON

Before me, the undersigned authority, personally appeared Sidney L. Matthew who, having been duly sworn, does depose and say of his own personal knowledge:

1. Affiant Sidney L. Matthew is lead counsel for Christopher Vayden Cannon pursuant to a written contingency fee representation agreement executed by Christopher Vayden Cannon in strict compliance with Rule 4–1.5 Rules of Professional Conduct adopted by the Supreme Court of Florida which provide for regulated specified contingent lawyer fees to be charged in the representation of certain cases including claims for recovery of damages arising from personal injury. A copy of the said rule is attached hereto and incorporated herein by reference as attachment A.

2. The subject written contingency fee representation agreement was executed on December 23, 2015, by and between Christopher Vayden Cannon and his lawyers Sidney L. Matthew, P.A. (by and through Sidney L. Matthew) and Anderson and Givens P.A. (by and through Justin Givens). The lawyers provided for a statutorily authorized division of attorney's fees which total did not exceed 25% as provided in the applicable rule of professional conduct attached as Attachment A.

3. The subject written contingency fee representation agreement provides for the payment of a contingency fee provided in Rule 4-1.5 and not to exceed any amount provided by law (including Florida Statute Section 768.28(8) which provides: "no attorney may charge, demand, receive or collect, for services rendered, fees in excess of 25% of any judgment or settlement." in actions brought against the state or its subdivisions in waiver of sovereign immunity)

4. Pursuant to a mediated settlement of the lawsuit filed in this case, the parties entered into a disbursement authorization and closing statement a copy of which is attached hereto and incorporated herein as Attachment B.

5. Pursuant to a negotiated settlement with the medical lien providers, the parties agreed to satisfy the outstanding applicable medical liens by and through the payment of a maximum of $100,000 payable in an initial payment of $25,000 and a contingent payment of $75,000 which is contingent upon the passage by the Florida legislature of the subject claims bill (Senate Bill SB-28 And House Bill HB-6527) and funding of that legislation.

6. The Plaintiff has agreed to pay Registered Lobbyist Patrick Bell for his lobbying services of five percent (5%) of the final claim, contingent upon the bill becoming law or occurrence of a settlement.

AND FURTHER AFFIANT SAYETH NOT.

SIDNEY L. MATTHEW

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 12th day of January 2018, by Sidney L. Matthew who is personally known to me or who has produced _____ as identification.

VICTORIA R. BRAMBLETT
Commission # GG 047328
Expires January 6, 2021
Bonded Thru Troy Fain Insurance 800-385-7019

NOTARY PUBLIC
Notary's Printed Name: VICTORIA R. BRAMBLETT

My Commission Expires: 1/6/21

SUPPLEMENTAL AFFIDAVIT OF JUSTIN GIVENS

STATE OF FLORIDA
COUNTY OF LEON

Before me, the undersigned authority, personally appeared Justin Givens who, having been duly sworn, does depose and say of his own personal knowledge:

1. Affiant Justin Givens is Co-counsel for Christopher Vayden Cannon pursuant to a written contingency fee representation agreement executed by Christopher Vayden Cannon in strict compliance with Rule 4–1.5 Rules of Professional Conduct adopted by the Supreme Court of Florida which provide for regulated specified contingent lawyer fees to be charged in the representation of certain cases including claims for recovery of damages arising from personal injury.

2. This is a Supplemental Affidavit in addition to the affidavit submitted by Sidney L. Matthew on January 12th, 2018

3. The Plaintiff has agreed to pay Registered Lobbyist Patrick Bell for his lobbying services of five percent (5%) of the final claim, contingent upon the bill becoming law or occurrence of a settlement, the 5% for lobbying services will come from the attorney's 25% of settlement.

AND FURTHER AFFIANT SAYETH NOT.

JUSTIN GIVENS

STATE OF FLORIDA
COUNTY OF LEON

The foregoing instrument was acknowledged before me this 26th day of January 2018, by Justin Givens who is personally known to me or who has produced _____ as identification.

VICTORIA R. BRAMBLETT
Commission # GG 047328
Expires January 6, 2021
Bonded Thru Troy Fain Insurance 800-385-7019

NOTARY PUBLIC
Notary's Printed Name: VICTORIA R. BRAMBLETT

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 6527 (2018)

Amendment No.

COMMITTEE/SUBCOMMITTEE ACTION

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

Committee/Subcommittee hearing bill: Civil Justice & Claims Subcommittee

Representative Alexander offered the following:

Amendment

Remove lines 100-102 and insert:

damages to Christopher Cannon. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $100,000, the total amount paid for lobbying fees may not exceed $25,000, and no amount may be paid for costs or other similar expenses.

STORAGE NAME: h6535.CJC
DATE: 1/26/18

January 26, 2018

SPECIAL MASTER'S FINAL REPORT

The Honorable Richard Corcoran
Speaker, The Florida House of Representatives
Suite 420, The Capitol
Tallahassee, Florida 32399-1300

Re: HB 6535 - Representative Newton
Relief/Estate of Dr. Sherrill Lynn Aversa/Department of Transportation

THIS IS AN UNCONTESTED CLAIM FOR $650,000 AGAINST THE DEPARTMENT OF TRANSPORTATION BASED ON A STIPULATED SETTLEMENT AGREEMENT IN WHICH THE DEPARTMENT AGREED TO COMPENSATE THE ESTATE OF DR. SHERRILL AVERSA IN THE TOTAL AMOUNT OF $800,000 FOR HER WRONGFUL DEATH. THE DEPARTMENT HAS PAID $150,000.

FINDINGS OF FACT:

On June 21, 1999, around 5:45 p.m., Dr. Sherrill Lynn Aversa was traveling southbound on I-75 in Tampa. Meanwhile, a Department of Transportation (DOT) truck driven by a DOT employee, Domingo Alvarado, Jr., was traveling northbound on I-75. Mr. Alvarado was the DOT electrician on call that evening.

The DOT truck had a 12-foot extension ladder along with cones on the top of the truck. Shortly before Mr. Alvarado reached the I-4 overpass, during rush hour, the ladder fell off his truck. Immediately behind Mr. Alvarado's DOT truck was a Ford Explorer SUV driven by Roxann Hodge. Mrs. Hodge was driving about the speed limit, 70 miles per hour, wearing her seatbelt. To avoid a collision with the ladder, Mrs. Hodge swerved sharply

left,[1] lost control of her vehicle, and crossed the interstate median.[2] Mrs. Hodge's vehicle then exited the median into southbound traffic and struck Dr. Aversa's vehicle head on.[3] The force of the impact caused both cars to rotate, causing a subsequent impact between Hodge's vehicle and a vehicle driven by Christopher Chappell. After rotating around completely, Dr. Aversa's vehicle was hit again by another vehicle. Six vehicles were ultimately involved in the collision, resulting in Dr. Aversa's death and four other injuries.

After realizing the ladder had fallen off his vehicle, Mr. Alvarado pulled off the roadway into the emergency lane on the right side, put on his caution lights, and ran to the ladder. He ultimately retrieved the ladder and cones, which had come to a rest in the center northbound lane, and re-secured the ladder. A witness who stopped to assist Mr. Alvarado pointed out the accident on the other side of the divided highway. Mr. Alvarado was not aware that his ladder had anything to do with the accident and noted that a sheriff was already at the scene. Later that evening, Mr. Alvarado saw news coverage of the accident and called Highway Patrol. DOT ultimately issued Mr. Alvarado a disciplinary letter.

The other drivers in the accident suffered various injuries and settled with DOT for a combined total of $50,000, leaving $150,000 available for payment to Dr. Lee Crandall, as husband and personal representative of the estate of Dr. Sherrill Aversa ("Estate").[4]

Dr. Aversa was a 32-year-old epidemiologist and published researcher in the field of HIV/AIDS at the University of Miami Medical School. Expert testimony was presented that the present value of economic damages alone totaled $2,646,244.

LITIGATION HISTORY:

On May 15, 2000, Dr. Aversa's husband and her estate's personal representative, Dr. Lee Crandall, filed a wrongful death action against DOT. Prior to trial, the parties entered into a stipulated settlement agreement in which Respondent agreed to pay a total of $800,000. The agreement acknowledged Respondent had already paid $50,000 to other parties injured in the accident and that only $150,000 remained under the sovereign immunity cap. Respondent therefore agreed to pay Claimant $150,000 and support a claim bill for $650,000 for up to ten legislative sessions. The court approved the agreement and entered a consent final judgment on June 11, 2003. Respondent has paid Claimant $150,000.

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[1] Mrs. Hodge stated in her deposition that she could not veer right because of another vehicle on the road.
[2] At the point in question, I-75 has three northbound lanes and three southbound lanes.
[3] The Investigative Report by Florida Highway Patrol found that Dr. Aversa was wearing her seatbelt.
[4] Under s. 768.28(5), F.S. (1999), any liability of a governmental entity exceeding $200,000 per occurrence can be paid only as directed by the Legislature through a claim bill.

CLAIMANT'S POSITION: Claimant argues it is entitled to the remaining amount of $650,000 under the stipulated settlement agreement.

RESPONDENT'S POSITION: Respondent entered into a settlement agreement with Claimant in 2003, agreeing to support a claim bill "for up to ten legislative sessions." Because more than ten legislative sessions have passed, Respondent states that it now "takes no position" on this claim bill. Respondent states that the bill erroneously indicates that Respondent has admitted liability for the accident and requests that this statement be removed from the bill.

CONCLUSIONS OF LAW: Regardless of whether there is a jury verdict or settlement, every claim bill must be reviewed *de novo* in light of the elements of negligence.

Duty & Breach
Section 316.520, F.S. (1999), provides that "[a] vehicle may not be driven or moved on any highway unless the vehicle is so constructed or loaded as to prevent any of its load from dropping, shifting, leaking, blowing, or otherwise escaping therefrom . . . ." Under this statute, Mr. Alvarado had a duty to secure the ladder to the DOT truck before operating the truck on the roadway. His failure to do so was a breach of that duty. As an employee of DOT in the course and scope of his employment, his negligence is attributable to DOT under the doctrine of respondeat superior.

Causation
Mr. Alvarado's failure to properly secure the ladder to the DOT truck he was driving was the proximate cause of Dr. Aversa's untimely death. When the ladder fell off the truck into Mrs. Hodge's path, she swerved to avoid the ladder, lost control of her vehicle, careened into the median, and crashed into Dr. Aversa's vehicle head on.

Damages
Dr. Aversa was an intelligent woman with a promising career ahead of her. An expert found that economic damages alone totaled $2,646,244. The amount of damages sought in this claim bill—$650,000—is wholly reasonable considering the outcome of the accident.

ATTORNEY'S/ LOBBYING FEES: Claimant's attorneys will limit their fees to 25 percent of any legislative award. Out of these fees, a lobbyist fee for 6% of the total award will be paid. There are no outstanding costs.

COLLATERAL SOURCES: In addition to the $150,000 paid by DOT, Dr. Aversa's estate has received the following amounts: $153,000 in life and accidental death insurance proceeds; $66,666 in underinsured motorist coverage; and $6,666 in settlement proceeds from Mrs. Hodge, the driver of the Ford Explorer.[5]

[5] Dr. Crandall created a Foundation in his late wife's name with the purpose of awarding scholarships to help doctoral students complete their degrees. The Foundation has awarded multiple scholarships over the years.

RESPONDENT'S ABILITY TO PAY: Respondent states that if the claim bill passes, funds will be paid out of the State Transportation Trust Fund. Respondent states that it "will make adjustments as necessary to avoid any impact on the Department's Work Program."

SUGGESTED AMENDMENTS: The statement that Respondent admitted liability for the accident should be removed from the bill. Also, the section addressing the limitation on attorney's fees should be amended to provide for specific fee amounts.

LEGISLATIVE HISTORY: This is the twelfth session this claim has been presented to the Legislature over a fifteen-session period. It was initially filed in the 2004 session as HB 245 by Representative Prieguez and SB 10 by Senator Margolis. In 2016, CS/SB 14 was not heard in Senate Appropriations and was never filed in the House.

RECOMMENDATION: I recommend that HB 6535 be reported **FAVORABLY**.

Respectfully submitted,

W. Jordan Jones

JORDAN JONES

House Special Master

cc: Representative Newton, House Sponsor
Senator Thurston, Senate Sponsor
Thomas Cibula, Senate Special Master

A bill to be entitled

An act for the relief of the Estate of Dr. Sherrill Lynn Aversa; providing an appropriation to compensate the Estate of Dr. Sherrill Lynn Aversa for Dr. Aversa's death as a result of the negligence of the Department of Transportation; requiring the Executive Office of the Governor to establish spending authority from unappropriated trust fund balances of the department for compensation to the Estate of Dr. Sherrill Lynn Aversa; providing a limitation on the payment of attorney fees; providing an effective date.

WHEREAS, on June 21, 1999, an employee of the Department of Transportation was driving a department vehicle north on Interstate 75 in Hillsborough County, and

WHEREAS, on that same day, Dr. Sherrill Lynn Aversa, having completed an interview at the University of South Florida Medical School, was traveling south on Interstate 75, and

WHEREAS, according to departmental policy, employees of the department are required to ensure that all items used by the department and stored on a department vehicle are appropriately secured, and

WHEREAS, one such item used by the department was a 12-foot extension ladder stored on the roof of the truck driven by the department employee and the employee failed to ensure that the

ladder was secured to the vehicle before leaving the department's maintenance yard, and

WHEREAS, as the employee traveled north on Interstate 75 in the department vehicle, the extension ladder flew off the roof into the northbound traffic traveling behind the department vehicle, and

WHEREAS, the driver of the vehicle traveling behind the department vehicle swerved to avoid hitting the ladder and, as a result of the swerving movement, lost control of her vehicle, veered to the left, crossed the Interstate 75 median, and struck Dr. Aversa's southbound vehicle, killing Dr. Aversa instantly, and

WHEREAS, as a result of these events, the Estate of Dr. Sherrill Lynn Aversa brought suit against the department for its negligence in causing the death of Dr. Aversa, and

WHEREAS, after 3 years of litigation, the department admitted liability for the accident and agreed to settle the case, and

WHEREAS, the parties agreed to a consent judgment in the amount of $800,000 solely against the department, with no finding of comparative negligence against any other party, and

WHEREAS, the department has paid $150,000 to the Estate of Dr. Sherrill Lynn Aversa consistent with the statutory limits of liability set forth in s. 768.28, Florida Statutes, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. The Executive Office of the Governor is directed to establish spending authority from unappropriated trust fund balances of the Department of Transportation in the amount of $650,000 to a new category titled "Relief: Estate of Dr. Sherrill Lynn Aversa" as compensation to the Estate of Dr. Sherrill Lynn Aversa for the death of Dr. Sherrill Lynn Aversa, which amount includes attorney fees and costs.

Section 3. The Chief Financial Officer is directed to draw a warrant, pursuant to the stipulated settlement agreement executed by the Department of Transportation and the personal representative of the Estate of Dr. Sherrill Lynn Aversa, in the amount of $650,000 upon funds of the Department of Transportation not otherwise encumbered, and the Chief Financial Officer is directed to pay the same sum out of such funds in the State Treasury.

Section 4. The amount paid by the Department of Transportation pursuant to s. 768.28, Florida Statutes, and the amount awarded under this act are intended to provide the sole compensation for this excess judgment claim and for all other present and future claims arising out of the factual situation

described in this act which resulted in the death of Dr. Sherrill Lynn Aversa. The total amount paid for attorney fees relating to this claim may not exceed 25 percent of the amount awarded under this act.

Section 5. This act shall take effect upon becoming a law.

IN THE CIRCUIT COURT OF THE 13TH JUDICIAL CIRCUIT IN AND FOR HILLSBOROUGH COUNTY, FLORIDA

LEE A. CRANDALL, as Personal, Representative of the Estate of Dr. Sherril Lynn Aversa, Deceased And on behalf of the Decedent's survivor,

Plaintiff,

v.

STATE OF FLORIDA DEPARTMENT OF TRANSPORTATION,

Defendant.

CASE NO.: 00-3688 DIVISION "A"

/

AFFIDAVIT OF JED KURZBAN, ESQ.

STATE OF FLORIDA)
) SS:
COUNTY OF DADE)

BEFORE ME, the undersigned authority personally appeared JED KURZBAN, ESQ., who having sworn states as follows:

1. I am over the age of (18) eighteen years old and *sui juris*.
2. My name is Jed Kurzban, Esquire, and I am a partner of KURZBAN KURZBAN WEINGER TETZELI & PRATT, P.A.
3. Pursuant to the attached Settlement Statement between my firm and the Plaintiff, Lee Crandall, as Personal Representative of the Estate of Sherril Aversa, my attorney's fees are the statutory amount of twenty-five (25%) from the gross proceeds of this claim bill petition as they were never paid.
4. In addition to the twenty-five (25%) statutory fee, there has been costs for the preparation of this cause of action for trial, up and through the time of the stipulated settlement. The costs are $111,772.89. To date, these costs have already been paid from the proceeds

provided by The Department of Transportation of the statutory amount paid to date and no further costs are owed.

5. There are additional costs of zero dollar ($0.00) for the efforts of my firm and me to lobby this matter through the House of Representatives and the Senate to obtain the claim bill we seek if a claim bill is passed.
6. There are no additional attorney fees by my firm for the lobbying of this matter, only the twenty-five (25%) from the bill total as fees for the underlying claim.
7. It has been agreed upon by both myself and the client, Lee Crandall, to retain the firm of Lamonica Corporation for lobbying of the claim bill we seek. It is agreed the fees of the services of Lamonica Corporation will be six percent, (6%) of the final claim contingent upon the Bill becoming law, pursuant to Mr. Crandall's claim bill petition. That amount is to be paid by the client out of the proceeds of the Claim Bill if made into law. A copy of this contract is attached.
8. The attorney's fees specified in paragraph 7 above will be taken from the percentage of attorney's fees, thus reducing my firm's fee to nineteen percent (19%) of any amount that may be awarded.
9. All of the above attorney's fees and costs have been thoroughly discussed with the client and have been agreed upon.

FURTHER AFFIANT SAYETH NAUGHT.

JED KURZBAN, ESQUIRE
Affiant

SWORN TO AND SUBSCRIBED before me this 2 day of January, 2018.

[X] Affiant is personally sworn to me; or
[ ] Affiant produced _____

as identification.

Notary Public, State of Florida At Large

My Commission Expires:

TANIA GONZALEZ
MY COMMISSION # FF 972162
EXPIRES: March 16, 2020
Bonded Thru Budget Notary Services

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. HB 6535 (2018)

Amendment No.

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

Committee/Subcommittee hearing bill: Civil Justice & Claims Subcommittee

Representative Newton offered the following:

Amendment

Remove lines 77-79 and insert:

Sherrill Lynn Aversa. Of the amount awarded under this act, the total amount paid for attorney fees may not exceed $123,500, the total amount paid for lobbying fees may not exceed $39,000, and no amount may be paid for costs or other similar expenses.