

SB 1274 by **Passidomo (CO-INTRODUCERS) Mayfield**; (Similar to CS/CS/H 00841) Community Associations

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SB 1076 by **Steube**; (Similar to H 01219) Franchises

SB 1728 by **Hutson**; (Identical to H 01221) Veterinary Medicine

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Hutson, Chair
Senator Hukill, Vice Chair

MEETING DATE: Tuesday, January 30, 2018
TIME: 4:30—6:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Hutson, Chair; Senator Hukill, Vice Chair; Senators Benacquisto, Bracy, Brandes, Braynon, Gibson, Steube, Thurston, and Young

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1274 Passidomo (Similar CS/H 841, Compare S 1530)	Community Associations; Deleting a provision prohibiting an association from hiring an attorney who represents the management company of the association; revising voting requirements relating to alterations and additions to certain common elements or association property; revising cooperative association recordkeeping requirements; prohibiting a board member from voting via e-mail, etc. RI 01/30/2018 Fav/CS CA RC	Fav/CS Yeas 10 Nays 0
2	SB 1076 Steube (Similar H 1219)	Franchises; Designating the "Protect Florida Small Business Act"; prohibiting a franchisor from terminating or not renewing a franchise under certain circumstances; prohibiting a franchisor from denying certain persons the opportunity to participate in the ownership of a franchise for a specified period after the death of the franchisee or the death of a person controlling a majority interest in the franchise; requiring a franchisor and a franchisee to deal with each other in good faith; prohibiting waivers through certain contract provisions that would affect a person's rights to make a claim, etc. RI 01/30/2018 Favorable JU RC	Favorable Yeas 5 Nays 4
3	SB 1728 Hutson (Identical H 1221)	Veterinary Medicine; Providing and revising definitions relating to veterinary medical practice, etc. RI 01/30/2018 Temporarily Postponed AGG AP	Temporarily Postponed

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 1274

INTRODUCER: Regulated Industries Committee and Senators Passidomo and Mayfield

SUBJECT: Community Associations

DATE: January 30, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	Fav/CS
2.			CA	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1274 revises requirements related to the governance and operation of condominium, cooperative, and homeowners' associations.

Regarding condominium, cooperative, and homeowners' associations, the bill revises the:

- Notice requirements for board and owner meetings at which an assessment will be considered to require specific information be provided in notices.
- Process for and membership of committees reviewing a recommended fine or suspension related to use of association property, the notice requirements associated with such fines and suspensions, and the time for payment of any fines.

Regarding condominium and cooperative associations, the bill:

- Requires the minutes of meetings and accounting records be maintained for seven years instead of one year.
- Makes condominium unit owners and cooperative shareholders responsible for removing or bypassing filters blocking receipt of mass e-mails sent by an association the owners and shareholders have consented to receive.

Regarding condominium associations, the bill:

- Repeals the prohibition against an association hiring an attorney who represents the management company of the association.
- Revises the period of time specified official records must be maintained by an association.

- Revises the information related to contracts, bids, and financial reports an association with 150 or more units must post on its website.
- Exempts, with conditions, an association from liability for disclosure of protected or restricted information on its website.
- Prohibits an association from waiving financial reporting requirements for two fiscal years after not complying with a request by the Division of Florida Condominiums, Timeshares, and Mobile Homes (within the Department of Business the Professional Regulation) to provide an owner with a copy of the most recent financial report.
- Provides when the recall of a board member is effective.
- Provides attorney's fees and costs for a recalled board member who or for an association that prevails in an arbitration proceeding concerning a recall, in certain circumstances.
- Requires a vote before substantial addition or alteration to a common elements.
- Repeals the July 1, 2018, deadline for classification as a bulk buyer, extending indefinitely the applicability of bulk buyer provisions.

Regarding cooperative associations, the bill:

- Prohibits co-owners of a unit in a residential cooperative association of more than 10 units from serving simultaneously on the board, unless the co-owners own more than one unit or there are not enough eligible candidates.
- Provides for the removal from office of an officer or director who is more than 90 days delinquent in any monetary obligation owed to the association.
- Allows the cost of communication services, information services, or Internet services obtained under a bulk contract to be a common expense of the association.

Regarding homeowners' associations, the bill:

- Permits an association to provide notices of a meeting by electronic transmission to any member who has provided a facsimile number or e-mail address for such purposes, and consented to receipt of electronic notices.
- Revises the requirements for the maintenance of reserve accounts to:
 - Apply the requirements to associations incorporated on or after July 1, 2018, and to associations incorporated before July 1, 2018, which elects to maintain reserves.
 - Require reserve accounts for deferred maintenance costs over \$100,000 and restrict the use of reserve funds to only authorized reserved expenditures.
 - Allow an association to elect not to maintain reserves or to maintain reduced reserves. Provide the method for calculating reserves and the amount due for each parcel and prohibiting assessments for reserves on undeveloped parcels.
 - Exclude parcel owners not subject to assessment from voting on reserves.
 - Limit a developer's voting interests to the parcels with completed improvements.
 - Revises the requirements for increasing assessments in an association's budget to:
 - Require a special meeting of the owners if the board adopts an annual budget with assessments exceeding 115 percent of the preceding fiscal year's assessments; and
 - Permit a majority of the members to adopt a substitute budget at a special meeting.

The bill has no fiscal impact on state government.

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

II. Present Situation:

Division of Florida Condominiums, Timeshares, and Mobile Homes

Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (DBPR) administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively. The division may investigate complaints and enforce compliance with chs. 718 and 719, F.S., with respect to associations that are still under developer control.¹ The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.² After control of the condominium is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.³ For cooperatives, the division's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.⁴

As part of the division's authority to investigate complaints, the division may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers and associations.⁵

If the division has a reasonable cause to believe that a violation of any provision of ch. 718, F.S., ch. 719, F.S., or related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The division may conduct an investigation and issue an order to cease and desist from unlawful practices and to take affirmative action to carry out the purpose of the applicable chapter. In addition, the division is authorized to petition a court to appoint a receiver or conservator to implement a court order, or to enforce of an injunction or temporary restraining order. The division may also impose civil penalties.⁶

Unlike condominium and cooperative associations, homeowners' associations are not regulated by a state agency. Section 720.302(2), F.S., expresses the legislative intent regarding the regulation of homeowners' associations:

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation

¹ Sections 718.501(1) and 719.501(1), F.S.

² *Id.*

³ Section 718.501(1), F.S.

⁴ Section 719.501(1), F.S.

⁵ Sections 718.501(1) and 719.501(1), F.S.

⁶ *Id.*

of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407 are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

In regards to homeowners' associations, the division's authority is limited to arbitration of recall election disputes.⁷

Condominium

A condominium is a "form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements."⁸ A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.⁹ A declaration is similar to a constitution in that it:

[S]trictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.¹⁰

A condominium is administered by a board of directors referred to as a "board of administration."¹¹

Cooperative Associations

Section 719.103(12), F.S., defines a "cooperative" to mean:

[T]hat form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property.

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative unit's occupants receive an exclusive right to occupy the unit. The

⁷ See s. 720.306(9)(c), F.S.

⁸ Section 718.103(11), F.S.

⁹ Section 718.104(2), F.S.

¹⁰ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

¹¹ Section 718.103(4), F.S.

cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.¹²

Homeowners' Associations

Florida law provides statutory recognition to corporations that operate residential communities in this state and procedures for operating homeowners' associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.¹³

A "homeowners' association" is defined as a "Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and 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."¹⁴ Unless specifically stated to the contrary, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations or by ch. 617, F.S., relating to not-for-profit corporations.¹⁵

Homeowners' associations are administered by a board of directors whose members are elected.¹⁶ The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.¹⁷ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.¹⁸

Chapters 718, 719, and 720, F.S.

Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, provide for the governance of these community associations. For example, the chapters delineate requirements for notices of meetings,¹⁹ recordkeeping requirements, including which records are accessible to the members of the association,²⁰ and financial reporting.²¹ Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

¹² See ss. 719.106(1)(g) and 719.107, F.S.

¹³ See s. 720.302(1), F.S.

¹⁴ Section 720.301(9), F.S.

¹⁵ Section 720.302(5), F.S.

¹⁶ See ss. 720.303 and 720.307, F.S.

¹⁷ See ss. 720.301 and 720.303, F.S.

¹⁸ Section 720.303(1), F.S.

¹⁹ See s. 718.112(2), F.S., for condominiums, s. 719.106(2)(c), F.S., for cooperatives, and s. 720.303(2), F.S., for homeowners' associations.

²⁰ See s. 718.111(12), F.S., for condominiums, s. 719.104(2), F.S., for cooperatives, and s. 720.303(4), F.S., for homeowners' associations.

²¹ See s. 718.111(13), F.S., for condominiums, s. 719.104(4), F.S., for cooperatives, and s. 720.303(7), F.S., for homeowners' associations.

For ease of reference to each of the topics addressed in SB 1274, the Present Situation for each topic will be described in Section III of this analysis, followed immediately by an associated section detailing the Effect of Proposed Changes.

III. Effect of Proposed Changes:

CS/SB 1274 revises the regulation and governance of condominium, cooperative, and homeowners' associations under chs. 718, 719, and 720, F.S., respectively.

Attorney Representation – Condominium Associations

Present Situation:

Section 718.111(3)(b), F.S., prohibits a condominium association from hiring an attorney who represents the management company of the association.

An attorney representing a community association must also comply with the ethical rules of professional conduct relating to conflicts of interest imposed on attorneys by the Florida Supreme Court. The rules prohibit a Florida-licensed attorney from representing a client if:

- (1) The representation of one client would be directly adverse to another client; or
- (2) There is a substantial risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.²²

However, notwithstanding the existence of a conflict of interest, an attorney may represent a client if:

- (1) The lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
- (2) The representation is not prohibited by law;
- (3) The representation does not involve the assertion of a position adverse to another client when the lawyer represents both clients in the same proceeding before a tribunal; and
- (4) Each affected client gives informed consent, confirmed in writing or clearly stated on the record at a hearing.²³

Effect of Proposed Changes:

The bill amends s. 718.111(3)(b), F.S., to remove the prohibition against a condominium association hiring an attorney who represents the management company of the association. As a result, the rules on attorney professional conduct established by the Supreme Court would govern an attorney representing a condominium association and the association's management company.

²² Rule 4-1.7, Florida Rules of Professional Conduct, November 20, 2017.

²³ *Id.*

Official Records – Condominium and Cooperative Associations

Present Situation:

Florida law specifies the official records condominium, cooperative, and homeowners' associations must maintain.²⁴ Generally, the official records must be maintained in this state for at least seven years.²⁵ Certain of these records must be accessible to the members of an association.²⁶ Additionally, certain records are protected or restricted from disclosure to members, such as records protected by attorney-client privilege, personnel records, and personal identifying records of owners.²⁷

Any management agreement, lease, or other contract to which a cooperative or homeowners' associations is a party must be kept for one year.²⁸ A condominium association must maintain copies of contracts for seven years.²⁹

Condominium and cooperative associations, but not homeowners' associations, must maintain as an official record the ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners. And these records must be maintained for one year from the date of the election, vote, or meeting to which the document relates.³⁰

A condominium association with 150 or more units, which does not include timeshare units, is required to post digital copies of specified documents on its website, and digital copies of any management agreement, lease, or other contract, and summaries of bids for materials, equipment, or services.³¹ The digital copies of summaries of bids for materials, equipment, or services must be maintained on the website for 1 year.³² The website must also include digital copies of the annual budget required by s. 718.112(2)(f), F.S., and any proposed budget to be considered at the annual meeting.³³

The condominium association must ensure that it does not post protected or restricted information on its website. If protected or restricted information is included in documents posted on the association's website, the association must ensure the information is redacted before the documents are posted online.³⁴

²⁴ See s. 718.111(12), F.S., relating to condominium associations, s. 719.104(2), F.S., relating to cooperative associations, and s. 720.303(5), F.S., relating to homeowners' associations.

²⁵ See s. 718.111(12)(b), F.S., for condominiums, s. 719.104(2)(b), F.S., for cooperatives, and s. 720.303(5), F.S., for homeowners' associations.

²⁶ See s. 718.111(12)(a), F.S., for condominiums, s. 719.104(2)(a), F.S., for cooperatives, and s. 720.303(5), F.S., for homeowners' associations.

²⁷ See s. 718.111(12)(c), F.S., for condominiums, s. 719.104(2)(c), F.S., for cooperatives, and s. 720.303(5), F.S., for homeowners' associations.

²⁸ Sections 719.104(2)(a)9.d. and 720.303(4)(i), F.S., require cooperative and homeowners' associations, respectively, to main a copy of such bids for one year.

²⁹ See s. 718.111(12)(a)11.d., F.S.

³⁰ Sections 718.111(12)(a)12., and 719.104(2)(a)10., F.S.

³¹ Sections 718.111(12)(g)1.e., F.S.

³² *Id.*

³³ Section 718.111(12)(g)1.g., F.S.

³⁴ Section 718.111(12)(g)3., F.S.

*Effect of Proposed Changes:*Condominium and Cooperative Associations

The bill amends ss. 718.111(12)(a) and 719.104(2)(a), F.S., which list the official records of condominium and cooperative associations, respectively, to remove language requiring the minutes of all meetings of the association and all accounting records to be maintained for at least seven years.

The bill amends ss. 718.111(12)(a)12. and 719.104(2)(a)10., F.S., to add electronic records relating to voting to the official records a condominium or cooperative association must maintain for seven years.

Condominium Associations

The bill amends s. 718.111(12), F.S., to

- Replace the term “electronic mailing” with “e-mail” in connection with the personal information of unit owners.
- Require a condominium association to maintain for one year, as an official record, bids for work performed, and bids for materials, equipment, or services. Under current law, such records must be maintained for seven years.
- Require a condominium association to maintain from the inception of the association the official records listed in ss. 718.111(12)(a)1. – 6., F.S., which include specified records from the developer, the declaration of condominium, the bylaws, articles of incorporations, and minutes of all meetings.
- Increase to ten working days from five working days, the number of days after receipt of a written request a condominium association has to make available official records to a unit owner.
- Require an association with 150 or more units to post on its website a list of all executory contracts or documents, in lieu of maintaining any management agreement, lease, or other contract rather than a digital copy of any management agreement, lease, or other contract. The bill also revises the requirement for such an association to post on its website summaries of bids for material, equipment, or services to require the association to list the bids it received for the past year for material, equipment, or services which exceed \$2,500.
- Delete the requirement an association with 150 or more units post on its website any proposed financial report to be considered at a meeting.
- Exempt an association from liability for the disclosure of protected or restricted information on its website, unless the disclosure was made with knowing or intentional disregard of the protected or restricted nature of the information. Under the bill, an association’s failure to post information on its website is not in and of itself sufficient to invalidate any action or decision of the association’s board or its committees.

Financial Reporting – Condominium Associations

Present Situation:

Sections 718.11(13), F.S., provides the financial reporting requirements for condominium associations.³⁵

Within 90 days following the end of the fiscal or calendar year, or annually on a date stated in the association's bylaws, the board must complete, or contract with a third party to complete, the financial statements. Within 21 days after the financial report is completed by the association or received from the third party, but no later than 120 days after the end of the fiscal year, the board must provide each member of the association a copy of the financial report or a notice that it is available at no charge upon a written request.

The type of financial reporting that an association must perform is based on the association's total annual revenue. An association with total annual revenue of:

- Less than \$150,000 must prepare a report of cash receipts and expenditures.
- Between \$150,000 and less than \$300,000 must prepare compiled financial statements.³⁶
- At least \$300,000 but less than \$500,000 must prepare reviewed financial statements.³⁷
- \$500,000 or more must prepare audited financial statements.³⁸

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

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

A unit owner may notify the division that an association has failed to provide him or her with a copy of the most recent financial report within five business days after a written request. The division must 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 five business days. If an association fails to comply with the division's request, the association may

³⁵ Sections 719.104(4), and 720.303(7), F.S., provide comparable financial reporting requirements for cooperative and homeowners' associations, respectively.

³⁶ A compiled financial statement is an accounting service based on information provided by the entity that is the subject of the financial statement. A compiled financial statement is made without a Certified Public Accountant's (CPA) assurance as to conformity with GAAP. Compiled financial statements must conform to the American Institute of Certified Public Accountants (AICPA) Statements on Standards for Accounting and Review Services. J.G. Siegel and J.K. Shim, *Barron's Business Guides, Dictionary of Accounting Terms*, 3rd ed. (Barron's 2000).

³⁷ A reviewed financial statement is an accounting service that provides a board of directors and interested parties some assurance as to the reliability of financial data without the CPA conducting an examination in accordance with GAAP. Reviewed financial statements must comply with AICPA auditing and review standards for public companies or the AICPA review standards for non-public businesses. *Id.*

³⁸ An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*

not waive the financial reporting requirement.³⁹ Current law does not specify the fiscal year or years for which the financial reporting requirement may not be waived.

Effect of Proposed Changes:

The bill amends s. 718.111(13)(e), F.S., to prohibit a condominium association from waiving the financial reporting requirement for two consecutive years beginning with the fiscal year in which the association has failed to comply with the division's request to provide a unit owner a copy of the most recent financial report.

Notice of Board Meetings – Condominium, Cooperative, and Homeowners' Associations

Present Situation:

Condominium and cooperative associations are required to notice all board meetings by posting a notice in a conspicuous place on the cooperative's or condominium's property for at least 48 hours. The notice must be posted 14 days before meetings when a nonemergency special assessment or an amendment to the rules regarding unit use is to be considered.⁴⁰

If the governing documents of the association allow, unit owners in a condominium association and shareholders in a cooperative association may waive notice of specific meetings, but may not allow unit owners or shareholders to waive notice of meetings to recall board members. Unit owners and shareholders may also give consent to receive notice of committee meetings by electronic transmission.⁴¹

If a member of a homeowners' association consents in writing to receive notice by electronic transmission, the association may provide notice by electronic transmission in the manner authorized by law for meetings of the board of directors, committees meetings, and annual and special meetings.⁴²

Effect of Proposed Changes:

The bill amends ss. 718.112(2)(c) and 719.106(1)(c), F.S., relating to board meetings and unit owner or shareholder meetings of a condominium or cooperative association, respectively, to:

- Require the notice of any meeting at which a regular or special assessment is to be considered to specifically state that an assessment will be considered and provide the estimated amount of the assessment and a description of the purposes for such assessment;
- Authorize the board to adopt, by rule, a procedure for conspicuously posting a meeting notice and agenda on a website serving the association;
- If the association adopts a rule for posting an electronic meeting notice and agenda, the rule must require the association to send an electronic notice to members with a hypertext link to the website where the notice is posted; and

³⁹ Section 718.111(13)(e), F.S.

⁴⁰ Sections 718.112(2)(c) and 719.106(1)(c)(1), F.S.

⁴¹ Sections 718.112(2)(d)6. and 719.106(1)(d)3., F.S., dealing with meeting notices for condominium and cooperative associations, respectively.

⁴² Section 720.303(2)(c)1., F.S.

- Require the notice on the association's website be posted for at least as long as the physical posting of a meeting notice is required.⁴³

The bill also amends ss. 718.112(2)(d)6. and 719.106(1)(d)3., F.S., to make condominium unit owners and cooperative shareholders who consent to receive notices by electronic transmission solely responsible for removing or bypassing filters that block receipt of mass e-mails sent by the condominium or cooperative association in the course of giving electronic notices.

Regarding homeowners' associations, the bill amends s. 720.303(2)(c)1., F.S., to permit an association to provide meeting notices by electronic transmission to any member who has provided a facsimile number or e-mail address to the association to be used for such purposes. The bill maintains the requirement in current law requiring the homeowners' association to first obtain a member's consent to receive meeting notices by electronic transmission.

Board Members – Condominium Associations

Present Situation:

A board member of a condominium association may serve two-year terms if permitted by the bylaws or articles of incorporation. A board member may serve more than four consecutive two-year terms, if approved by an affirmative vote of two-thirds of the total voting interests of the association or if there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy.⁴⁴

Effect of Proposed Changes:

The bill amends s. 718.112(2)(d), F.S., to provide board members may serve terms longer than one year (rather than two-year terms) and may not serve more than eight consecutive years rather than four consecutive two-year terms under current law. Under the bill, a board member may serve more than eight consecutive terms, if approved by a vote of two-thirds of all votes cast in an election rather than two-thirds of the total voting interests of the association under current law.

Board Members – Cooperative Associations

Present Situation:

Unless the governing documents of a cooperative association provide otherwise, the board of the association must be composed of five members. If the cooperative is a not-for-profit association with five or fewer units, the board must consist of not fewer than three members.⁴⁵

⁴³ See ss. 718.112(2)(c) and 719.106(1)(c), F.S., providing the notice requirements for meetings in condominium and cooperative associations, respectively.

⁴⁴ Section 718.112(2)(d), F.S.

⁴⁵ Section 718.112(2)(a), F.S., provides an identical requirement for condominium associations.

Effect of Proposed Changes:

The bill amends s. 719.106(1)(a)1., F.S., to prohibit co-owners of a unit in a residential cooperative association of 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.⁴⁶

Recall of Directors – Condominiums***Present Situation:***

In a condominium association in which the non-developer members are entitled to elect the majority of the board, any board director may be recalled and removed from office with or without cause by a majority of the voting interests. A board director may be recalled by an agreement in writing or by written ballot without a membership meeting.⁴⁷

If the proposed recall is by written agreement, the written agreement must be served on the association by certified mail or personal service. Within five full business days after receipt of the written agreement, the board must hold a meeting. If the recall is approved by a majority of all voting members or the recall is by an agreement in writing by all voting members, the recall is effective immediately.⁴⁸

If the board fails to hold a meeting within five business days or fails to file the required petition, the unit owner representative may file a petition with the division to challenge the board's failure to meet. Current law does not authorize the board to file any petition after the recall election or receipt of the written agreement. The division's review is limited to the sufficiency of service and the facial validity of the written agreement or ballots filed.⁴⁹

Within 60 days after the recall, a recalled board member may file a petition with the division to challenge the validity of the recall.⁵⁰ In such a challenge, the association and the unit owner representative must be named as respondents. However, current law does not specify the matters to be reviewed by the division's arbitrator, the post-review process for removal or reinstatement of a recalled board member, or the award of attorney fees and costs to the prevailing party.

Effect of Proposed Changes:

The bill amends s. 718.112(2)(j), F.S., to provide that the recall of a director is effective immediately upon the conclusion of the board meeting called after the board's receipt of the written agreement for recall or the recall is approved in an election.

Also deleted by the bill is the provision in s. 718.112(2)(j)4., F.S., authorizing the unit owner representative to file a petition with the division challenging the board's failure to file a required petition. Current law does not authorize the board to file any petition after the recall election or receipt of the written agreement.⁵¹ The bill maintains the authority in current law of the unit

⁴⁶ *Id.*

⁴⁷ Section 718.112(2)(j)1., F.S.

⁴⁸ Sections 718.112(2)(j)2., F.S.

⁴⁹ Section 718.112(2)(j)4., F.S.

⁵⁰ Section 718.112(2)(j)6., F.S.

⁵¹ *See* s. 718.112(2)(j), F.S., relating to the process for the recall of board members.

owner representative to file a petition with the division challenging the board's failure to hold the meeting required after a recall election or its receipt of the written agreement.⁵²

Under the bill, the recalled board member may challenge the facial validity of the written agreement or ballots filed or compliance with the procedural requirements of the recall. If the recall is determined invalid by the division's arbitrator, the petitioning board member must 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 respondent association and unit owner representative. The arbitrator may award attorney fees and costs to a prevailing respondent, or upon a finding by the arbitrator that the petitioner's claim is frivolous.

Alterations and Additions to Condominium Property

Present Situation:

Section 718.113(2), F.S., requires 75 percent of the total voting interests of the association to approve a material alteration or substantial addition to common elements or association property, including in a multicondominium association, but does not specify when the approval must be obtained.

The requirements in s. 718.113(2), F.S., for material alterations or substantial addition to common elements or association property apply to associations existing on October 1, 2008.

Effect of Proposed Changes:

The bill amends s. 718.113(2), F.S., to require the approval by the voting interests of the association before a material alteration or substantial addition to the common elements or association property is commenced. The bill also expands the number of associations subject to the revised requirements in s. 718.113(2), F.S., for making a material alteration or substantial addition to the common elements or association property to all condominium associations existing on July 1, 2018, instead of on October 1, 2008.

Conflicts of Interest – Condominiums

Present Situation:

Chapter 718, F.S., imposes a number of restrictions on conflicts of interest by members of the board of a condominium association. The members of the board of the association have a fiduciary relationship to the unit owners.⁵³ Consistent with this responsibility, officers and directors may not solicit or accept any good or service from a person providing or proposing to provide goods or services to the association.⁵⁴ An officer or director who violates the prohibition is subject to a possible civil penalty and criminal penalties.⁵⁵

⁵² See s. 718.112(2)(j)4., F.S.

⁵³ Section 718.111(1)(a), F.S.

⁵⁴ *Id.*

⁵⁵ See ss. 718.111(1)(a), (d), and 617.0834, F.S. Sections 718.111(1)(d) and 617.0834, F.S., specify that an officer's or director's breach of, or failure to perform, his or her duties constitutes a violation of the criminal law, but do not specify the criminal law violated.

Additionally, officers and directors are required to exercise their duties in good faith, with the care of an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the association.⁵⁶ An officer or director is liable for monetary damages if he or she breaches or fails to perform his or her duties and the breach or failure is related to certain violations of criminal law, an improper personal benefit, or certain reckless acts or omissions.⁵⁷

Section 718.3026(3), F.S., dealing with contracts for products or services in a condominium association, requires contracts between a condominium association, and a director, or an entity in which a director has a financial interest, to comply with the conflict of interest procedures outlined in s. 617.0832, F.S. A contract is void or voidable if the association does not comply with s. 617.0832, F.S.⁵⁸ To comply with the disclosure requirements in s. 617.0832, F.S., the fact of a potentially conflicting relationship or interest must be disclosed or known to the board of directors or committee which authorizes, approves, or ratifies the contract or transaction, must be disclosed or made known to the members entitled to vote on such contract or transaction, or the contract or transaction must be fair and reasonable as to the corporation at the time it is authorized by the board, a committee, or the members.⁵⁹

Under s. 617.0832(2), F.S., a conflict-of-interest transaction must be authorized, approved, or ratified by a majority vote of the directors who have no relationship or interest in the transaction. However, s. 718.3026(3)(c), F.S., requires an affirmative vote of two-thirds of the directors present for any contract or other transaction between the association and a director or entity in which a director has a financial interest. The meeting minutes must contain the disclosures required under s. 617.0832, F.S.⁶⁰

The existence of the contract or other transaction must be disclosed to the members at the next regular or special meeting of the members, and any member may make a motion for the contract or transaction to be brought up for a vote. The contract or transaction may be canceled by a majority vote of the members present at the meeting. If the members cancel the contract, the association is only liable for the reasonable value of 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 the cancellation.⁶¹

Additionally, s. 718.3027, F.S., also provides a process for the resolution of conflicts of interests of directors and officers of the board, and the relatives of such directors and officers, in an association that is not a timeshare condominium. These persons 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 such person enters into a contract for goods or services with the association, or has an interest in the business entity conducting business with the association or which proposes to enter into a contract or other transaction with the association.

⁵⁶ Section 617.0830(1), F.S.

⁵⁷ Sections 617.0830 and 617.0834, F.S.

⁵⁸ Section 617.0832(1), F.S.

⁵⁹ *Id.*

⁶⁰ Section 718.3026(3)(b), F.S.

⁶¹ Section 718.3026(3)(d), F.S.

Under s. 718.3027, F.S., the existence of the conflict of interest must be documented on contracts and meeting agendas. The officer or director engaged in a conflict of interest must choose to not pursue the activity creating the conflict or must withdraw from office. Otherwise, the board must remove the officer or director from office.

Effect of Proposed Changes:

The bill transfers the provisions relating to the process for resolving conflicts of interest in s. 718.3026, F.S., dealing with contracts for products and services, to s. 718.3027(2), F.S., dealing with conflicts of interest.

Fines and Suspensions – Condominiums, Cooperatives, and Homeowners’ Associations

Present Situation:

A condominium, cooperative, or homeowners’ association may not issue a fine of more than \$100 per violation, or \$1,000 in the aggregate.⁶² An association may suspend, for a reasonable period of time, the right of a unit owner, or a unit owner’s tenant, guest, or invitee, to use the common elements, common facilities, or any other association property for failure to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association.⁶³

The association must provide at least 14 days’ written notice and an opportunity for a hearing to the unit owner and, if applicable, its occupant, licensee, or invitee before it may assess a fine or suspension. The hearing must be held before a committee of other unit owners who are not board members or persons residing in a board member’s household. The committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the committee does not agree, the fine or suspension may not be imposed.⁶⁴

Effect of Proposed Changes:

The bill amends ss. 718.303(3)(b), 719.303(3)(b), and 720.305(2)(b), F.S., relating to the obligations of owners in condominium, cooperative, and homeowners’ associations, respectively, to require a committee reviewing a recommendation of the association to fine, or suspend the use rights of, a unit owner or occupant, licensee or invitee of the unit owner, contain 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.

Under the bill, a majority vote of the committee must approve the proposed fine or suspension. If a fine is approved, the fine must be paid within five days after the date the committee approves the fine. The association must provide written notice of the fine or suspension by mail or hand delivery to the owner and, if applicable, the occupant, licensee, or invitee of the owner.

⁶² Sections 718.303(3), 719.303(3), and 720.305(2) F.S., relating to condominiums, cooperatives, and homeowners’ associations, respectively.

⁶³ Sections 718.303(3)(b), 719.303(3)(b), 720.305(2)(2), F.S., relating to condominiums, cooperatives, and homeowners’ associations, respectively.

⁶⁴ *Id.*

Distressed Condominium Relief Act

Present Situation:

In 2010, the Legislature enacted the “Distressed Condominium Relief Act” (Act) as part VII of ch. 718, F.S., which defines the extent to which successors to the developer, including a construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties and other responsibilities of the developer.⁶⁵

The Act creates the categories of "bulk buyers" and "bulk assignees."

A “bulk assignee” is a person who acquires more than seven condominium parcels in a single condominium as provided in s. 718.707, F.S., and receives an assignment of some or substantially all of the rights of the developer as an exhibit in the deed or as a separate instrument recorded in the public records in the county where the condominium is located.⁶⁶

A “bulk buyer” is a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of developer rights other than the rights specified in the act to conduct sales, leasing, and marketing activities within the condominium. A bulk buyer is exempt from payment of working capital contributions and from rights of first refusal.⁶⁷

Section 718.704(1), F.S., provides that a bulk assignee assumes all the duties and responsibilities of the developer, and specifies obligations for which the bulk assignee is not liable.

Section 718.707, F.S., specifies a time limit for classification as a bulk assignee or bulk buyer. A person acquiring condominium parcels may not be classified as a bulk assignee or a bulk buyer unless the condominium parcels were acquired prior to July 1, 2018. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

The Act was created in reaction to the “massive downturn in the condo market which has occurred throughout the state”⁶⁸ and 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:

The Legislature further finds and declares that this situation cannot be open-ended without potentially prejudicing the rights of unit owners and condo associations, and thereby declares that the provisions of this part may be used by purchasers of condo inventory for only a specific and defined period.⁶⁹

⁶⁵ Ch. 2010-174, s. 18, Laws of Fla., codified as part VII, ch. 718, F.S.

⁶⁶ Section 718.703(1), F.S.

⁶⁷ Section 718.703(2), F.S.

⁶⁸ Section 718.702(1), F.S.

⁶⁹ Section 718.702(3), F.S.

Originally, the time limitation for classification as a bulk assignee or bulk buyer ended July 1, 2012.⁷⁰ In 2012, the Legislature extended the time limitation to July 1, 2015.⁷¹ In 2014, the legislature amended s. 718.707, F.S., to extend the time limitation to July 1, 2016.⁷²

In 2015, the Legislature further 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.

Effect of Proposed Changes:

The bill amends s. 718.707, F.S., to remove the deadline of July 1, 2018, for classification as a condominium bulk buyer or bulk assignee.

Directors and Officers - Cooperative Associations

Present Situation

If a director or officer of a condominium is more than 90 days delinquent in the payment of any monetary obligation due to the association, the director or officer is deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.⁷³ Chapter 719, F.S., does not provide a comparable sanction for directors or officers of a cooperative association.

Effect of Proposed Changes

The bill creates s. 719.106(1)(m), F.S., to provide that a cooperative association director or officer who is more than 90 days delinquent in the payment of any monetary obligation due to the association is deemed to have abandoned the office, creating a vacancy in the office to be filled according to law.⁷⁴

Common Expenses – Cooperative Associations

Present Situation

Section 719.107(1), F.S., specifies the costs a cooperative association may include as a common expense of the association. Common expenses include the expenses of the operation, maintenance, repair, or replacement of the cooperative property; costs of carrying out the powers and duties of the association; and any other expense designated as common expense by ch. 719, F.S., or the governing documents of the cooperative association.⁷⁵ The cost of a master antenna television system or duly franchised cable television service obtained under a bulk service contract is also a common expense of a cooperative association.⁷⁶

⁷⁰ Ch. 2010-174, s. 18, Laws of Fla.

⁷¹ Ch. 2012-61, s. 36, Laws of Fla.

⁷² Ch. 2014-74, s. 5, Laws of Fla.

⁷³ See 718.112(2)(n), F.S.

⁷⁴ Section 718.112(2)(n), F.S., provides an identical provision for condominium associations.

⁷⁵ Section 719.107(1), F.S.

⁷⁶ Section 719.107(1)(b), F.S.

Any contract made by the board of a cooperative association after April 2, 1992, for a community antenna system or duly franchised cable television service may be canceled by a majority of the voting interests present at the next regular or special meeting of the association.⁷⁷

Effect of Proposed Changes

The bill amends s. 719.107(1)(b), F.S., to include the cost of communication services as defined in ch. 202, F.S., information services, or Internet service, obtained under a bulk contract, as cost deemed a common expense of the association. The bill removes the cost of a master antenna television system or duly franchised cable television service obtained under a bulk service contract as common expense of a cooperative association.

Additionally, the bill amends s. 719.107(1)(b)1., F.S., to permit contracts made by the board of a cooperative association after April 2, 1992, for communication services as defined in ch. 202, F.S., information services, or Internet service to be cancelled by a majority of the voting interests present at the next regular or special meeting of the association. The bill maintains the provision in current law for the cancellation of contracts for a community antenna system or duly franchised cable television service.

Budgets and Reserve Accounts - Homeowners' Associations

Present Situation

Budgets and Reserve Accounts

Homeowners' associations must prepare an annual budget for the coming year that includes:

- The estimated revenues and operating expenses for that year;
- The estimated surplus or deficit as of the end of the current year; and
- All fees or charges paid for by the association for recreational amenities.⁷⁸

The association is required to provide each member with a copy of the annual budget or a written notice that a copy of the budget is available upon request at no charge to the member.⁷⁹

The budget may include reserve accounts for capital expenditures and deferred maintenance for which the association is responsible. A reserve account is an account into which an association collects periodic advance payments to cover future anticipated and specific capital expenditures and deferred maintenance items.

If a reserve account is not established by developer or by a vote of the members, the account must be funded pursuant to the requirements of the governing documents. If the reserve account is established by the developer or by a vote of the members, the reserves shall be determined, maintained, and waived in the manner provided in s. 720.303(6), F.S. A majority of the total voting interests of the association may vote to terminate a reserve account.⁸⁰ The budget of the

⁷⁷ Section 719.107(1)(b)1., F.S.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ Section 720.303(6)(b), F.S.

association must include a notice, as specified in current law, regarding whether the budget includes or does not include reserve accounts.⁸¹

The members may elect to establish a reserve account by an affirmative vote of a majority of the total voting interests of the association at a duly called meeting of the membership or by the written consent of a majority of the total voting interests. The approval to establish reserve accounts must designate the components for which the reserve accounts are established.⁸²

The homeowners' association must compute the amount in the reserve account with a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association must also annually adjust the replacement reserve assessments to take into account any changes in estimates of cost or useful life of a reserve item.⁸³

A homeowners' association may vote to waive funding, reduce funding, or terminate a reserve account by a majority vote of the voting interests. A vote to waive or reduce reserves is applicable only as to one fiscal year.⁸⁴

There are two types of reserve accounts:

- Separate reserve accounts for each asset; and
- Pooled reserve accounts for two or more assets.⁸⁵

Current law provides funding formulas for separate and pooled reserve accounts.⁸⁶ Reserve funds and any interest accruing on the funds must remain in the reserve account or accounts and must be used only for authorized reserve expenditures, unless their use for other purposes is approved in advance by a majority vote at a meeting at which a quorum is present. Prior to turnover of control of an association by a developer to parcel owners, the developer-controlled association cannot vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association.⁸⁷

Budgets and Assessments

Current law does not provide a process for members of a homeowners' association to reconsider the board's adoption of a budget that increases assessments. In a condominium association, the board is required to call a special meeting, if the board adopts an annual budget that requires an assessment that exceeds 115 percent of assessments for the preceding fiscal year. The condominium board must conduct a special meeting of the unit owners to consider a substitute

⁸¹ Section 720.303(6)(c), F.S.

⁸² Section 720.303(6)(d), F.S.

⁸³ Section 720.303(6)(e), F.S.

⁸⁴ Section 720.303(6)(f), F.S.

⁸⁵ *See s. 720.303(6)(g), F.S.*

⁸⁶ Section 720.303(6)(g), F.S. *See also* Division of Florida Condominiums, Timeshares, and Mobile Homes, Budgets & Reserves Schedules: A Self-Study Training Manual, available at:

<http://www.myfloridalicense.com/dbpr/lsc/documents/BudgetsandReserveSchedules.pdf> (last visited January 25, 2018).

⁸⁷ Section 720.303(6)(h), F.S.

budget if the board receives, within 21 days after adoption of the annual budget, a written request for a special meeting from at least 10 percent of all voting interests. The meeting must take place within 60 days of the adoption of the annual budget, and the notice must be delivered by mail or hand delivery at least 14 days before the meeting.⁸⁸

Effect of Proposed Changes:

Budgets and Reserve Accounts

The bill amends s. 720.303(6), F.S., to revise the requirements for the maintenance of reserve accounts by homeowners' associations. The bill provides:

- All homeowners' associations incorporated on or after July 1, 2018, and any homeowners' association incorporated before July 1, 2018, which has voted by a majority to conform to the reserve account provisions as revised by this bill, must include reserve accounts in the annual budget for items with deferred maintenance costs exceeding \$100,000, instead of having the option to include reserve accounts in the annual budget.
- Boards may elect to reserve money for any item with deferred maintenance expense exceeding \$25,000, and also may elect to reserve money for any item with a deferred maintenance item that is less than \$25,000, if approved by a majority vote.
- A homeowners' association, by a majority vote of the members present at a meeting, may elect not to maintain reserves or to maintain reserves for less than the required amount.
- In calculating the reserves, each parcel owner is obligated to pay annual reserves for only the amount determined by dividing the total annual reserve amount disclosed in the budget by the total number of parcels that ultimately will be included in the association.
- Assessments may not be assessed on undeveloped parcels, and voting interests for parcels that are not subject to assessment are not eligible to vote on questions involving waiving or reducing the funding of reserves.
- The developer's voting interest is limited to the parcels owned by the developer with completed improvements evidenced by a certificate of occupancy.
- Homeowners' associations must use the pool reserve account funding formula to determine the funding for two or more assets for which the reserve account is maintained; however, associations may, by majority vote, elect to use the alternative straight-line accounting method for separate accounts.
- Proxy voting is permitted to waive, reduce, or terminate funding of reserve accounts, but the proxy ballot must contain a statement in conspicuous type that waiving funding for reserve accounts may result in unanticipated special assessments.
- Reserve funds must be held in a separate bank account established for such funds and may not be used for any purpose other than reserved expenditure.
- Reserve funds do not apply to mandatory reserve accounts required by any local authority, water or drainage district, community development district, or political subdivision that has authority to approve and control subdivision infrastructure.

⁸⁸ Section 718.112(2)(e)2.a., F.S.

Budgets and AssessmentsThe bill amends s. 720.303(6), F.S., to revise the requirements for assessment increases in the budget of a homeowners' association. Under the bill, which is comparable to the process under s. 718.112(2)(e)2.a., F.S., for condominium associations, if assessments for an annual budget exceed 115 percent of assessments for the preceding year and 10 percent of the voting interests request a special meeting within 21 days of the adoption of the budget, the board must:

- Conduct a special meeting of the unit owners to consider a substitute budget within 60 days of adopting the annual budget.
- Hand deliver or mail notice of the meeting to each parcel owner at least 14 days prior to such special meeting.

An officer or manager of the association, or other person providing notice of such meeting must execute an affidavit evidencing compliance with this notice requirement, and file the affidavit in the official records of the association.

Parcel owners may consider and adopt a substitute budget at the special meeting. A substitute budget is adopted if approved by a majority of all voting interests, unless the bylaws require adoption by a greater percentage of voting interests. If there is not a quorum at the special meeting or a substitute budget is not adopted, the annual budget approved by the board will take effect.

The determination of whether assessments exceed 115 percent of assessments for the prior fiscal year must exclude any authorized provision for reasonable reserves for repair, replacement of property, anticipated expenses which the board does not expect to be incurred on a regular basis, or assessments to improve the property.

Other Provisions – Cooperatives and Homeowners' Associations

The bill amends ss. 719.106(1)(c) and 720.303(2)(a), F.S., to permit members of the board of a cooperative or homeowners' association to use e-mail as a means of communication, but not cast a vote by e-mail.⁸⁹

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁸⁹ Section 718.112(1)(c), F.S., provides an identical provision for condominium associations.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 718.111, 718.112, 718.113, 718.3026, 718.3027, 718.303, 718.707, 719.104, 719.106, 719.107, 719.303, 720.303, 720.305, 720.306, 720.3085, and 720.401.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on January 30, 2018:

The committee substitute amends s. 718.111(12), F.S., relating to condominium associations, to:

- Specify the official records an association must maintain from the inception of the association.
- Replace the term “electronic mailing” with “e-mail”.
- Require an association to maintain for one year, as an official record, bids for work performed, and bids for materials, equipment, or services.
- Require an association with 150 or more units to post on its website a list of all executory contracts or documents, and to require the association to list the bids it received for the past year for material, equipment, or services which exceed \$2,500.
- Permit an association to post on its website complete copies of bids instead of a summary of bids.
- Repeal the requirement for an association with 150 or more units to post on its website a digital copy of any proposed financial report to be considered at a meeting.

- Exempt an association from liability for the disclosure of protected or restricted information on its website.
- Provide that an association's failure to post information on its website is not, in and of itself, sufficient to invalidate any action or decision of the association's board or its committees.

The committee substitute also amends s. 718.112(12)(d), F.S., to revise the terms of office for board members of a condominium association.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.



236508

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/01/2018	.	
	.	
	.	
	.	

The Committee on Regulated Industries (Passidomo) recommended the following:

Senate Amendment (with directory and title amendments)

Delete lines 108 - 619

and insert:

(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



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11 of each condominium operated by the association and each
12 amendment to each declaration.

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

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

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

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

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

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

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



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

42 11. Accounting records for the association and separate
43 accounting records for each condominium that the association
44 operates. ~~All accounting records must be maintained for at least~~
45 ~~7 years.~~ Any person who knowingly or intentionally defaces or
46 destroys such records, or who knowingly or intentionally fails
47 to create or maintain such records, with the intent of causing
48 harm to the association or one or more of its members, is
49 personally subject to a civil penalty pursuant to s.

50 718.501(1)(d). The accounting records must include, but are not
51 limited to:

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

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

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

60 d. All contracts for work to be performed. Bids for work to
61 be performed are also considered official records and must be
62 maintained by the association for a period of 1 year after the
63 date of receipt.

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



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

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

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

76 16. A copy of the inspection report as described in s.
77 718.301(4) (p).

78 17. Bids for materials, equipment, or services, which must
79 be maintained by the association for a period of 1 year after
80 the date of receipt.

81 (b) The official records specified in subparagraphs (a)1.-
82 6. must be permanently maintained from the inception of the
83 association. All other official records ~~of the association~~ must
84 be maintained within the state for at least 7 years, unless
85 otherwise provided by law. The records of the association shall
86 be made available to a unit owner within 45 miles of the
87 condominium property or within the county in which the
88 condominium property is located within 10 ~~5~~ working days after
89 receipt of a written request by the board or its designee.
90 However, such distance requirement does not apply to an
91 association governing a timeshare condominium. This paragraph
92 may be complied with by having a copy of the official records of
93 the association available for inspection or copying on the
94 condominium property or association property, or the association
95 may offer the option of making the records available to a unit
96 owner electronically via the Internet or by allowing the records
97 to be viewed in electronic format on a computer screen and



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98 printed upon request. The association is not responsible for the
99 use or misuse of the information provided to an association
100 member or his or her authorized representative pursuant to the
101 compliance requirements of this chapter unless the association
102 has an affirmative duty not to disclose such information
103 pursuant to this chapter.

104 (c)1. The official records of the association are open to
105 inspection by any association member or the authorized
106 representative of such member at all reasonable times. The right
107 to inspect the records includes the right to make or obtain
108 copies, at the reasonable expense, if any, of the member or
109 authorized representative of such member. A renter of a unit has
110 a right to inspect and copy the association's bylaws and rules.
111 The association may adopt reasonable rules regarding the
112 frequency, time, location, notice, and manner of record
113 inspections and copying. The failure of an association to
114 provide the records within 10 working days after receipt of a
115 written request creates a rebuttable presumption that the
116 association willfully failed to comply with this paragraph. A
117 unit owner who is denied access to official records is entitled
118 to the actual damages or minimum damages for the association's
119 willful failure to comply. Minimum damages are \$50 per calendar
120 day for up to 10 days, beginning on the 11th working day after
121 receipt of the written request. The failure to allow ~~permit~~
122 inspection entitles any person prevailing in an enforcement
123 action to recover reasonable attorney fees from the person in
124 control of the records who, directly or indirectly, knowingly
125 denied access to the records.

126 2. Any person who knowingly or intentionally defaces or



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127 destroys accounting records that are required by this chapter to
128 be maintained during the period for which such records are
129 required to be maintained, or who knowingly or intentionally
130 fails to create or maintain accounting records that are required
131 to be created or maintained, with the intent of causing harm to
132 the association or one or more of its members, is personally
133 subject to a civil penalty pursuant to s. 718.501(1)(d).

134 3. The association shall maintain an adequate number of
135 copies of the declaration, articles of incorporation, bylaws,
136 and rules, and all amendments to each of the foregoing, as well
137 as the question and answer sheet as described in s. 718.504 and
138 year-end financial information required under this section, on
139 the condominium property to ensure their availability to unit
140 owners and prospective purchasers, and may charge its actual
141 costs for preparing and furnishing these documents to those
142 requesting the documents. An association shall allow a member or
143 his or her authorized representative to use a portable device,
144 including a smartphone, tablet, portable scanner, or any other
145 technology capable of scanning or taking photographs, to make an
146 electronic copy of the official records in lieu of the
147 association's providing the member or his or her authorized
148 representative with a copy of such records. The association may
149 not charge a member or his or her authorized representative for
150 the use of a portable device. Notwithstanding this paragraph,
151 the following records are not accessible to unit owners:

152 a. Any record protected by the lawyer-client privilege as
153 described in s. 90.502 and any record protected by the work-
154 product privilege, including a record prepared by an association
155 attorney or prepared at the attorney's express direction, which



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156 reflects a mental impression, conclusion, litigation strategy,
157 or legal theory of the attorney or the association, and which
158 was prepared exclusively for civil or criminal litigation or for
159 adversarial administrative proceedings, or which was prepared in
160 anticipation of such litigation or proceedings until the
161 conclusion of the litigation or proceedings.

162 b. Information obtained by an association in connection
163 with the approval of the lease, sale, or other transfer of a
164 unit.

165 c. Personnel records of association or management company
166 employees, including, but not limited to, disciplinary, payroll,
167 health, and insurance records. For purposes of this sub-
168 subparagraph, the term "personnel records" does not include
169 written employment agreements with an association employee or
170 management company, or budgetary or financial records that
171 indicate the compensation paid to an association employee.

172 d. Medical records of unit owners.

173 e. Social security numbers, driver license numbers, credit
174 card numbers, e-mail addresses, telephone numbers, facsimile
175 numbers, emergency contact information, addresses of a unit
176 owner other than as provided to fulfill the association's notice
177 requirements, and other personal identifying information of any
178 person, excluding the person's name, unit designation, mailing
179 address, property address, and any address, e-mail address, or
180 facsimile number provided to the association to fulfill the
181 association's notice requirements. Notwithstanding the
182 restrictions in this sub-subparagraph, an association may print
183 and distribute to parcel owners a directory containing the name,
184 parcel address, and all telephone numbers of each parcel owner.



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185 However, an owner may exclude his or her telephone numbers from
186 the directory by so requesting in writing to the association. An
187 owner may consent in writing to the disclosure of other contact
188 information described in this sub-subparagraph. The association
189 is not liable for the inadvertent disclosure of information that
190 is protected under this sub-subparagraph if the information is
191 included in an official record of the association and is
192 voluntarily provided by an owner and not requested by the
193 association.

194 f. Electronic security measures that are used by the
195 association to safeguard data, including passwords.

196 g. The software and operating system used by the
197 association which allow the manipulation of data, even if the
198 owner owns a copy of the same software used by the association.
199 The data is part of the official records of the association.

200 (e)1. The association or its authorized agent is not
201 required to provide a prospective purchaser or lienholder with
202 information about the condominium or the association other than
203 information or documents required by this chapter to be made
204 available or disclosed. The association or its authorized agent
205 may charge a reasonable fee to the prospective purchaser,
206 lienholder, or the current unit owner for providing good faith
207 responses to requests for information by or on behalf of a
208 prospective purchaser or lienholder, other than that required by
209 law, if the fee does not exceed \$150 plus the reasonable cost of
210 photocopying and any attorney ~~attorney's~~ fees incurred by the
211 association in connection with the response.

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



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

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

222 a. The association's website must be:

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

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

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

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

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



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

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

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

253 d. The rules of the association, if any.

254 e. A list of all executory contracts or documents ~~Any~~
255 ~~management agreement, lease, or other contract~~ to which the
256 association is a party or under which the association or the
257 unit owners have an obligation or responsibility and, after
258 bidding for the related materials, equipment, or services has
259 closed, a list of bids received by the association within the
260 past year. ~~Summaries of bids~~ for materials, equipment, or
261 services which exceed \$2,500 ~~must be maintained on the website~~
262 ~~for 1 year.~~

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

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

267 h. The certification of each director required by s.
268 718.112(2)(d)4.b.

269 i. All contracts or transactions between the association
270 and any director, officer, corporation, firm, or association
271 that is not an affiliated condominium association or any other



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272 entity in which an association director is also a director or
273 officer and financially interested.

274 j. Any contract or document regarding a conflict of
275 interest or possible conflict of interest as provided in ss.
276 468.436(2)(b)6. and 718.3027(3) ~~ss. 468.436(2) and 718.3026(3).~~

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

287 1. Notice of any board meeting, the agenda, and any other
288 document required for the meeting as required by s.
289 718.112(2)(c), which must be posted no later than the date
290 required for notice pursuant to s. 718.112(2)(c).

291 3. The association shall ensure that the information and
292 records described in paragraph (c), which are not allowed
293 ~~permitted~~ to be accessible to unit owners, are not posted on the
294 association's website. If protected information or information
295 restricted from being accessible to unit owners is included in
296 documents that are required to be posted on the association's
297 website, the association shall ensure the information is
298 redacted before posting the documents online. Notwithstanding
299 the foregoing, the association or its agent is not liable for
300 disclosing information that is protected or restricted pursuant



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301 to this paragraph unless such disclosure was made with a knowing
302 or intentional disregard of the protected or restricted nature
303 of such information.

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

308 (13) FINANCIAL REPORTING.—Within 90 days after the end of
309 the fiscal year, or annually on a date provided in the bylaws,
310 the association shall prepare and complete, or contract for the
311 preparation and completion of, a financial report for the
312 preceding fiscal year. Within 21 days after the final financial
313 report is completed by the association or received from the
314 third party, but not later than 120 days after the end of the
315 fiscal year or other date as provided in the bylaws, the
316 association shall mail to each unit owner at the address last
317 furnished to the association by the unit owner, or hand deliver
318 to each unit owner, a copy of the most recent financial report
319 or a notice that a copy of the most recent financial report will
320 be mailed or hand delivered to the unit owner, without charge,
321 within 5 business days after receipt of a written request from
322 the unit owner. The division shall adopt rules setting forth
323 uniform accounting principles and standards to be used by all
324 associations and addressing the financial reporting requirements
325 for multicondominium associations. The rules must include, but
326 not be limited to, standards for presenting a summary of
327 association reserves, including a good faith estimate disclosing
328 the annual amount of reserve funds that would be necessary for
329 the association to fully fund reserves for each reserve item



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330 based on the straight-line accounting method. This disclosure is
331 not applicable to reserves funded via the pooling method. In
332 adopting such rules, the division shall consider the number of
333 members and annual revenues of an association. Financial reports
334 shall be prepared as follows:

335 (e) A unit owner may provide written notice to the division
336 of the association's failure to mail or hand deliver him or her
337 a copy of the most recent financial report within 5 business
338 days after he or she submitted a written request to the
339 association for a copy of such report. If the division
340 determines that the association failed to mail or hand deliver a
341 copy of the most recent financial report to the unit owner, the
342 division shall provide written notice to the association that
343 the association must mail or hand deliver a copy of the most
344 recent financial report to the unit owner and the division
345 within 5 business days after it receives such notice from the
346 division. An association that fails to comply with the
347 division's request may not waive the financial reporting
348 requirement provided in paragraph (d) for the fiscal year in
349 which the unit owner's request was made and the following fiscal
350 year. A financial report received by the division pursuant to
351 this paragraph shall be maintained, and the division shall
352 provide a copy of such report to an association member upon his
353 or her request.

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

356 718.112 Bylaws.—

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



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359 the following:

360 (a) *Administration.*—

361 1. The form of administration of the association shall be
362 described indicating the title of the officers and board of
363 administration and specifying the powers, duties, manner of
364 selection and removal, and compensation, if any, of officers and
365 boards. In the absence of such a provision, the board of
366 administration shall be composed of five members, unless the
367 ~~except in the case of a condominium which~~ has five or fewer
368 units. The board shall consist of not fewer than three members
369 in condominiums with five or fewer units that are not-for-profit
370 ~~corporations, in which case in a not-for-profit corporation the~~
371 ~~board shall consist of not fewer than three members.~~ In the
372 absence of provisions to the contrary in the bylaws, the board
373 of administration shall have a president, a secretary, and a
374 treasurer, who shall perform the duties of such officers
375 customarily performed by officers of corporations. Unless
376 prohibited in the bylaws, the board of administration may
377 appoint other officers and grant them the duties it deems
378 appropriate. Unless otherwise provided in the bylaws, the
379 officers shall serve without compensation and at the pleasure of
380 the board of administration. Unless otherwise provided in the
381 bylaws, the members of the board shall serve without
382 compensation.

383 2. When a unit owner of a residential condominium files a
384 written inquiry by certified mail with the board of
385 administration, the board shall respond in writing to the unit
386 owner within 30 days after receipt of the inquiry. The board's
387 response shall either give a substantive response to the



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

407 (c) *Board of administration meetings.*—Meetings of the board
408 of administration at which a quorum of the members is present
409 are open to all unit owners. Members of the board of
410 administration may use e-mail as a means of communication but
411 may not cast a vote on an association matter via e-mail. A unit
412 owner may tape record or videotape the meetings. The right to
413 attend such meetings includes the right to speak at such
414 meetings with reference to all designated agenda items. The
415 division shall adopt reasonable rules governing the tape
416 recording and videotaping of the meeting. The association may



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417 adopt written reasonable rules governing the frequency,
418 duration, and manner of unit owner statements.

419 1. Adequate notice of all board meetings, which must
420 specifically identify all agenda items, must be posted
421 conspicuously on the condominium property at least 48 continuous
422 hours before the meeting except in an emergency. If 20 percent
423 of the voting interests petition the board to address an item of
424 business, the board, within 60 days after receipt of the
425 petition, shall place the item on the agenda at its next regular
426 board meeting or at a special meeting called for that purpose.
427 An item not included on the notice may be taken up on an
428 emergency basis by a vote of at least a majority plus one of the
429 board members. Such emergency action must be noticed and
430 ratified at the next regular board meeting. ~~However,~~ Written
431 notice of a meeting at which a nonemergency special assessment
432 or an amendment to rules regarding unit use will be considered
433 must be mailed, delivered, or electronically transmitted to the
434 unit owners and posted conspicuously on the condominium property
435 at least 14 days before the meeting. Evidence of compliance with
436 this 14-day notice requirement must be made by an affidavit
437 executed by the person providing the notice and filed with the
438 official records of the association. Notice of any meeting in
439 which regular or special assessments against unit owners are to
440 be considered must specifically state that assessments will be
441 considered and provide the estimated cost and description of the
442 purposes for such assessments. Upon notice to the unit owners,
443 the board shall, by duly adopted rule, designate a specific
444 location on the condominium ~~or association~~ property where all
445 notices of board meetings must be posted. If there is no



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446 condominium property ~~or association property~~ where notices can
447 be posted, notices shall be mailed, delivered, or electronically
448 transmitted to each unit owner at least 14 days before the
449 meeting. In lieu of or in addition to the physical posting of
450 the notice on the condominium property, the association may, by
451 reasonable rule, adopt a procedure for conspicuously posting and
452 repeatedly broadcasting the notice and the agenda on a closed-
453 circuit cable television system serving the condominium
454 association. However, if broadcast notice is used in lieu of a
455 notice physically posted on condominium property, the notice and
456 agenda must be broadcast at least four times every broadcast
457 hour of each day that a posted notice is otherwise required
458 under this section. If broadcast notice is provided, the notice
459 and agenda must be broadcast in a manner and for a sufficient
460 continuous length of time so as to allow an average reader to
461 observe the notice and read and comprehend the entire content of
462 the notice and the agenda. In addition to any of the authorized
463 means of providing notice of a meeting of the board, the
464 association may, by rule, adopt a procedure for conspicuously
465 posting the meeting notice and the agenda on the condominium
466 association's website for at least the minimum period of time
467 for which a notice of a meeting is also required to be
468 physically posted on the condominium property. Any rule adopted,
469 in addition to other matters, must include a requirement that
470 the association send an electronic notice in the same manner as
471 a notice for a meeting of the members, which must include a
472 hyperlink to the website where the notice is posted, to unit
473 owners whose e-mail addresses are included in the association's
474 official records ~~Notice of any meeting in which regular or~~



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475 ~~special assessments against unit owners are to be considered~~
476 ~~must specifically state that assessments will be considered and~~
477 ~~provide the nature, estimated cost, and description of the~~
478 ~~purposes for such assessments.~~

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

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

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

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

495 (d) *Unit owner meetings.*—

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

502 2. Unless the bylaws provide otherwise, a vacancy on the
503 board caused by the expiration of a director's term must ~~shall~~



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504 be filled by electing a new board member, and the election must
505 be by secret ballot. An election is not required if the number
506 of vacancies equals or exceeds the number of candidates. For
507 purposes of this paragraph, the term "candidate" means an
508 eligible person who has timely submitted the written notice, as
509 described in sub-subparagraph 4.a., of his or her intention to
510 become a candidate. Except in a timeshare or nonresidential
511 condominium, or if the staggered term of a board member does not
512 expire until a later annual meeting, or if all members' terms
513 would otherwise expire but there are no candidates, the terms of
514 all board members expire at the annual meeting, and such members
515 may stand for reelection unless prohibited by the bylaws. Board
516 members may serve ~~2-year~~ terms longer than 1 year if allowed
517 ~~permitted~~ by the bylaws or articles of incorporation. A board
518 member may not serve more than 8 consecutive years ~~four~~
519 ~~consecutive 2-year terms~~, unless approved by an affirmative vote
520 of two-thirds of all votes cast in the election ~~the total voting~~
521 ~~interests of the association~~ or unless there are not enough
522 eligible candidates to fill the vacancies on the board at the
523 time of the vacancy. If the number of board members whose terms
524 expire at the annual meeting equals or exceeds the number of
525 candidates, the candidates become members of the board effective
526 upon the adjournment of the annual meeting. Unless the bylaws
527 provide otherwise, any remaining vacancies shall be filled by
528 the affirmative vote of the majority of the directors making up
529 the newly constituted board even if the directors constitute
530 less than a quorum or there is only one director. In a
531 residential condominium association of more than 10 units or in
532 a residential condominium association that does not include



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533 timeshare units or timeshare interests, coowners of a unit may
534 not serve as members of the board of directors at the same time
535 unless they own more than one unit or unless there are not
536 enough eligible candidates to fill the vacancies on the board at
537 the time of the vacancy. A unit owner in a residential
538 condominium desiring to be a candidate for board membership must
539 comply with sub-subparagraph 4.a. and must be eligible to be a
540 candidate to serve on the board of directors at the time of the
541 deadline for submitting a notice of intent to run in order to
542 have his or her name listed as a proper candidate on the ballot
543 or to serve on the board. A person who has been suspended or
544 removed by the division under this chapter, or who is delinquent
545 in the payment of any monetary obligation due to the
546 association, is not eligible to be a candidate for board
547 membership and may not be listed on the ballot. A person who has
548 been convicted of any felony in this state or in a United States
549 District or Territorial Court, or who has been convicted of any
550 offense in another jurisdiction which would be considered a
551 felony if committed in this state, is not eligible for board
552 membership unless such felon's civil rights have been restored
553 for at least 5 years as of the date such person seeks election
554 to the board. The validity of an action by the board is not
555 affected if it is later determined that a board member is
556 ineligible for board membership due to having been convicted of
557 a felony. This subparagraph does not limit the term of a member
558 of the board of a nonresidential or timeshare condominium.

559 3. The bylaws must provide the method of calling meetings
560 of unit owners, including annual meetings. Written notice must
561 include an agenda, must be mailed, hand delivered, or



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562 electronically transmitted to each unit owner at least 14 days
563 before the annual meeting, and must be posted in a conspicuous
564 place on the condominium property at least 14 continuous days
565 before the annual meeting. Upon notice to the unit owners, the
566 board shall, by duly adopted rule, designate a specific location
567 on the condominium property ~~or association property~~ where all
568 notices of unit owner meetings must ~~shall~~ be posted. This
569 requirement does not apply if there is no condominium property
570 ~~or association property~~ for posting notices. In lieu of, or in
571 addition to, the physical posting of meeting notices, the
572 association may, by reasonable rule, adopt a procedure for
573 conspicuously posting and repeatedly broadcasting the notice and
574 the agenda on a closed-circuit cable television system serving
575 the condominium association. However, if broadcast notice is
576 used in lieu of a notice posted physically on the condominium
577 property, the notice and agenda must be broadcast at least four
578 times every broadcast hour of each day that a posted notice is
579 otherwise required under this section. If broadcast notice is
580 provided, the notice and agenda must be broadcast in a manner
581 and for a sufficient continuous length of time so as to allow an
582 average reader to observe the notice and read and comprehend the
583 entire content of the notice and the agenda. In addition to any
584 of the authorized means of providing notice of a meeting of the
585 board, the association may, by rule, adopt a procedure for
586 conspicuously posting the meeting notice and the agenda on the
587 condominium association's website for at least the minimum
588 period of time for which a notice of a meeting is also required
589 to be physically posted on the condominium property. Any rule
590 adopted, in addition to other matters, must include a



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591 requirement that the association send an electronic notice in
592 the same manner as a notice for a meeting of the members, which
593 must include a hyperlink to the website where the notice is
594 posted, to unit owners whose e-mail addresses are included in
595 the association's official records. Unless a unit owner waives
596 in writing the right to receive notice of the annual meeting,
597 such notice must be hand delivered, mailed, or electronically
598 transmitted to each unit owner. Notice for meetings and notice
599 for all other purposes must be mailed to each unit owner at the
600 address last furnished to the association by the unit owner, or
601 hand delivered to each unit owner. However, if a unit is owned
602 by more than one person, the association must provide notice to
603 the address that the developer identifies for that purpose and
604 thereafter as one or more of the owners of the unit advise the
605 association in writing, or if no address is given or the owners
606 of the unit do not agree, to the address provided on the deed of
607 record. An officer of the association, or the manager or other
608 person providing notice of the association meeting, must provide
609 an affidavit or United States Postal Service certificate of
610 mailing, to be included in the official records of the
611 association affirming that the notice was mailed or hand
612 delivered in accordance with this provision.

613 4. The members of the board of a residential condominium
614 shall be elected by written ballot or voting machine. Proxies
615 may not be used in electing the board in general elections or
616 elections to fill vacancies caused by recall, resignation, or
617 otherwise, unless otherwise provided in this chapter. This
618 subparagraph does not apply to an association governing a
619 timeshare condominium.



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620 a. At least 60 days before a scheduled election, the
621 association shall mail, deliver, or electronically transmit, by
622 separate association mailing or included in another association
623 mailing, delivery, or transmission, including regularly
624 published newsletters, to each unit owner entitled to a vote, a
625 first notice of the date of the election. A unit owner or other
626 eligible person desiring to be a candidate for the board must
627 give written notice of his or her intent to be a candidate to
628 the association at least 40 days before a scheduled election.
629 Together with the written notice and agenda as set forth in
630 subparagraph 3., the association shall mail, deliver, or
631 electronically transmit a second notice of the election to all
632 unit owners entitled to vote, together with a ballot that lists
633 all candidates. Upon request of a candidate, an information
634 sheet, no larger than 8 1/2 inches by 11 inches, which must be
635 furnished by the candidate at least 35 days before the election,
636 must be included with the mailing, delivery, or transmission of
637 the ballot, with the costs of mailing, delivery, or electronic
638 transmission and copying to be borne by the association. The
639 association is not liable for the contents of the information
640 sheets prepared by the candidates. In order to reduce costs, the
641 association may print or duplicate the information sheets on
642 both sides of the paper. The division shall by rule establish
643 voting procedures consistent with this sub-subparagraph,
644 including rules establishing procedures for giving notice by
645 electronic transmission and rules providing for the secrecy of
646 ballots. Elections shall be decided by a plurality of ballots
647 cast. There is no quorum requirement; however, at least 20
648 percent of the eligible voters must cast a ballot in order to



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649 have a valid election. A unit owner may not allow ~~permit~~ any
650 other

651
652 ===== D I R E C T O R Y C L A U S E A M E N D M E N T =====

653 And the directory clause is amended as follows:

654 Delete line 74

655 and insert:

656 Section 1. Subsection (3), paragraphs (a), (b), (c), (e),
657 and (g) of

658
659 ===== T I T L E A M E N D M E N T =====

660 And the title is amended as follows:

661 Delete lines 7 - 10

662 and insert:

663 reporting requirements; revising the list of documents
664 that the association is required to post online;
665 limiting an association's liability for inadvertent
666 disclosure of protected or restricted information;
667 providing that the failure of an association to post
668 certain information is not sufficient, in and of
669 itself, to invalidate any action or decision of the
670 association; amending s. 718.112, F.S.; revising
671 provisions relating to required association bylaws;
672 authorizing an association to adopt rules for posting
673 certain notices on the association's website; revising
674 board term limits; providing

APPEARANCE RECORD

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1-30-13

Meeting Date

SB 1274

Bill Number (if applicable)

Topic Condominiums

Amendment Barcode (if applicable)

Name Kari Helvank

Job Title

Address 113 EAST COLLEGE AVE.

Phone 850-566-1824

Street LAURELHURST FL 32301

Email kari@wilsonmgmt.com

City State Zip

Speaking: [X] For [] Against [] Information

Waive Speaking: [X] In Support [] Against (The Chair will read this information into the record.)

Representing Florida Home Builders Assoc.

Appearing at request of Chair: [] Yes [] No

Lobbyist registered with Legislature: [X] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

01-30-18

Meeting Date

S1274

Bill Number (if applicable)

Topic community associations

Amendment Barcode (if applicable)

Name Barbara Billiot Stage, Esq.

Job Title Attorney

Address 7635 Ashley Park Ct #503-T
Street
Orlando FL 32835
City State Zip

Phone 321-299-9412

Email barbara.stage@stagerlae.com

Speaking: For Against Information Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing homeowners & associations

Appearing at request of Chair: Yes No Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

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1-30-18

Meeting Date

1274

Bill Number (if applicable)

Topic Community Associations

Amendment Barcode (if applicable)

Name TRAVIS MOORE

Job Title _____

Address P.O. Box 2020

Phone 727.421.6902

Street

St. Petersburg FL

33731

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Community Associations Institute (CAI)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

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1-30-18

Meeting Date

1274

Bill Number (if applicable)

Topic SB 1274

Amendment Barcode (if applicable)

Name Mark Anderson

Job Title _____

Address 106 S. Monroe st
Street

Phone 813-205-0658

Tallahassee FL 32301
City State Zip

Email Mark@consultandesign.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing CEOMC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

S-001 (10/14/14)

APPEARANCE RECORD

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01/30/2018

Meeting Date

S 1274

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Jan Bergemann

Job Title CCFJ Resident

Address 1156 Tall Oaks Rd

Phone (386) 740-1503

Deland

FL

32720

Email jan@ccfj.net

Street

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing CCFJ, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-30-14

Meeting Date

1274

Bill Number (if applicable)

236508

Amendment Barcode (if applicable)

Topic Amendment 236508

Name Mark Anderson

Job Title _____

Address 106 S. Monroe St

Street

Phone 813-205-0658

Tallahassee

City

FL

State

32301

Zip

Email Mark@CongStaffAnderson.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing CEOMC

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.



The Florida Senate

Committee Agenda Request

To: Senator Travis Hutson, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: January 12, 2018

I respectfully request that **Senate Bill #1274**, relating to Community Associations, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.

A handwritten signature in black ink, appearing to read "K. Passidomo", with a horizontal line extending to the right.

Senator Kathleen Passidomo
Florida Senate, District 28

By the Committee on Regulated Industries; and Senators Passidomo and Mayfield

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1 A bill to be entitled
2 An act relating to community associations; amending s.
3 718.111, F.S.; deleting a provision prohibiting an
4 association from hiring an attorney who represents the
5 management company of the association; revising
6 condominium association recordkeeping and financial
7 reporting requirements; revising the list of documents
8 that the association is required to post online;
9 limiting an association's liability for inadvertent
10 disclosure of protected or restricted information;
11 providing that the failure of an association to post
12 certain information is not sufficient, in and of
13 itself, to invalidate any action or decision of the
14 association; amending s. 718.112, F.S.; revising
15 provisions relating to required association bylaws;
16 authorizing an association to adopt rules for posting
17 certain notices on the association's website; revising
18 board term limits; providing responsibilities for unit
19 owners who receive electronic notices; revising and
20 providing board member recall and challenge
21 requirements; authorizing the recovery of attorney
22 fees and costs in an action to challenge the validity
23 of a board member recall; amending s. 718.113, F.S.;
24 revising voting requirements relating to alterations
25 and additions to certain common elements or
26 association property; amending s. 718.3026, F.S.;
27 removing a provision relating to certain contracts or
28 transactions regarding conflicts of interest; amending
29 s. 718.3027, F.S.; providing requirements for proposed

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30 activity that is identified as a conflict of interest;
31 amending s. 718.303, F.S.; revising fine and
32 suspension requirements; amending s. 718.707, F.S.;
33 revising the time limitation for classification as a
34 bulk assignee or bulk buyer; amending s. 719.104,
35 F.S.; revising cooperative association recordkeeping
36 requirements; amending s. 719.106, F.S.; revising the
37 composition of boards of administration; placing an
38 additional restriction on service as a board member;
39 prohibiting a board member from voting via e-mail;
40 requiring that a notice for certain meetings contain
41 certain information; authorizing an association to
42 adopt rules for posting certain notices on a website;
43 requiring that an adopted rule contain a certain
44 requirement related to electronic notice; providing
45 responsibilities for unit owners who receive
46 electronic notices; providing that directors or
47 officers who are delinquent in certain payments owed
48 in excess of certain periods of time are deemed to
49 have abandoned their offices; amending s. 719.107,
50 F.S.; specifying that certain services that are
51 obtained pursuant to a bulk contract are deemed a
52 common expense; amending s. 719.303, F.S.; revising
53 fine and suspension requirements; specifying a fine
54 payment is due within a certain timeframe after the
55 fine is approved by the committee; requiring the
56 association to provide written notice of certain fines
57 or suspensions to certain persons; amending s.
58 720.303, F.S.; prohibiting a board member from voting

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59 via e-mail; revising reserve account requirements;
60 providing requirements for votes relating to reserve
61 accounts; providing applicability; requiring that
62 meetings at which a proposed annual budget will be
63 considered be open to all parcel owners; providing
64 requirements for special meetings held to consider a
65 substitute annual budget; amending s. 720.305, F.S.;
66 expanding the list of persons required to be notified
67 of a fine or suspension before the fine or suspension
68 may be imposed; specifying that a payment for a fine
69 is due within a certain timeframe; amending s.
70 720.306, F.S.; prohibiting write-in nominations for
71 certain elections; requiring certain candidates to
72 commence service on the board of directors regardless
73 of whether a quorum is attained; amending s. 720.3085,
74 F.S.; clarifying applicability; amending s. 720.401,
75 F.S.; revising the statements required to be included
76 in the disclosure summary; providing an effective
77 date.

78

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

80

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

84 718.111 The association.—

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

87 ~~(a)~~ The association may contract, sue, or be sued with

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88 respect to the exercise or nonexercise of its powers. For these
89 purposes, the powers of the association include, but are not
90 limited to, the maintenance, management, and operation of the
91 condominium property. After control of the association is
92 obtained by unit owners other than the developer, the
93 association may institute, maintain, settle, or appeal actions
94 or hearings in its name on behalf of all unit owners concerning
95 matters of common interest to most or all unit owners,
96 including, but not limited to, the common elements; the roof and
97 structural components of a building or other improvements;
98 mechanical, electrical, and plumbing elements serving an
99 improvement or a building; representations of the developer
100 pertaining to any existing or proposed commonly used facilities;
101 and protesting ad valorem taxes on commonly used facilities and
102 on units; and may defend actions in eminent domain or bring
103 inverse condemnation actions. If the association has the
104 authority to maintain a class action, the association may be
105 joined in an action as representative of that class with
106 reference to litigation and disputes involving the matters for
107 which the association could bring a class action. Nothing herein
108 limits any statutory or common-law right of any individual unit
109 owner or class of unit owners to bring any action without
110 participation by the association which may otherwise be
111 available.

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

114 (12) OFFICIAL RECORDS.—

115 (a) ~~From the inception of the association,~~ The association
116 shall maintain each of the following items, if applicable, which

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117 constitutes the official records of the association:

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

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

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

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

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

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

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

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

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

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

152 11. Accounting records for the association and separate
153 accounting records for each condominium that the association
154 operates. ~~All accounting records must be maintained for at least~~
155 ~~7 years.~~ Any person who knowingly or intentionally defaces or
156 destroys such records, or who knowingly or intentionally fails
157 to create or maintain such records, with the intent of causing
158 harm to the association or one or more of its members, is
159 personally subject to a civil penalty pursuant to s.
160 718.501(1)(d). The accounting records must include, but are not
161 limited to:

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

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

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

170 d. All contracts for work to be performed. Bids for work to
171 be performed are also considered official records and must be
172 maintained by the association for a period of 1 year after the
173 date of receipt.

174 12. Ballots, sign-in sheets, voting proxies, and all other

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175 papers and electronic records relating to voting by unit owners,
176 which must be maintained for 1 year from the date of the
177 election, vote, or meeting to which the document relates,
178 notwithstanding paragraph (b).

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

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

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

186 16. A copy of the inspection report as described in s.
187 718.301(4)(p).

188 17. Bids for materials, equipment, or services, which must
189 be maintained by the association for a period of 1 year after
190 the date of receipt.

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

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204 condominium property or association property, or the association
205 may offer the option of making the records available to a unit
206 owner electronically via the Internet or by allowing the records
207 to be viewed in electronic format on a computer screen and
208 printed upon request. The association is not responsible for the
209 use or misuse of the information provided to an association
210 member or his or her authorized representative pursuant to the
211 compliance requirements of this chapter unless the association
212 has an affirmative duty not to disclose such information
213 pursuant to this chapter.

214 (c)1. The official records of the association are open to
215 inspection by any association member or the authorized
216 representative of such member at all reasonable times. The right
217 to inspect the records includes the right to make or obtain
218 copies, at the reasonable expense, if any, of the member or
219 authorized representative of such member. A renter of a unit has
220 a right to inspect and copy the association's bylaws and rules.
221 The association may adopt reasonable rules regarding the
222 frequency, time, location, notice, and manner of record
223 inspections and copying. The failure of an association to
224 provide the records within 10 working days after receipt of a
225 written request creates a rebuttable presumption that the
226 association willfully failed to comply with this paragraph. A
227 unit owner who is denied access to official records is entitled
228 to the actual damages or minimum damages for the association's
229 willful failure to comply. Minimum damages are \$50 per calendar
230 day for up to 10 days, beginning on the 11th working day after
231 receipt of the written request. The failure to allow ~~permit~~
232 inspection entitles any person prevailing in an enforcement

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233 action to recover reasonable attorney fees from the person in
234 control of the records who, directly or indirectly, knowingly
235 denied access to the records.

236 2. Any person who knowingly or intentionally defaces or
237 destroys accounting records that are required by this chapter to
238 be maintained during the period for which such records are
239 required to be maintained, or who knowingly or intentionally
240 fails to create or maintain accounting records that are required
241 to be created or maintained, with the intent of causing harm to
242 the association or one or more of its members, is personally
243 subject to a civil penalty pursuant to s. 718.501(1)(d).

244 3. The association shall maintain an adequate number of
245 copies of the declaration, articles of incorporation, bylaws,
246 and rules, and all amendments to each of the foregoing, as well
247 as the question and answer sheet as described in s. 718.504 and
248 year-end financial information required under this section, on
249 the condominium property to ensure their availability to unit
250 owners and prospective purchasers, and may charge its actual
251 costs for preparing and furnishing these documents to those
252 requesting the documents. An association shall allow a member or
253 his or her authorized representative to use a portable device,
254 including a smartphone, tablet, portable scanner, or any other
255 technology capable of scanning or taking photographs, to make an
256 electronic copy of the official records in lieu of the
257 association's providing the member or his or her authorized
258 representative with a copy of such records. The association may
259 not charge a member or his or her authorized representative for
260 the use of a portable device. Notwithstanding this paragraph,
261 the following records are not accessible to unit owners:

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262 a. Any record protected by the lawyer-client privilege as
263 described in s. 90.502 and any record protected by the work-
264 product privilege, including a record prepared by an association
265 attorney or prepared at the attorney's express direction, which
266 reflects a mental impression, conclusion, litigation strategy,
267 or legal theory of the attorney or the association, and which
268 was prepared exclusively for civil or criminal litigation or for
269 adversarial administrative proceedings, or which was prepared in
270 anticipation of such litigation or proceedings until the
271 conclusion of the litigation or proceedings.

272 b. Information obtained by an association in connection
273 with the approval of the lease, sale, or other transfer of a
274 unit.

275 c. Personnel records of association or management company
276 employees, including, but not limited to, disciplinary, payroll,
277 health, and insurance records. For purposes of this sub-
278 subparagraph, the term "personnel records" does not include
279 written employment agreements with an association employee or
280 management company, or budgetary or financial records that
281 indicate the compensation paid to an association employee.

282 d. Medical records of unit owners.

283 e. Social security numbers, driver license numbers, credit
284 card numbers, e-mail addresses, telephone numbers, facsimile
285 numbers, emergency contact information, addresses of a unit
286 owner other than as provided to fulfill the association's notice
287 requirements, and other personal identifying information of any
288 person, excluding the person's name, unit designation, mailing
289 address, property address, and any address, e-mail address, or
290 facsimile number provided to the association to fulfill the

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291 association's notice requirements. Notwithstanding the
292 restrictions in this sub-subparagraph, an association may print
293 and distribute to parcel owners a directory containing the name,
294 parcel address, and all telephone numbers of each parcel owner.
295 However, an owner may exclude his or her telephone numbers from
296 the directory by so requesting in writing to the association. An
297 owner may consent in writing to the disclosure of other contact
298 information described in this sub-subparagraph. The association
299 is not liable for the inadvertent disclosure of information that
300 is protected under this sub-subparagraph if the information is
301 included in an official record of the association and is
302 voluntarily provided by an owner and not requested by the
303 association.

304 f. Electronic security measures that are used by the
305 association to safeguard data, including passwords.

306 g. The software and operating system used by the
307 association which allow the manipulation of data, even if the
308 owner owns a copy of the same software used by the association.
309 The data is part of the official records of the association.

310 (e)1. The association or its authorized agent is not
311 required to provide a prospective purchaser or lienholder with
312 information about the condominium or the association other than
313 information or documents required by this chapter to be made
314 available or disclosed. The association or its authorized agent
315 may charge a reasonable fee to the prospective purchaser,
316 lienholder, or the current unit owner for providing good faith
317 responses to requests for information by or on behalf of a
318 prospective purchaser or lienholder, other than that required by
319 law, if the fee does not exceed \$150 plus the reasonable cost of

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320 photocopying and any attorney ~~attorney's~~ fees incurred by the
321 association in connection with the response.

322 2. An association and its authorized agent are not liable
323 for providing such information in good faith pursuant to a
324 written request if the person providing the information includes
325 a written statement in substantially the following form: "The
326 responses herein are made in good faith and to the best of my
327 ability as to their accuracy."

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

332 a. The association's website must be:

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

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

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

346 c. Upon a unit owner's written request, the association
347 must provide the unit owner with a username and password and
348 access to the protected sections of the association's website

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349 that contain any notices, records, or documents that must be
350 electronically provided.

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

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

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

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

363 d. The rules of the association, if any.

364 e. A list of all executory contracts or documents ~~Any~~
365 ~~management agreement, lease, or other contract~~ to which the
366 association is a party or under which the association or the
367 unit owners have an obligation or responsibility and, after
368 bidding for the related materials, equipment, or services has
369 closed, a list of bids received by the association within the
370 past year. ~~Summaries of bids for materials, equipment, or~~
371 ~~services which exceed \$2,500 must be maintained on the website~~
372 ~~for 1 year.~~

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

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

377 h. The certification of each director required by s.

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378 718.112(2)(d)4.b.

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

384 j. Any contract or document regarding a conflict of
385 interest or possible conflict of interest as provided in ss.
386 468.436(2)(b)6. and 718.3027(3) ~~ss. 468.436(2) and 718.3026(3)~~.

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

397 l. Notice of any board meeting, the agenda, and any other
398 document required for the meeting as required by s.
399 718.112(2)(c), which must be posted no later than the date
400 required for notice pursuant to s. 718.112(2)(c).

401 3. The association shall ensure that the information and
402 records described in paragraph (c), which are not allowed
403 ~~permitted~~ to be accessible to unit owners, are not posted on the
404 association's website. If protected information or information
405 restricted from being accessible to unit owners is included in
406 documents that are required to be posted on the association's

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407 website, the association shall ensure the information is
408 redacted before posting the documents online. Notwithstanding
409 the foregoing, the association or its agent is not liable for
410 disclosing information that is protected or restricted pursuant
411 to this paragraph unless such disclosure was made with a knowing
412 or intentional disregard of the protected or restricted nature
413 of such information.

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

418 (13) FINANCIAL REPORTING.—Within 90 days after the end of
419 the fiscal year, or annually on a date provided in the bylaws,
420 the association shall prepare and complete, or contract for the
421 preparation and completion of, a financial report for the
422 preceding fiscal year. Within 21 days after the final financial
423 report is completed by the association or received from the
424 third party, but not later than 120 days after the end of the
425 fiscal year or other date as provided in the bylaws, the
426 association shall mail to each unit owner at the address last
427 furnished to the association by the unit owner, or hand deliver
428 to each unit owner, a copy of the most recent financial report
429 or a notice that a copy of the most recent financial report will
430 be mailed or hand delivered to the unit owner, without charge,
431 within 5 business days after receipt of a written request from
432 the unit owner. The division shall adopt rules setting forth
433 uniform accounting principles and standards to be used by all
434 associations and addressing the financial reporting requirements
435 for multicondominium associations. The rules must include, but

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436 not be limited to, standards for presenting a summary of
437 association reserves, including a good faith estimate disclosing
438 the annual amount of reserve funds that would be necessary for
439 the association to fully fund reserves for each reserve item
440 based on the straight-line accounting method. This disclosure is
441 not applicable to reserves funded via the pooling method. In
442 adopting such rules, the division shall consider the number of
443 members and annual revenues of an association. Financial reports
444 shall be prepared as follows:

445 (e) A unit owner may provide written notice to the division
446 of the association's failure to mail or hand deliver him or her
447 a copy of the most recent financial report within 5 business
448 days after he or she submitted a written request to the
449 association for a copy of such report. If the division
450 determines that the association failed to mail or hand deliver a
451 copy of the most recent financial report to the unit owner, the
452 division shall provide written notice to the association that
453 the association must mail or hand deliver a copy of the most
454 recent financial report to the unit owner and the division
455 within 5 business days after it receives such notice from the
456 division. An association that fails to comply with the
457 division's request may not waive the financial reporting
458 requirement provided in paragraph (d) for the fiscal year in
459 which the unit owner's request was made and the following fiscal
460 year. A financial report received by the division pursuant to
461 this paragraph shall be maintained, and the division shall
462 provide a copy of such report to an association member upon his
463 or her request.

464 Section 2. Paragraphs (a), (c), (d), and (j) of subsection

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465 (2) of section 718.112, Florida Statutes, are amended to read:

466 718.112 Bylaws.—

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

470 (a) *Administration.*—

471 1. The form of administration of the association shall be
472 described indicating the title of the officers and board of
473 administration and specifying the powers, duties, manner of
474 selection and removal, and compensation, if any, of officers and
475 boards. In the absence of such a provision, the board of
476 administration shall be composed of five members, unless the
477 ~~except in the case of a condominium which~~ has five or fewer
478 units. The board shall consist of not fewer than three members
479 in condominiums with five or fewer units that are not-for-profit
480 corporations, ~~in which case in a not-for-profit corporation the~~
481 ~~board shall consist of not fewer than three members.~~ In the
482 absence of provisions to the contrary in the bylaws, the board
483 of administration shall have a president, a secretary, and a
484 treasurer, who shall perform the duties of such officers
485 customarily performed by officers of corporations. Unless
486 prohibited in the bylaws, the board of administration may
487 appoint other officers and grant them the duties it deems
488 appropriate. Unless otherwise provided in the bylaws, the
489 officers shall serve without compensation and at the pleasure of
490 the board of administration. Unless otherwise provided in the
491 bylaws, the members of the board shall serve without
492 compensation.

493 2. When a unit owner of a residential condominium files a

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494 written inquiry by certified mail with the board of
495 administration, the board shall respond in writing to the unit
496 owner within 30 days after receipt of the inquiry. The board's
497 response shall either give a substantive response to the
498 inquirer, notify the inquirer that a legal opinion has been
499 requested, or notify the inquirer that advice has been requested
500 from the division. If the board requests advice from the
501 division, the board shall, within 10 days after its receipt of
502 the advice, provide in writing a substantive response to the
503 inquirer. If a legal opinion is requested, the board shall,
504 within 60 days after the receipt of the inquiry, provide in
505 writing a substantive response to the inquiry. The failure to
506 provide a substantive response to the inquiry as provided herein
507 precludes the board from recovering attorney fees and costs in
508 any subsequent litigation, administrative proceeding, or
509 arbitration arising out of the inquiry. The association may
510 through its board of administration adopt reasonable rules and
511 regulations regarding the frequency and manner of responding to
512 unit owner inquiries, one of which may be that the association
513 is only obligated to respond to one written inquiry per unit in
514 any given 30-day period. In such a case, any additional inquiry
515 or inquiries must be responded to in the subsequent 30-day
516 period, or periods, as applicable.

517 (c) *Board of administration meetings.*—Meetings of the board
518 of administration at which a quorum of the members is present
519 are open to all unit owners. Members of the board of
520 administration may use e-mail as a means of communication but
521 may not cast a vote on an association matter via e-mail. A unit
522 owner may tape record or videotape the meetings. The right to

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

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

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552 purposes for such assessments. Upon notice to the unit owners,
553 the board shall, by duly adopted rule, designate a specific
554 location on the condominium ~~or association~~ property where all
555 notices of board meetings must be posted. If there is no
556 condominium property ~~or association property~~ where notices can
557 be posted, notices shall be mailed, delivered, or electronically
558 transmitted to each unit owner at least 14 days before the
559 meeting. In lieu of or in addition to the physical posting of
560 the notice on the condominium property, the association may, by
561 reasonable rule, adopt a procedure for conspicuously posting and
562 repeatedly broadcasting the notice and the agenda on a closed-
563 circuit cable television system serving the condominium
564 association. However, if broadcast notice is used in lieu of a
565 notice physically posted on condominium property, the notice and
566 agenda must be broadcast at least four times every broadcast
567 hour of each day that a posted notice is otherwise required
568 under this section. If broadcast notice is provided, the notice
569 and agenda must be broadcast in a manner and for a sufficient
570 continuous length of time so as to allow an average reader to
571 observe the notice and read and comprehend the entire content of
572 the notice and the agenda. In addition to any of the authorized
573 means of providing notice of a meeting of the board, the
574 association may, by rule, adopt a procedure for conspicuously
575 posting the meeting notice and the agenda on the condominium
576 association's website for at least the minimum period of time
577 for which a notice of a meeting is also required to be
578 physically posted on the condominium property. Any rule adopted,
579 in addition to other matters, must include a requirement that
580 the association send an electronic notice in the same manner as

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581 a notice for a meeting of the members, which must include a
582 hyperlink to the website where the notice is posted, to unit
583 owners whose e-mail addresses are included in the association's
584 official records ~~Notice of any meeting in which regular or~~
585 ~~special assessments against unit owners are to be considered~~
586 ~~must specifically state that assessments will be considered and~~
587 ~~provide the nature, estimated cost, and description of the~~
588 ~~purposes for such assessments.~~

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

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

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

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

605 (d) *Unit owner meetings.*—

606 1. An annual meeting of the unit owners must ~~shall~~ be held
607 at the location provided in the association bylaws and, if the
608 bylaws are silent as to the location, the meeting must ~~shall~~ be
609 held within 45 miles of the condominium property. However, such

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610 distance requirement does not apply to an association governing
611 a timeshare condominium.

612 2. Unless the bylaws provide otherwise, a vacancy on the
613 board caused by the expiration of a director's term must ~~shall~~
614 be filled by electing a new board member, and the election must
615 be by secret ballot. An election is not required if the number
616 of vacancies equals or exceeds the number of candidates. For
617 purposes of this paragraph, the term "candidate" means an
618 eligible person who has timely submitted the written notice, as
619 described in sub-subparagraph 4.a., of his or her intention to
620 become a candidate. Except in a timeshare or nonresidential
621 condominium, or if the staggered term of a board member does not
622 expire until a later annual meeting, or if all members' terms
623 would otherwise expire but there are no candidates, the terms of
624 all board members expire at the annual meeting, and such members
625 may stand for reelection unless prohibited by the bylaws. Board
626 members may serve ~~2-year~~ terms longer than 1 year if allowed
627 ~~permitted~~ by the bylaws or articles of incorporation. A board
628 member may not serve more than 8 consecutive years ~~four~~
629 ~~consecutive 2-year terms~~, unless approved by an affirmative vote
630 of two-thirds of all votes cast in the election ~~the total voting~~
631 ~~interests of the association~~ or unless there are not enough
632 eligible candidates to fill the vacancies on the board at the
633 time of the vacancy. If the number of board members whose terms
634 expire at the annual meeting equals or exceeds the number of
635 candidates, the candidates become members of the board effective
636 upon the adjournment of the annual meeting. Unless the bylaws
637 provide otherwise, any remaining vacancies shall be filled by
638 the affirmative vote of the majority of the directors making up

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639 the newly constituted board even if the directors constitute
640 less than a quorum or there is only one director. In a
641 residential condominium association of more than 10 units or in
642 a residential condominium association that does not include
643 timeshare units or timeshare interests, coowners of a unit may
644 not serve as members of the board of directors at the same time
645 unless they own more than one unit or unless there are not
646 enough eligible candidates to fill the vacancies on the board at
647 the time of the vacancy. A unit owner in a residential
648 condominium desiring to be a candidate for board membership must
649 comply with sub-subparagraph 4.a. and must be eligible to be a
650 candidate to serve on the board of directors at the time of the
651 deadline for submitting a notice of intent to run in order to
652 have his or her name listed as a proper candidate on the ballot
653 or to serve on the board. A person who has been suspended or
654 removed by the division under this chapter, or who is delinquent
655 in the payment of any monetary obligation due to the
656 association, is not eligible to be a candidate for board
657 membership and may not be listed on the ballot. A person who has
658 been convicted of any felony in this state or in a United States
659 District or Territorial Court, or who has been convicted of any
660 offense in another jurisdiction which would be considered a
661 felony if committed in this state, is not eligible for board
662 membership unless such felon's civil rights have been restored
663 for at least 5 years as of the date such person seeks election
664 to the board. The validity of an action by the board is not
665 affected if it is later determined that a board member is
666 ineligible for board membership due to having been convicted of
667 a felony. This subparagraph does not limit the term of a member

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668 of the board of a nonresidential or timeshare condominium.

669 3. The bylaws must provide the method of calling meetings
670 of unit owners, including annual meetings. Written notice must
671 include an agenda, must be mailed, hand delivered, or
672 electronically transmitted to each unit owner at least 14 days
673 before the annual meeting, and must be posted in a conspicuous
674 place on the condominium property at least 14 continuous days
675 before the annual meeting. Upon notice to the unit owners, the
676 board shall, by duly adopted rule, designate a specific location
677 on the condominium property ~~or association property~~ where all
678 notices of unit owner meetings must ~~shall~~ be posted. This
679 requirement does not apply if there is no condominium property
680 ~~or association property~~ for posting notices. In lieu of, or in
681 addition to, the physical posting of meeting notices, the
682 association may, by reasonable rule, adopt a procedure for
683 conspicuously posting and repeatedly broadcasting the notice and
684 the agenda on a closed-circuit cable television system serving
685 the condominium association. However, if broadcast notice is
686 used in lieu of a notice posted physically on the condominium
687 property, the notice and agenda must be broadcast at least four
688 times every broadcast hour of each day that a posted notice is
689 otherwise required under this section. If broadcast notice is
690 provided, the notice and agenda must be broadcast in a manner
691 and for a sufficient continuous length of time so as to allow an
692 average reader to observe the notice and read and comprehend the
693 entire content of the notice and the agenda. In addition to any
694 of the authorized means of providing notice of a meeting of the
695 board, the association may, by rule, adopt a procedure for
696 conspicuously posting the meeting notice and the agenda on the

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697 condominium association's website for at least the minimum
698 period of time for which a notice of a meeting is also required
699 to be physically posted on the condominium property. Any rule
700 adopted, in addition to other matters, must include a
701 requirement that the association send an electronic notice in
702 the same manner as a notice for a meeting of the members, which
703 must include a hyperlink to the website where the notice is
704 posted, to unit owners whose e-mail addresses are included in
705 the association's official records. Unless a unit owner waives
706 in writing the right to receive notice of the annual meeting,
707 such notice must be hand delivered, mailed, or electronically
708 transmitted to each unit owner. Notice for meetings and notice
709 for all other purposes must be mailed to each unit owner at the
710 address last furnished to the association by the unit owner, or
711 hand delivered to each unit owner. However, if a unit is owned
712 by more than one person, the association must provide notice to
713 the address that the developer identifies for that purpose and
714 thereafter as one or more of the owners of the unit advise the
715 association in writing, or if no address is given or the owners
716 of the unit do not agree, to the address provided on the deed of
717 record. An officer of the association, or the manager or other
718 person providing notice of the association meeting, must provide
719 an affidavit or United States Postal Service certificate of
720 mailing, to be included in the official records of the
721 association affirming that the notice was mailed or hand
722 delivered in accordance with this provision.

723 4. The members of the board of a residential condominium
724 shall be elected by written ballot or voting machine. Proxies
725 may not be used in electing the board in general elections or

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726 elections to fill vacancies caused by recall, resignation, or
727 otherwise, unless otherwise provided in this chapter. This
728 subparagraph does not apply to an association governing a
729 timeshare condominium.

730 a. At least 60 days before a scheduled election, the
731 association shall mail, deliver, or electronically transmit, by
732 separate association mailing or included in another association
733 mailing, delivery, or transmission, including regularly
734 published newsletters, to each unit owner entitled to a vote, a
735 first notice of the date of the election. A unit owner or other
736 eligible person desiring to be a candidate for the board must
737 give written notice of his or her intent to be a candidate to
738 the association at least 40 days before a scheduled election.
739 Together with the written notice and agenda as set forth in
740 subparagraph 3., the association shall mail, deliver, or
741 electronically transmit a second notice of the election to all
742 unit owners entitled to vote, together with a ballot that lists
743 all candidates. Upon request of a candidate, an information
744 sheet, no larger than 8 1/2 inches by 11 inches, which must be
745 furnished by the candidate at least 35 days before the election,
746 must be included with the mailing, delivery, or transmission of
747 the ballot, with the costs of mailing, delivery, or electronic
748 transmission and copying to be borne by the association. The
749 association is not liable for the contents of the information
750 sheets prepared by the candidates. In order to reduce costs, the
751 association may print or duplicate the information sheets on
752 both sides of the paper. The division shall by rule establish
753 voting procedures consistent with this sub-subparagraph,
754 including rules establishing procedures for giving notice by

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755 electronic transmission and rules providing for the secrecy of
756 ballots. Elections shall be decided by a plurality of ballots
757 cast. There is no quorum requirement; however, at least 20
758 percent of the eligible voters must cast a ballot in order to
759 have a valid election. A unit owner may not allow ~~permit~~ any
760 other person to vote his or her ballot, and any ballots
761 improperly cast are invalid. A unit owner who violates this
762 provision may be fined by the association in accordance with s.
763 718.303. A unit owner who needs assistance in casting the ballot
764 for the reasons stated in s. 101.051 may obtain such assistance.
765 The regular election must occur on the date of the annual
766 meeting. Notwithstanding this sub-subparagraph, an election is
767 not required unless more candidates file notices of intent to
768 run or are nominated than board vacancies exist.

769 b. Within 90 days after being elected or appointed to the
770 board of an association of a residential condominium, each newly
771 elected or appointed director shall certify in writing to the
772 secretary of the association that he or she has read the
773 association's declaration of condominium, articles of
774 incorporation, bylaws, and current written policies; that he or
775 she will work to uphold such documents and policies to the best
776 of his or her ability; and that he or she will faithfully
777 discharge his or her fiduciary responsibility to the
778 association's members. In lieu of this written certification,
779 within 90 days after being elected or appointed to the board,
780 the newly elected or appointed director may submit a certificate
781 of having satisfactorily completed the educational curriculum
782 administered by a division-approved condominium education
783 provider within 1 year before or 90 days after the date of

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784 election or appointment. The written certification or
785 educational certificate is valid and does not have to be
786 resubmitted as long as the director serves on the board without
787 interruption. A director of an association of a residential
788 condominium who fails to timely file the written certification
789 or educational certificate is suspended from service on the
790 board until he or she complies with this sub-subparagraph. The
791 board may temporarily fill the vacancy during the period of
792 suspension. The secretary shall cause the association to retain
793 a director's written certification or educational certificate
794 for inspection by the members for 5 years after a director's
795 election or the duration of the director's uninterrupted tenure,
796 whichever is longer. Failure to have such written certification
797 or educational certificate on file does not affect the validity
798 of any board action.

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

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

811 6. Unit owners may waive notice of specific meetings if
812 allowed by the applicable bylaws or declaration or any law.

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813 Notice of meetings of the board of administration, unit owner
814 meetings, except unit owner meetings called to recall board
815 members under paragraph (j), and committee meetings may be given
816 by electronic transmission to unit owners who consent to receive
817 notice by electronic transmission. A unit owner who consents to
818 receiving notices by electronic transmission is solely
819 responsible for removing or bypassing filters that block receipt
820 of mass e-mails sent to members on behalf of the association in
821 the course of giving electronic notices.

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

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

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

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842 paragraph (j) and rules adopted by the division.

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

849
850 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
851 association of 10 or fewer units may, by affirmative vote of a
852 majority of the total voting interests, provide for different
853 voting and election procedures in its bylaws, which may be by a
854 proxy specifically delineating the different voting and election
855 procedures. The different voting and election procedures may
856 provide for elections to be conducted by limited or general
857 proxy.

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

869 1. If the recall is approved by a majority of all voting
870 interests by a vote at a meeting, the recall will be effective

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871 as provided in this paragraph. The board shall duly notice and
872 hold a board meeting within 5 full business days after the
873 adjournment of the unit owner meeting to recall one or more
874 board members. Such member or members shall be recalled
875 effective immediately upon conclusion of the board meeting
876 provided that the recall is facially valid. A recalled member
877 must and shall turn over to the board, within 10 full business
878 days after the vote, any and all records and property of the
879 association in their possession.

880 2. If the proposed recall is by an agreement in writing by
881 a majority of all voting interests, the agreement in writing or
882 a copy thereof shall be served on the association by certified
883 mail or by personal service in the manner authorized by chapter
884 48 and the Florida Rules of Civil Procedure. The board of
885 administration shall duly notice and hold a meeting of the board
886 within 5 full business days after receipt of the agreement in
887 writing. Such member or members shall be recalled effective
888 immediately upon the conclusion of the board meeting provided
889 that the recall is facially valid. A recalled member ~~and~~ shall
890 turn over to the board, within 10 full business days, any and
891 all records and property of the association in their possession.

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

899 4. If the board fails to duly notice and hold the required

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

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

921 6. A board member who has been recalled may file a petition
922 pursuant to s. 718.1255 challenging the validity of the recall.
923 The petition must be filed within 60 days after the recall. The
924 association and the unit owner representative shall be named as
925 the respondents. The petition may challenge the facial validity
926 of the written agreement or ballots filed or the substantial
927 compliance with the procedural requirements for the recall. If
928 the arbitrator determines the recall was invalid, the

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929 petitioning board member shall immediately be reinstated and the
930 recall is null and void. A board member who is successful in
931 challenging a recall is entitled to recover reasonable attorney
932 fees and costs from the respondents. The arbitrator may award
933 reasonable attorney fees and costs to the respondents if they
934 prevail and the arbitrator makes a finding that the petitioner's
935 claim is frivolous.

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

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

945 718.113 Maintenance; limitation upon improvement; display
946 of flag; hurricane shutters and protection; display of religious
947 decorations.—

948 (2) (a) Except as otherwise provided in this section, there
949 shall be no material alteration or substantial additions to the
950 common elements or to real property which is association
951 property, except in a manner provided in the declaration as
952 originally recorded or as amended under the procedures provided
953 therein. If the declaration as originally recorded or as amended
954 under the procedures provided therein does not specify the
955 procedure for approval of material alterations or substantial
956 additions, 75 percent of the total voting interests of the
957 association must approve the alterations or additions before the

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958 material alterations or substantial additions are commenced.

959 This paragraph is intended to clarify existing law and applies
960 to associations existing on July 1, 2018 ~~October 1, 2008~~.

961 (b) There may ~~shall~~ not be any material alteration of, or
962 substantial addition to, the common elements of any condominium
963 operated by a multicondominium association unless approved in
964 the manner provided in the declaration of the affected
965 condominium or condominiums as originally recorded or as amended
966 under the procedures provided therein. If a declaration as
967 originally recorded or as amended under the procedures provided
968 therein does not specify a procedure for approving such an
969 alteration or addition, the approval of 75 percent of the total
970 voting interests of each affected condominium is required before
971 the material alterations or substantial additions are commenced.

972 This subsection does not prohibit a provision in any
973 declaration, articles of incorporation, or bylaws as originally
974 recorded or as amended under the procedures provided therein
975 requiring the approval of unit owners in any condominium
976 operated by the same association or requiring board approval
977 before a material alteration or substantial addition to the
978 common elements is permitted. This paragraph is intended to
979 clarify existing law and applies to associations existing on
980 July 1, 2018 ~~the effective date of this act~~.

981 (c) There may ~~shall~~ not be any material alteration or
982 substantial addition made to association real property operated
983 by a multicondominium association, except as provided in the
984 declaration, articles of incorporation, or bylaws as originally
985 recorded or as amended under the procedures provided therein. If
986 the declaration, articles of incorporation, or bylaws as

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987 originally recorded or as amended under the procedures provided
988 therein do not specify the procedure for approving an alteration
989 or addition to association real property, the approval of 75
990 percent of the total voting interests of the association is
991 required before the material alterations or substantial
992 additions are commenced. This paragraph is intended to clarify
993 existing law and applies to associations existing on July 1,
994 2018 ~~the effective date of this act.~~

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

997 718.3026 Contracts for products and services; in writing;
998 bids; exceptions.—Associations with 10 or fewer units may opt
999 out of the provisions of this section if two-thirds of the unit
1000 owners vote to do so, which opt-out may be accomplished by a
1001 proxy specifically setting forth the exception from this
1002 section.

1003 ~~(3) As to any contract or other transaction between an~~
1004 ~~association and one or more of its directors or any other~~
1005 ~~corporation, firm, association, or entity in which one or more~~
1006 ~~of its directors are directors or officers or are financially~~
1007 ~~interested:~~

1008 ~~(a) The association shall comply with the requirements of~~
1009 ~~s. 617.0832.~~

1010 ~~(b) The disclosures required by s. 617.0832 shall be~~
1011 ~~entered into the written minutes of the meeting.~~

1012 ~~(c) Approval of the contract or other transaction shall~~
1013 ~~require an affirmative vote of two-thirds of the directors~~
1014 ~~present.~~

1015 ~~(d) At the next regular or special meeting of the members,~~

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1016 ~~the existence of the contract or other transaction shall be~~
1017 ~~disclosed to the members. Upon motion of any member, the~~
1018 ~~contract or transaction shall be brought up for a vote and may~~
1019 ~~be canceled by a majority vote of the members present. Should~~
1020 ~~the members cancel the contract, the association shall only be~~
1021 ~~liable for the reasonable value of goods and services provided~~
1022 ~~up to the time of cancellation and shall not be liable for any~~
1023 ~~termination fee, liquidated damages, or other form of penalty~~
1024 ~~for such cancellation.~~

1025 Section 5. Section 718.3027, Florida Statutes, is amended
1026 to read:

1027 718.3027 Conflicts of interest.—

1028 (1) Directors and officers of a board of an association
1029 that is not a timeshare condominium association, and the
1030 relatives of such directors and officers, must disclose to the
1031 board any activity that may reasonably be construed to be a
1032 conflict of interest. A rebuttable presumption of a conflict of
1033 interest exists if any of the following occurs without prior
1034 notice, as required in subsection (5) ~~(4)~~:

1035 (a) A director or an officer, or a relative of a director
1036 or an officer, enters into a contract for goods or services with
1037 the association.

1038 (b) A director or an officer, or a relative of a director
1039 or an officer, holds an interest in a corporation, limited
1040 liability corporation, partnership, limited liability
1041 partnership, or other business entity that conducts business
1042 with the association or proposes to enter into a contract or
1043 other transaction with the association.

1044 (2) If a director or an officer, or a relative of a

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1045 director or an officer, proposes to engage in an activity that
1046 is a conflict of interest, as described in subsection (1), the
1047 proposed activity must be listed on, and all contracts and
1048 transactional documents related to the proposed activity must be
1049 attached to, the meeting agenda. The association shall comply
1050 with the requirements of s. 617.0832, and the disclosures
1051 required by s. 617.0832 must be entered into the written minutes
1052 of the meeting. Approval of the contract or other transaction
1053 requires an affirmative vote of two-thirds of all other
1054 directors present. At the next regular or special meeting of the
1055 members, the existence of the contract or other transaction must
1056 be disclosed to the members. Upon motion of any member, the
1057 contract or transaction must be brought up for a vote and may be
1058 canceled by a majority vote of the members present. If the
1059 contract is canceled, the association is liable only for the
1060 reasonable value of the goods and services provided up to the
1061 time of cancellation and is not liable for any termination fee,
1062 liquidated damages, or other form of penalty for such
1063 cancellation.

1064 (3) If the board votes against the proposed activity, the
1065 director or officer, or the relative of the director or officer,
1066 must notify the board in writing of his or her intention not to
1067 pursue the proposed activity or to withdraw from office. If the
1068 board finds that an officer or a director has violated this
1069 subsection, the officer or director shall be deemed removed from
1070 office. The vacancy shall be filled according to general law.

1071 ~~(4)~~ (3) A director or an officer, or a relative of a
1072 director or an officer, who is a party to, or has an interest
1073 in, an activity that is a possible conflict of interest, as

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1074 described in subsection (1), may attend the meeting at which the
1075 activity is considered by the board and is authorized to make a
1076 presentation to the board regarding the activity. After the
1077 presentation, the director or officer, or the relative of the
1078 director or officer, must leave the meeting during the
1079 discussion of, and the vote on, the activity. A director or an
1080 officer who is a party to, or has an interest in, the activity
1081 must recuse himself or herself from the vote.

1082 (5)~~(4)~~ A contract entered into between a director or an
1083 officer, or a relative of a director or an officer, and the
1084 association, which is not a timeshare condominium association,
1085 that has not been properly disclosed as a conflict of interest
1086 or potential conflict of interest as required by s.
1087 718.111(12)(g) is voidable and terminates upon the filing of a
1088 written notice terminating the contract with the board of
1089 directors which contains the consent of at least 20 percent of
1090 the voting interests of the association.

1091 (6)~~(5)~~ As used in this section, the term "relative" means a
1092 relative within the third degree of consanguinity by blood or
1093 marriage.

1094 Section 6. Paragraph (b) of subsection (3) of section
1095 718.303, Florida Statutes, is amended to read:

1096 718.303 Obligations of owners and occupants; remedies.—

1097 (3) The association may levy reasonable fines for the
1098 failure of the owner of the unit or its occupant, licensee, or
1099 invitee to comply with any provision of the declaration, the
1100 association bylaws, or reasonable rules of the association. A
1101 fine may not become a lien against a unit. A fine may be levied
1102 by the board on the basis of each day of a continuing violation,

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1103 with a single notice and opportunity for hearing before a
1104 committee as provided in paragraph (b). However, the fine may
1105 not exceed \$100 per violation, or \$1,000 in the aggregate.

1106 (b) A fine or suspension levied by the board of
1107 administration may not be imposed unless the board first
1108 provides at least 14 days' written notice ~~and an opportunity for~~
1109 ~~a hearing~~ to the unit owner and, if applicable, to any its
1110 occupant, licensee, or invitee of the unit owner sought to be
1111 fined or suspended and provides an opportunity for a hearing.
1112 ~~The hearing must be held~~ before a committee of at least three
1113 members appointed by the board who are not officers, directors,
1114 or employees of the association, or the spouse, parent, child,
1115 brother, or sister of an officer, director, or employee other
1116 ~~unit owners who are neither board members nor persons residing~~
1117 ~~in a board member's household.~~ The role of the committee is
1118 limited to determining whether to confirm or reject the fine or
1119 suspension levied by the board. If the committee does not
1120 approve agree, the proposed fine or suspension by majority vote,
1121 the fine or suspension may not be imposed. If the proposed fine
1122 or suspension is approved by the committee, the fine payment is
1123 due 5 days after the date of the committee meeting at which the
1124 fine is approved. The association must provide written notice of
1125 such fine or suspension by mail or hand delivery to the unit
1126 owner and, if applicable, to any tenant, licensee, or invitee of
1127 the unit owner.

1128 Section 7. Section 718.707, Florida Statutes, is amended to
1129 read:

1130 718.707 Time limitation for classification as bulk assignee
1131 or bulk buyer.—A person acquiring condominium parcels may not be

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1132 classified as a bulk assignee or bulk buyer unless the
1133 condominium parcels were acquired on or after July 1, 2010, ~~but~~
1134 ~~before July 1, 2018~~. The date of such acquisition shall be
1135 determined by the date of recording a deed or other instrument
1136 of conveyance for such parcels in the public records of the
1137 county in which the condominium is located, or by the date of
1138 issuing a certificate of title in a foreclosure proceeding with
1139 respect to such condominium parcels.

1140 Section 8. Paragraphs (a) and (b) of subsection (2) of
1141 section 719.104, Florida Statutes, are amended to read:

1142 719.104 Cooperatives; access to units; records; financial
1143 reports; assessments; purchase of leases.—

1144 (2) OFFICIAL RECORDS.—

1145 (a) From the inception of the association, the association
1146 shall maintain a copy of each of the following, where
1147 applicable, which shall constitute the official records of the
1148 association:

1149 1. The plans, permits, warranties, and other items provided
1150 by the developer pursuant to s. 719.301(4).

1151 2. A photocopy of the cooperative documents.

1152 3. A copy of the current rules of the association.

1153 4. A book or books containing the minutes of all meetings
1154 of the association, of the board of directors, and of the unit
1155 owners, ~~which minutes shall be retained for a period of not less~~
1156 ~~than 7 years~~.

1157 5. A current roster of all unit owners and their mailing
1158 addresses, unit identifications, voting certifications, and, if
1159 known, telephone numbers. The association shall also maintain
1160 the electronic mailing addresses and the numbers designated by

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1161 unit owners for receiving notice sent by electronic transmission
1162 of those unit owners consenting to receive notice by electronic
1163 transmission. The electronic mailing addresses and numbers
1164 provided by unit owners to receive notice by electronic
1165 transmission shall be removed from association records when
1166 consent to receive notice by electronic transmission is revoked.
1167 However, the association is not liable for an erroneous
1168 disclosure of the electronic mail address or the number for
1169 receiving electronic transmission of notices.

1170 6. All current insurance policies of the association.

1171 7. A current copy of any management agreement, lease, or
1172 other contract to which the association is a party or under
1173 which the association or the unit owners have an obligation or
1174 responsibility.

1175 8. Bills of sale or transfer for all property owned by the
1176 association.

1177 9. Accounting records for the association and separate
1178 accounting records for each unit it operates, according to good
1179 accounting practices. ~~All accounting records shall be maintained~~
1180 ~~for a period of not less than 7 years.~~ The accounting records
1181 must ~~shall~~ include, but not be limited to:

1182 a. Accurate, itemized, and detailed records of all receipts
1183 and expenditures.

1184 b. A current account and a monthly, bimonthly, or quarterly
1185 statement of the account for each unit designating the name of
1186 the unit owner, the due date and amount of each assessment, the
1187 amount paid upon the account, and the balance due.

1188 c. All audits, reviews, accounting statements, and
1189 financial reports of the association.

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1190 d. All contracts for work to be performed. Bids for work to
1191 be performed shall also be considered official records and shall
1192 be maintained for a period of 1 year.

1193 10. Ballots, sign-in sheets, voting proxies, and all other
1194 papers and electronic records relating to voting by unit owners,
1195 which shall be maintained for a period of 1 year after the date
1196 of the election, vote, or meeting to which the document relates.

1197 11. All rental records where the association is acting as
1198 agent for the rental of units.

1199 12. A copy of the current question and answer sheet as
1200 described in s. 719.504.

1201 13. All other written records of the association not
1202 specifically included in the foregoing which are related to the
1203 operation of the association.

1204 (b) The official records of the association must be
1205 maintained within the state for at least 7 years. The records of
1206 the association must ~~shall~~ be made available to a unit owner
1207 within 45 miles of the cooperative property or within the county
1208 in which the cooperative property is located within 10 ~~5~~ working
1209 days after receipt of written request by the board or its
1210 designee. This paragraph may be complied with by having a copy
1211 of the official records of the association available for
1212 inspection or copying on the cooperative property or the
1213 association may offer the option of making the records available
1214 to a unit owner electronically via the Internet or by allowing
1215 the records to be viewed in an electronic format on a computer
1216 screen and printed upon request. The association is not
1217 responsible for the use or misuse of the information provided to
1218 an association member or his or her authorized representative

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1219 pursuant to the compliance requirements of this chapter unless
1220 the association has an affirmative duty not to disclose such
1221 information pursuant to this chapter.

1222 Section 9. Paragraphs (a), (c), and (d) of subsection (1)
1223 of section 719.106, Florida Statutes, are amended, and paragraph
1224 (m) is added to that subsection, to read:

1225 719.106 Bylaws; cooperative ownership.-

1226 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative
1227 documents shall provide for the following, and if they do not,
1228 they shall be deemed to include the following:

1229 (a) *Administration*.—

1230 1. The form of administration of the association shall be
1231 described, indicating the titles of the officers and board of
1232 administration and specifying the powers, duties, manner of
1233 selection and removal, and compensation, if any, of officers and
1234 board members. In the absence of such a provision, the board of
1235 administration shall be composed of five members, unless the
1236 cooperative has ~~except in the case of cooperatives having five~~
1237 ~~or fewer units., in which case in not-for-profit corporations,~~
1238 The board shall consist of not fewer than three members in
1239 cooperatives with five or fewer units that are not-for-profit
1240 corporations. In a residential cooperative association of more
1241 than 10 units, co-owners of a unit may not serve as members of
1242 the board of directors at the same time unless the co-owners own
1243 more than one unit or unless there are not enough eligible
1244 candidates to fill the vacancies on the board at the time of the
1245 vacancy. In the absence of provisions to the contrary, the board
1246 of administration must ~~shall~~ have a president, a secretary, and
1247 a treasurer, who shall perform the duties of those offices

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1248 customarily performed by officers of corporations. Unless
1249 prohibited in the bylaws, the board of administration may
1250 appoint other officers and grant them those duties it deems
1251 appropriate. Unless otherwise provided in the bylaws, the
1252 officers shall serve without compensation and at the pleasure of
1253 the board. Unless otherwise provided in the bylaws, the members
1254 of the board shall serve without compensation.

1255 2. A person who has been suspended or removed by the
1256 division under this chapter, or who is delinquent in the payment
1257 of any monetary obligation due to the association, is not
1258 eligible to be a candidate for board membership and may not be
1259 listed on the ballot. A director or officer charged by
1260 information or indictment with a felony theft or embezzlement
1261 offense involving the association's funds or property is
1262 suspended from office. The board shall fill the vacancy
1263 according to general law until the end of the period of the
1264 suspension or the end of the director's term of office,
1265 whichever occurs first. However, if the charges are resolved
1266 without a finding of guilt or without acceptance of a plea of
1267 guilty or nolo contendere, the director or officer shall be
1268 reinstated for any remainder of his or her term of office. A
1269 member who has such criminal charges pending may not be
1270 appointed or elected to a position as a director or officer. A
1271 person who has been convicted of any felony in this state or in
1272 any United States District Court, or who has been convicted of
1273 any offense in another jurisdiction which would be considered a
1274 felony if committed in this state, is not eligible for board
1275 membership unless such felon's civil rights have been restored
1276 for at least 5 years as of the date such person seeks election

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1277 to the board. The validity of an action by the board is not
1278 affected if it is later determined that a board member is
1279 ineligible for board membership due to having been convicted of
1280 a felony.

1281 3. When a unit owner files a written inquiry by certified
1282 mail with the board of administration, the board shall respond
1283 in writing to the unit owner within 30 days of receipt of the
1284 inquiry. The board's response shall either give a substantive
1285 response to the inquirer, notify the inquirer that a legal
1286 opinion has been requested, or notify the inquirer that advice
1287 has been requested from the division. If the board requests
1288 advice from the division, the board shall, within 10 days of its
1289 receipt of the advice, provide in writing a substantive response
1290 to the inquirer. If a legal opinion is requested, the board
1291 shall, within 60 days after the receipt of the inquiry, provide
1292 in writing a substantive response to the inquirer. The failure
1293 to provide a substantive response to the inquirer as provided
1294 herein precludes the board from recovering attorney's fees and
1295 costs in any subsequent litigation, administrative proceeding,
1296 or arbitration arising out of the inquiry. The association may,
1297 through its board of administration, adopt reasonable rules and
1298 regulations regarding the frequency and manner of responding to
1299 the unit owners' inquiries, one of which may be that the
1300 association is obligated to respond to only one written inquiry
1301 per unit in any given 30-day period. In such case, any
1302 additional inquiry or inquiries must be responded to in the
1303 subsequent 30-day period, or periods, as applicable.

1304 (c) *Board of administration meetings.* ~~Members of the board~~
1305 of administration may use e-mail as a means of communication but

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1306 may not cast a vote on an association matter via e-mail.
1307 Meetings of the board of administration at which a quorum of the
1308 members is present shall be open to all unit owners. Any unit
1309 owner may tape record or videotape meetings of the board of
1310 administration. The right to attend such meetings includes the
1311 right to speak at such meetings with reference to all designated
1312 agenda items. The division shall adopt reasonable rules
1313 governing the tape recording and videotaping of the meeting. The
1314 association may adopt reasonable written rules governing the
1315 frequency, duration, and manner of unit owner statements.
1316 Adequate notice of all meetings shall be posted in a conspicuous
1317 place upon the cooperative property at least 48 continuous hours
1318 preceding the meeting, except in an emergency. Any item not
1319 included on the notice may be taken up on an emergency basis by
1320 at least a majority plus one of the members of the board. Such
1321 emergency action shall be noticed and ratified at the next
1322 regular meeting of the board. Notice of any meeting in which
1323 regular or special assessments against unit owners are to be
1324 considered must specifically state that assessments will be
1325 considered and provide the estimated cost for and description of
1326 the purpose for such assessments. ~~However,~~ Written notice of any
1327 meeting at which nonemergency special assessments, or at which
1328 amendment to rules regarding unit use, will be considered shall
1329 be mailed, delivered, or electronically transmitted to the unit
1330 owners and posted conspicuously on the cooperative property not
1331 less than 14 days before the meeting. Evidence of compliance
1332 with this 14-day notice shall be made by an affidavit executed
1333 by the person providing the notice and filed among the official
1334 records of the association. Upon notice to the unit owners, the

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1335 board shall by duly adopted rule designate a specific location
1336 on the cooperative property upon which all notices of board
1337 meetings shall be posted. In lieu of or in addition to the
1338 physical posting of notice of any meeting of the board of
1339 administration on the cooperative property, the association may,
1340 by reasonable rule, adopt a procedure for conspicuously posting
1341 and repeatedly broadcasting the notice and the agenda on a
1342 closed-circuit cable television system serving the cooperative
1343 association. However, if broadcast notice is used in lieu of a
1344 notice posted physically on the cooperative property, the notice
1345 and agenda must be broadcast at least four times every broadcast
1346 hour of each day that a posted notice is otherwise required
1347 under this section. When broadcast notice is provided, the
1348 notice and agenda must be broadcast in a manner and for a
1349 sufficient continuous length of time so as to allow an average
1350 reader to observe the notice and read and comprehend the entire
1351 content of the notice and the agenda. In addition to any of the
1352 authorized means of providing notice of a meeting of the board,
1353 the association may, by rule, adopt a procedure for
1354 conspicuously posting the meeting notice and the agenda on the
1355 cooperative association's website for at least the minimum
1356 period of time for which a notice of a meeting is also required
1357 to be physically posted on the cooperative property. Any rule
1358 adopted must, in addition to other matters, include a
1359 requirement that the association send an electronic notice in
1360 the same manner as a notice for a meeting of the members, which
1361 must include a hyperlink to the website where the notice is
1362 posted, to unit owners whose e-mail addresses are included in
1363 the association's official records ~~Notice of any meeting in~~

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1364 ~~which regular assessments against unit owners are to be~~
1365 ~~considered for any reason shall specifically contain a statement~~
1366 ~~that assessments will be considered and the nature of any such~~
1367 ~~assessments.~~ Meetings of a committee to take final action on
1368 behalf of the board or to make recommendations to the board
1369 regarding the association budget are subject to the provisions
1370 of this paragraph. Meetings of a committee that does not take
1371 final action on behalf of the board or make recommendations to
1372 the board regarding the association budget are subject to the
1373 provisions of this section, unless those meetings are exempted
1374 from this section by the bylaws of the association.

1375 Notwithstanding any other law to the contrary, the requirement
1376 that board meetings and committee meetings be open to the unit
1377 owners does not apply to board or committee meetings held for
1378 the purpose of discussing personnel matters or meetings between
1379 the board or a committee and the association's attorney, with
1380 respect to proposed or pending litigation, if the meeting is
1381 held for the purpose of seeking or rendering legal advice.

1382 (d) *Shareholder meetings.*—There shall be an annual meeting
1383 of the shareholders. All members of the board of administration
1384 shall be elected at the annual meeting unless the bylaws provide
1385 for staggered election terms or for their election at another
1386 meeting. Any unit owner desiring to be a candidate for board
1387 membership must comply with subparagraph 1. The bylaws must
1388 provide the method for calling meetings, including annual
1389 meetings. Written notice, which must incorporate an
1390 identification of agenda items, shall be given to each unit
1391 owner at least 14 days before the annual meeting and posted in a
1392 conspicuous place on the cooperative property at least 14

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1393 continuous days preceding the annual meeting. Upon notice to the
1394 unit owners, the board must by duly adopted rule designate a
1395 specific location on the cooperative property upon which all
1396 notice of unit owner meetings are posted. In lieu of or in
1397 addition to the physical posting of the meeting notice, the
1398 association may, by reasonable rule, adopt a procedure for
1399 conspicuously posting and repeatedly broadcasting the notice and
1400 the agenda on a closed-circuit cable television system serving
1401 the cooperative association. However, if broadcast notice is
1402 used in lieu of a posted notice, the notice and agenda must be
1403 broadcast at least four times every broadcast hour of each day
1404 that a posted notice is otherwise required under this section.
1405 If broadcast notice is provided, the notice and agenda must be
1406 broadcast in a manner and for a sufficient continuous length of
1407 time to allow an average reader to observe the notice and read
1408 and comprehend the entire content of the notice and the agenda.
1409 In addition to any of the authorized means of providing notice
1410 of a meeting of the shareholders, the association may, by rule,
1411 adopt a procedure for conspicuously posting the meeting notice
1412 and the agenda on the cooperative association's website for at
1413 least the minimum period of time for which a notice of a meeting
1414 is also required to be physically posted on the cooperative
1415 property. Any rule adopted must, in addition to other matters,
1416 include a requirement that the association send an electronic
1417 notice in the same manner as a notice for a meeting of the
1418 members, which must include a hyperlink to the website where the
1419 notice is posted, to unit owners whose e-mail addresses are
1420 included in the association's official records. Unless a unit
1421 owner waives in writing the right to receive notice of the

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1422 annual meeting, the notice of the annual meeting must be sent by
1423 mail, hand delivered, or electronically transmitted to each unit
1424 owner. An officer of the association must provide an affidavit
1425 or United States Postal Service certificate of mailing, to be
1426 included in the official records of the association, affirming
1427 that notices of the association meeting were mailed, hand
1428 delivered, or electronically transmitted, in accordance with
1429 this provision, to each unit owner at the address last furnished
1430 to the association.

1431 1. The board of administration shall be elected by written
1432 ballot or voting machine. A proxy may not be used in electing
1433 the board of administration in general elections or elections to
1434 fill vacancies caused by recall, resignation, or otherwise
1435 unless otherwise provided in this chapter.

1436 a. At least 60 days before a scheduled election, the
1437 association shall mail, deliver, or transmit, whether by
1438 separate association mailing, delivery, or electronic
1439 transmission or included in another association mailing,
1440 delivery, or electronic transmission, including regularly
1441 published newsletters, to each unit owner entitled to vote, a
1442 first notice of the date of the election. Any unit owner or
1443 other eligible person desiring to be a candidate for the board
1444 of administration must give written notice to the association at
1445 least 40 days before a scheduled election. Together with the
1446 written notice and agenda as set forth in this section, the
1447 association shall mail, deliver, or electronically transmit a
1448 second notice of election to all unit owners entitled to vote,
1449 together with a ballot that lists all candidates. Upon request
1450 of a candidate, the association shall include an information

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1451 sheet, no larger than 8 1/2 inches by 11 inches, which must be
1452 furnished by the candidate at least 35 days before the election,
1453 to be included with the mailing, delivery, or electronic
1454 transmission of the ballot, with the costs of mailing, delivery,
1455 or transmission and copying to be borne by the association. The
1456 association is not liable for the contents of the information
1457 sheets provided by the candidates. In order to reduce costs, the
1458 association may print or duplicate the information sheets on
1459 both sides of the paper. The division shall by rule establish
1460 voting procedures consistent with this subparagraph, including
1461 rules establishing procedures for giving notice by electronic
1462 transmission and rules providing for the secrecy of ballots.
1463 Elections shall be decided by a plurality of those ballots cast.
1464 There is no quorum requirement. However, at least 20 percent of
1465 the eligible voters must cast a ballot in order to have a valid
1466 election. A unit owner may not permit any other person to vote
1467 his or her ballot, and any such ballots improperly cast are
1468 invalid. A unit owner who needs assistance in casting the ballot
1469 for the reasons stated in s. 101.051 may obtain assistance in
1470 casting the ballot. Any unit owner violating this provision may
1471 be fined by the association in accordance with s. 719.303. The
1472 regular election must occur on the date of the annual meeting.
1473 This subparagraph does not apply to timeshare cooperatives.
1474 Notwithstanding this subparagraph, an election and balloting are
1475 not required unless more candidates file a notice of intent to
1476 run or are nominated than vacancies exist on the board. Any
1477 challenge to the election process must be commenced within 60
1478 days after the election results are announced.

1479 b. Within 90 days after being elected or appointed to the

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1480 board, each new director shall certify in writing to the
1481 secretary of the association that he or she has read the
1482 association's bylaws, articles of incorporation, proprietary
1483 lease, and current written policies; that he or she will work to
1484 uphold such documents and policies to the best of his or her
1485 ability; and that he or she will faithfully discharge his or her
1486 fiduciary responsibility to the association's members. Within 90
1487 days after being elected or appointed to the board, in lieu of
1488 this written certification, the newly elected or appointed
1489 director may submit a certificate of having satisfactorily
1490 completed the educational curriculum administered by an
1491 education provider as approved by the division pursuant to the
1492 requirements established in chapter 718 within 1 year before or
1493 90 days after the date of election or appointment. The
1494 educational certificate is valid and does not have to be
1495 resubmitted as long as the director serves on the board without
1496 interruption. A director who fails to timely file the written
1497 certification or educational certificate is suspended from
1498 service on the board until he or she complies with this sub-
1499 subparagraph. The board may temporarily fill the vacancy during
1500 the period of suspension. The secretary of the association shall
1501 cause the association to retain a director's written
1502 certification or educational certificate for inspection by the
1503 members for 5 years after a director's election or the duration
1504 of the director's uninterrupted tenure, whichever is longer.
1505 Failure to have such written certification or educational
1506 certificate on file does not affect the validity of any board
1507 action.

1508 2. Any approval by unit owners called for by this chapter,

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1509 or the applicable cooperative documents, must be made at a duly
1510 noticed meeting of unit owners and is subject to this chapter or
1511 the applicable cooperative documents relating to unit owner
1512 decisionmaking, except that unit owners may take action by
1513 written agreement, without meetings, on matters for which action
1514 by written agreement without meetings is expressly allowed by
1515 the applicable cooperative documents or law which provides for
1516 the unit owner action.

1517 3. Unit owners may waive notice of specific meetings if
1518 allowed by the applicable cooperative documents or law. Notice
1519 of meetings of the board of administration, shareholder
1520 meetings, except shareholder meetings called to recall board
1521 members under paragraph (f), and committee meetings may be given
1522 by electronic transmission to unit owners who consent to receive
1523 notice by electronic transmission. A unit owner who consents to
1524 receiving notices by electronic transmission is solely
1525 responsible for removing or bypassing filters that may block
1526 receipt of mass e-mails sent to members on behalf of the
1527 association in the course of giving electronic notices.

1528 4. Unit owners have the right to participate in meetings of
1529 unit owners with reference to all designated agenda items.
1530 However, the association may adopt reasonable rules governing
1531 the frequency, duration, and manner of unit owner participation.

1532 5. Any unit owner may tape record or videotape meetings of
1533 the unit owners subject to reasonable rules adopted by the
1534 division.

1535 6. Unless otherwise provided in the bylaws, a vacancy
1536 occurring on the board before the expiration of a term may be
1537 filled by the affirmative vote of the majority of the remaining

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1538 directors, even if the remaining directors constitute less than
1539 a quorum, or by the sole remaining director. In the alternative,
1540 a board may hold an election to fill the vacancy, in which case
1541 the election procedures must conform to the requirements of
1542 subparagraph 1. unless the association has opted out of the
1543 statutory election process, in which case the bylaws of the
1544 association control. Unless otherwise provided in the bylaws, a
1545 board member appointed or elected under this subparagraph shall
1546 fill the vacancy for the unexpired term of the seat being
1547 filled. Filling vacancies created by recall is governed by
1548 paragraph (f) and rules adopted by the division.

1549
1550 Notwithstanding subparagraphs (b)2. and (d)1., an association
1551 may, by the affirmative vote of a majority of the total voting
1552 interests, provide for a different voting and election procedure
1553 in its bylaws, which vote may be by a proxy specifically
1554 delineating the different voting and election procedures. The
1555 different voting and election procedures may provide for
1556 elections to be conducted by limited or general proxy.

1557 (m) Director or officer delinquencies.—A director or
1558 officer more than 90 days delinquent in the payment of any
1559 monetary obligation due the association is deemed to have
1560 abandoned the office, and such vacancy in the office must be
1561 filled according to law.

1562 Section 10. Paragraph (b) of subsection (1) of section
1563 719.107, Florida Statutes, is amended to read:

1564 719.107 Common expenses; assessment.—

1565 (1)

1566 (b) If so provided in the bylaws, the cost of

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1567 communications services as defined in chapter 202, information
1568 services, or Internet services ~~a master antenna television~~
1569 ~~system or duly franchised cable television service~~ obtained
1570 pursuant to a bulk contract shall be deemed a common expense,
1571 and if not obtained pursuant to a bulk contract, such cost shall
1572 be considered common expense if it is designated as such in a
1573 written contract between the board of administration and the
1574 company providing the communications services as defined in
1575 chapter 202, information services, or Internet services ~~master~~
1576 ~~television antenna system or the cable television service~~. The
1577 contract shall be for a term of not less than 2 years.

1578 1. Any contract made by the board after April 2, 1992, for
1579 a community antenna system or duly franchised cable television
1580 service, communications services as defined in chapter 202,
1581 information services, or Internet services may be canceled by a
1582 majority of the voting interests present at the next regular or
1583 special meeting of the association. Any member may make a motion
1584 to cancel the contract, but if no motion is made or if such
1585 motion fails to obtain the required majority at the next regular
1586 or special meeting, whichever is sooner, following the making of
1587 the contract, then such contract shall be deemed ratified for
1588 the term therein expressed.

1589 2. Any such contract shall provide, and shall be deemed to
1590 provide if not expressly set forth, that any hearing impaired or
1591 legally blind unit owner who does not occupy the unit with a
1592 nonhearing impaired or sighted person may discontinue the
1593 service without incurring disconnect fees, penalties, or
1594 subsequent service charges, and as to such units, the owners may
1595 ~~shall~~ not be required to pay any common expenses charge related

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1596 to such service. If less than all members of an association
1597 share the expenses of cable television, the expense shall be
1598 shared equally by all participating unit owners. The association
1599 may use the provisions of s. 719.108 to enforce payment of the
1600 shares of such costs by the unit owners receiving cable
1601 television.

1602 Section 11. Paragraph (b) of subsection (3) of section
1603 719.303, Florida Statutes, is amended to read:

1604 719.303 Obligations of owners.—

1605 (3) The association may levy reasonable fines for failure
1606 of the unit owner or the unit's occupant, licensee, or invitee
1607 to comply with any provision of the cooperative documents or
1608 reasonable rules of the association. A fine may not become a
1609 lien against a unit. A fine may be levied by the board on the
1610 basis of each day of a continuing violation, with a single
1611 notice and opportunity for hearing before a committee as
1612 provided in paragraph (b). However, the fine may not exceed \$100
1613 per violation, or \$1,000 in the aggregate.

1614 (b) A fine or suspension levied by the board of
1615 administration may not be imposed unless the board first
1616 provides at least 14 days' written notice ~~and an opportunity for~~
1617 ~~a hearing~~ to the unit owner and, if applicable, to any its
1618 occupant, licensee, or invitee of the unit owner sought to be
1619 fined or suspended and provides an opportunity for a hearing.
1620 ~~The hearing must be held~~ before a committee of at least three
1621 members appointed by the board who are not officers, directors,
1622 or employees of the association, or the spouse, parent, child,
1623 brother, or sister of an officer, director, or employee ~~other~~
1624 ~~unit owners who are neither board members nor persons residing~~

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1625 ~~in a board member's household.~~ The role of the committee is
1626 limited to determining whether to confirm or reject the fine or
1627 suspension levied by the board. If the committee does not
1628 approve ~~agree with~~ the proposed fine or suspension by majority
1629 vote, the fine or suspension ~~it~~ may not be imposed. If the
1630 proposed fine or suspension is approved by the committee, the
1631 fine payment is due 5 days after the date of the committee
1632 meeting at which the fine is approved. The association must
1633 provide written notice of such fine or suspension by mail or
1634 hand delivery to the unit owner and, if applicable, to any
1635 tenant, licensee, or invitee of the unit owner.

1636 Section 12. Paragraphs (a) and (c) of subsection (2) and
1637 paragraphs (b) through (h) of subsection (6) of section 720.303,
1638 Florida Statutes, are amended, and paragraphs (i) and (j) are
1639 added to subsection (6) of that section, to read:

1640 720.303 Association powers and duties; meetings of board;
1641 official records; budgets; financial reporting; association
1642 funds; recalls.—

1643 (2) BOARD MEETINGS.—

1644 (a) Members of the board of administration may use e-mail
1645 as a means of communication, but may not cast a vote on an
1646 association matter via e-mail. A meeting of the board of
1647 directors of an association occurs whenever a quorum of the
1648 board gathers to conduct association business. Meetings of the
1649 board must be open to all members, except for meetings between
1650 the board and its attorney with respect to proposed or pending
1651 litigation where the contents of the discussion would otherwise
1652 be governed by the attorney-client privilege. A meeting of the
1653 board must be held at a location that is accessible to a

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1654 physically handicapped person if requested by a physically
1655 handicapped person who has a right to attend the meeting. The
1656 provisions of this subsection shall also apply to the meetings
1657 of any committee or other similar body when a final decision
1658 will be made regarding the expenditure of association funds and
1659 to meetings of any body vested with the power to approve or
1660 disapprove architectural decisions with respect to a specific
1661 parcel of residential property owned by a member of the
1662 community.

1663 (c) The bylaws shall provide the following for giving
1664 notice to parcel owners and members of all board meetings and,
1665 if they do not do so, shall be deemed to include ~~provide~~ the
1666 following:

1667 1. Notices of all board meetings must be posted in a
1668 conspicuous place in the community at least 48 hours in advance
1669 of a meeting, except in an emergency. In the alternative, if
1670 notice is not posted in a conspicuous place in the community,
1671 notice of each board meeting must be mailed or delivered to each
1672 member at least 7 days before the meeting, except in an
1673 emergency. Notwithstanding this general notice requirement, for
1674 communities with more than 100 members, the association bylaws
1675 may provide for a reasonable alternative to posting or mailing
1676 of notice for each board meeting, including publication of
1677 notice, provision of a schedule of board meetings, or the
1678 conspicuous posting and repeated broadcasting of the notice on a
1679 closed-circuit cable television system serving the homeowners'
1680 association. However, if broadcast notice is used in lieu of a
1681 notice posted physically in the community, the notice must be
1682 broadcast at least four times every broadcast hour of each day

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1683 that a posted notice is otherwise required. When broadcast
1684 notice is provided, the notice and agenda must be broadcast in a
1685 manner and for a sufficient continuous length of time so as to
1686 allow an average reader to observe the notice and read and
1687 comprehend the entire content of the notice and the agenda. The
1688 association may provide notice by electronic transmission in a
1689 manner authorized by law for meetings of the board of directors,
1690 committee meetings requiring notice under this section, and
1691 annual and special meetings of the members to any member who has
1692 provided a facsimile number or e-mail address to the association
1693 to be used for such purposes; however, a member must consent in
1694 writing to receiving notice by electronic transmission.

1695 2. An assessment may not be levied at a board meeting
1696 unless the notice of the meeting includes a statement that
1697 assessments will be considered and the nature of the
1698 assessments. Written notice of any meeting at which special
1699 assessments will be considered or at which amendments to rules
1700 regarding parcel use will be considered must be mailed,
1701 delivered, or electronically transmitted to the members and
1702 parcel owners and posted conspicuously on the property or
1703 broadcast on closed-circuit cable television not less than 14
1704 days before the meeting.

1705 3. Directors may not vote by proxy or by secret ballot at
1706 board meetings, except that secret ballots may be used in the
1707 election of officers. This subsection also applies to the
1708 meetings of any committee or other similar body, when a final
1709 decision will be made regarding the expenditure of association
1710 funds, and to any body vested with the power to approve or
1711 disapprove architectural decisions with respect to a specific

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1712 parcel of residential property owned by a member of the
1713 community.

1714 (6) BUDGETS; BUDGET MEETINGS.—

1715 (b) In addition to annual operating expenses, for all
1716 associations incorporated on or after July 1, 2018, and any
1717 association incorporated before that date that, by a majority
1718 vote of the members of the association who are present at a
1719 meeting, in person or by proxy, at which a quorum is present,
1720 affirmatively votes to be bound by the provisions of this
1721 subsection, the budget must ~~may~~ include reserve accounts for the
1722 capital expenditures and deferred maintenance of any item with a
1723 deferred maintenance expense exceeding \$100,000 which is the
1724 obligation of ~~for which~~ the association under is responsible. If
1725 reserve accounts are not established pursuant to paragraph (d),
1726 funding of such reserves is limited to the extent that the
1727 governing documents. However, subsequent to the transfer of
1728 control of the association to its members, other than pursuant
1729 to s. 720.307, and the developer no longer having authority to
1730 appoint members to the board of directors, the board of
1731 directors may elect to reserve money for any item that has a
1732 deferred maintenance expense exceeding \$25,000. The board may
1733 elect to reserve money for any item that has a deferred
1734 maintenance expense of less than \$25,000 if approved by a
1735 majority of the members present at a meeting, in person or by
1736 proxy, at which a quorum is present. The amount to be reserved
1737 must be calculated using a formula based upon the estimated
1738 deferred maintenance expense of each reserve item divided by the
1739 estimated remaining useful life of that item. However, and
1740 notwithstanding the amount disclosed as being the total required

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1741 reserve amount, each parcel that is obligated to pay annual
1742 reserves to the association each year must be assessed for only
1743 the amount determined by dividing the total annual reserve
1744 amount disclosed in the budget by the total number of parcels
1745 that will ultimately be operated by the association. The
1746 assessments actually collected must be less than the full amount
1747 of required reserves as disclosed in the proposed annual budget
1748 until all parcels that will ultimately be operated by the
1749 association are obligated to pay assessments for reserves. The
1750 association may adjust the deferred maintenance reserve
1751 assessments annually to take into account any changes in
1752 estimates or the useful life of a reserve item, of the
1753 anticipated cost of the deferred maintenance, or any changes in
1754 the number of parcels that will ultimately be operated by the
1755 association. This paragraph does not apply to an adopted budget
1756 when the members of the association have determined, by a
1757 majority vote of the members present at a meeting, in person or
1758 by proxy, at which a quorum is present, not to provide reserves
1759 or reserves in an amount less than required by this subsection
1760 ~~limit increases in assessments, including reserves. If the~~
1761 ~~budget of the association includes reserve accounts established~~
1762 ~~pursuant to paragraph (d), such reserves shall be determined,~~
1763 ~~maintained, and waived in the manner provided in this~~
1764 ~~subsection. Once an association provides for reserve accounts~~
1765 ~~pursuant to paragraph (d), the association shall thereafter~~
1766 ~~determine, maintain, and waive reserves in compliance with this~~
1767 ~~subsection. This paragraph section does not preclude an~~
1768 association from ceasing to add money to a reserve account
1769 established pursuant to this paragraph upon a majority vote of

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1770 the members present at a meeting, in person or by proxy, at
1771 which a quorum is present. Upon such approval, reserves may not
1772 be included in the budget for that year. Only parcels with
1773 completed improvements as evidenced by certificates of occupancy
1774 for such improvements are obligated to pay assessments for
1775 reserves. A developer who subsidizes the association's budget
1776 under s. 720.308(1) or establishes a guarantee under s.
1777 720.308(2), is not obligated to include reserve contributions in
1778 any such guarantee or subsidy payment ~~the termination of a~~
1779 ~~reserve account established pursuant to this paragraph upon~~
1780 ~~approval of a majority of the total voting interests of the~~
1781 ~~association. Upon such approval, the terminating reserve account~~
1782 ~~shall be removed from the budget.~~

1783 (c)1. The developer may vote the voting interests allocated
1784 to its parcels with completed improvements, as evidenced by
1785 certificates of occupancy for such improvements, to waive the
1786 reserves or reduce the funding of reserves. If a meeting of the
1787 parcel owners has been called to waive or reduce the funding of
1788 reserves and a waiver or reduction is not achieved or a quorum
1789 is not present, the reserves required by paragraph (b) must be
1790 maintained ~~If the budget of the association does not provide for~~
1791 ~~reserve accounts pursuant to paragraph (d) and the association~~
1792 ~~is responsible for the repair and maintenance of capital~~
1793 ~~improvements that may result in a special assessment if reserves~~
1794 ~~are not provided, each financial report for the preceding fiscal~~
1795 ~~year required by subsection (7) must contain the following~~
1796 ~~statement in conspicuous type:~~
1797 ~~THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE~~
1798 ~~ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT~~

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1799 ~~MAY RESULT IN SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE~~
1800 ~~FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6), FLORIDA~~
1801 ~~STATUTES, UPON OBTAINING THE APPROVAL OF A MAJORITY OF THE TOTAL~~
1802 ~~VOTING INTERESTS OF THE ASSOCIATION BY VOTE OF THE MEMBERS AT A~~
1803 ~~MEETING OR BY WRITTEN CONSENT.~~

1804 ~~2. If the budget of the association does provide for~~
1805 ~~funding accounts for deferred expenditures, including, but not~~
1806 ~~limited to, funds for capital expenditures and deferred~~
1807 ~~maintenance, but such accounts are not created or established~~
1808 ~~pursuant to paragraph (d), each financial report for the~~
1809 ~~preceding fiscal year required under subsection (7) must also~~
1810 ~~contain the following statement in conspicuous type:~~
1811 ~~THE BUDGET OF THE ASSOCIATION PROVIDES FOR LIMITED VOLUNTARY~~
1812 ~~DEFERRED EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES~~
1813 ~~AND DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED~~
1814 ~~IN OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED~~
1815 ~~TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(6),~~
1816 ~~FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE~~
1817 ~~RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR~~
1818 ~~ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.~~

1819 ~~(d) Reserve funds and any interest accruing thereon must~~
1820 ~~remain in the reserve account or accounts and may be used only~~
1821 ~~for deferred maintenance An association is deemed to have~~
1822 ~~provided for reserve accounts if reserve accounts have been~~
1823 ~~initially established by the developer or if the membership of~~
1824 ~~the association affirmatively elects to provide for reserves. If~~
1825 ~~reserve accounts are established by the developer, the budget~~
1826 ~~must designate the components for which the reserve accounts may~~
1827 ~~be used. If reserve accounts are not initially provided by the~~

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1828 ~~developer, the membership of the association may elect to do so~~
1829 ~~upon the affirmative approval of a majority of the total voting~~
1830 ~~interests of the association. Such approval may be obtained by~~
1831 ~~vote of the members at a duly called meeting of the membership~~
1832 ~~or by the written consent of a majority of the total voting~~
1833 ~~interests of the association. The approval action of the~~
1834 ~~membership must state that reserve accounts shall be provided~~
1835 ~~for in the budget and must designate the components for which~~
1836 ~~the reserve accounts are to be established. Upon approval by the~~
1837 ~~membership, the board of directors shall include the required~~
1838 ~~reserve accounts in the budget in the next fiscal year following~~
1839 ~~the approval and each year thereafter. Once established as~~
1840 ~~provided in this subsection, the reserve accounts must be funded~~
1841 ~~or maintained or have their funding waived in the manner~~
1842 ~~provided in paragraph (f).~~

1843 (e) The only voting interests that are eligible to vote on
1844 questions that involve waiving or reducing the funding of
1845 reserves are the voting interests of the parcels subject to
1846 assessment to fund the reserves in question. Any vote taken
1847 pursuant to this subsection to waive or reduce reserves is
1848 applicable only for 1 budget year. Proxy questions relating to
1849 waiving or reducing the funding of reserves must contain the
1850 following statement in capitalized, bold letters in a font size
1851 larger than any other used on the face of the proxy ballot:
1852 WAIVING OF RESERVES, IN WHOLE OR IN PART, MAY RESULT IN PARCEL
1853 OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS
1854 REGARDING THOSE ITEMS ~~The amount to be reserved in any account~~
1855 ~~established shall be computed by means of a formula that is~~
1856 ~~based upon estimated remaining useful life and estimated~~

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1857 ~~replacement cost or deferred maintenance expense of each reserve~~
1858 ~~item. The association may adjust replacement reserve assessments~~
1859 ~~annually to take into account any changes in estimates of cost~~
1860 ~~or useful life of a reserve item.~~

1861 (f) Except as provided in paragraph (g), funding formulas
1862 for reserves required by this section must be based on a pooled
1863 analysis method of two or more of the assets for which reserves
1864 are required to be accrued. The projected annual cash inflows
1865 may include estimated earnings from investment of principal. The
1866 reserve funding formula must result in constant funding each
1867 year. However, based on the method for calculating the
1868 assessment for reserves as described in paragraph (b), the
1869 assessments actually collected may be less than the full amount
1870 of required reserves disclosed in the proposed annual budget
1871 until all parcels that will ultimately be operated by the
1872 association are obligated to pay assessments for reserves After
1873 ~~one or more reserve accounts are established, the membership of~~
1874 ~~the association, upon a majority vote at a meeting at which a~~
1875 ~~quorum is present, may provide for no reserves or less reserves~~
1876 ~~than required by this section. If a meeting of the unit owners~~
1877 ~~has been called to determine whether to waive or reduce the~~
1878 ~~funding of reserves and such result is not achieved or a quorum~~
1879 ~~is not present, the reserves as included in the budget go into~~
1880 ~~effect. After the turnover, the developer may vote its voting~~
1881 ~~interest to waive or reduce the funding of reserves. Any vote~~
1882 ~~taken pursuant to this subsection to waive or reduce reserves is~~
1883 ~~applicable only to one budget year.~~

1884 (g) As an alternative to the pooled analysis method
1885 described in paragraph (f), if approved by a majority vote of

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1886 the members present at a meeting, in person or by proxy, at
1887 which a quorum is present, the funding formulas for the
1888 disclosure of reserves required ~~authorized~~ by this section may
1889 ~~must~~ be based on a separate analysis of each of the required
1890 assets under the straight-line accounting method ~~or a pooled~~
1891 ~~analysis of two or more of the required assets.~~

1892 ~~1.~~ If the association maintains separate reserve accounts
1893 for each of the required assets, under the straight-line
1894 accounting method the amount of the contribution to each reserve
1895 account is the sum of the following two calculations:

1896 ~~1.a.~~ The total amount necessary, if any, to bring a
1897 negative component balance to zero.

1898 ~~2.b.~~ The total estimated deferred maintenance expense or
1899 estimated replacement cost of the reserve component less the
1900 estimated balance of the reserve component as of the beginning
1901 of the period the budget will be in effect. The remainder, if
1902 greater than zero, shall be divided by the estimated remaining
1903 useful life of the component.

1904
1905 The formula may be adjusted each year for changes in estimates
1906 and deferred maintenance performed during the year and may
1907 include factors such as inflation and earnings on invested
1908 funds. An association may convert its funding formulas from a
1909 straight-line accounting method to a pooled analysis method, as
1910 described in paragraph (f), and back to a straight-line
1911 accounting method at any time if approved by a majority vote of
1912 the members present at a meeting, in person or by proxy, at
1913 which a quorum is present.

1914 ~~2. If the association maintains a pooled account of two or~~

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1915 ~~more of the required reserve assets, the amount of the~~
1916 ~~contribution to the pooled reserve account as disclosed on the~~
1917 ~~proposed budget may not be less than that required to ensure~~
1918 ~~that the balance on hand at the beginning of the period the~~
1919 ~~budget will go into effect plus the projected annual cash~~
1920 ~~inflows over the remaining estimated useful life of all of the~~
1921 ~~assets that make up the reserve pool are equal to or greater~~
1922 ~~than the projected annual cash outflows over the remaining~~
1923 ~~estimated useful lives of all the assets that make up the~~
1924 ~~reserve pool, based on the current reserve analysis. The~~
1925 ~~projected annual cash inflows may include estimated earnings~~
1926 ~~from investment of principal and accounts receivable minus the~~
1927 ~~allowance for doubtful accounts. The reserve funding formula may~~
1928 ~~not include any type of balloon payments.~~

1929 (h)1. Meetings at which a proposed annual budget of an
1930 association will be considered by the board must be open to all
1931 parcel owners ~~Reserve funds and any interest accruing thereon~~
1932 ~~shall remain in the reserve account or accounts and shall be~~
1933 ~~used only for authorized reserve expenditures unless their use~~
1934 ~~for other purposes is approved in advance by a majority vote at~~
1935 ~~a meeting at which a quorum is present. Prior to turnover of~~
1936 ~~control of an association by a developer to parcel owners, the~~
1937 ~~developer-controlled association shall not vote to use reserves~~
1938 ~~for purposes other than those for which they were intended~~
1939 ~~without the approval of a majority of all nondeveloper voting~~
1940 ~~interests voting in person or by limited proxy at a duly called~~
1941 ~~meeting of the association.~~

1942 2.a. If a board adopts an annual budget that requires
1943 assessments against parcel owners which exceed 115 percent of

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1944 assessments for the preceding fiscal year and the board
1945 receives, within 21 days after adoption of the annual budget, a
1946 written request for a special meeting from at least 10 percent
1947 of all voting interests, the board must conduct a special
1948 meeting of the parcel owners to consider a substitute budget.
1949 The special meeting must be conducted within 60 days after
1950 adoption of the annual budget. At least 14 days before such
1951 special meeting, the board shall hand deliver to each parcel
1952 owner, or mail to each parcel owner at the address last
1953 furnished to the association, a notice of the meeting. An
1954 officer or manager of the association, or other person providing
1955 notice of such meeting, shall execute an affidavit evidencing
1956 compliance with this notice requirement and file the affidavit
1957 among the official records of the association. Parcel owners may
1958 consider and adopt a substitute budget at the special meeting. A
1959 substitute budget is adopted if approved by a majority of all
1960 voting interests unless the governing documents require adoption
1961 by a greater percentage of voting interests. If there is not a
1962 quorum at the special meeting or a substitute budget is not
1963 adopted, the annual budget previously adopted by the board takes
1964 effect as scheduled.

1965 b. Any determination on whether assessments exceed 115
1966 percent of assessments for the prior fiscal year shall exclude
1967 any provision for reasonable reserves for repair or deferred
1968 maintenance of items that are the obligation of the association
1969 under the governing documents, anticipated expenses of the
1970 association which the board does not expect to be incurred on a
1971 regular or annual basis, or assessments for improvements to the
1972 common areas or association property, or other items that are

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1973 the obligation of the association under the governing documents.

1974 (i) Paragraphs (b)-(g) do not apply to mandatory reserve
1975 accounts for the deferred maintenance of the infrastructure
1976 which are required to be established and maintained by an
1977 association at the direction of a county or municipal
1978 government, water or drainage management district, community
1979 development district, or other political subdivision that has
1980 the authority to approve and control subdivision infrastructure
1981 that is being entrusted to the care of an association.

1982 (j) Reserve funds must be held in a separate bank account
1983 established for such funds.

1984 Section 13. Paragraph (b) of subsection (2) of section
1985 720.305, Florida Statutes, is amended to read:

1986 720.305 Obligations of members; remedies at law or in
1987 equity; levy of fines and suspension of use rights.-

1988 (2) The association may levy reasonable fines. A fine may
1989 not exceed \$100 per violation against any member or any member's
1990 tenant, guest, or invitee for the failure of the owner of the
1991 parcel or its occupant, licensee, or invitee to comply with any
1992 provision of the declaration, the association bylaws, or
1993 reasonable rules of the association unless otherwise provided in
1994 the governing documents. A fine may be levied by the board for
1995 each day of a continuing violation, with a single notice and
1996 opportunity for hearing, except that the fine may not exceed
1997 \$1,000 in the aggregate unless otherwise provided in the
1998 governing documents. A fine of less than \$1,000 may not become a
1999 lien against a parcel. In any action to recover a fine, the
2000 prevailing party is entitled to reasonable attorney fees and
2001 costs from the nonprevailing party as determined by the court.

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2002 (b) A fine or suspension levied ~~may not be imposed~~ by the
2003 board of administration may not be imposed unless the board
2004 first provides ~~without~~ at least 14 days' notice to the parcel
2005 owner and, if applicable, to any occupant, licensee, or invitee
2006 of the parcel owner, person sought to be fined or suspended and
2007 provides an opportunity for a hearing before a committee of at
2008 least three members appointed by the board who are not officers,
2009 directors, or employees of the association, or the spouse,
2010 parent, child, brother, or sister of an officer, director, or
2011 employee. If the committee, by majority vote, does not approve a
2012 proposed fine or suspension, the proposed fine or suspension ~~it~~
2013 may not be imposed. The role of the committee is limited to
2014 determining whether to confirm or reject the fine or suspension
2015 levied by the board. If the proposed ~~board of administration~~
2016 ~~imposes a~~ fine or suspension levied by the board is approved by
2017 the committee, the fine payment is due 5 days after the date of
2018 the committee meeting at which the fine is approved. The
2019 association shall ~~must~~ provide written notice of such fine or
2020 suspension by mail or hand delivery to the parcel owner and, if
2021 applicable, to any tenant, licensee, or invitee of the parcel
2022 owner.

2023 Section 14. Paragraph (a) of subsection (9) of section
2024 720.306, Florida Statutes, is amended to read:

2025 720.306 Meetings of members; voting and election
2026 procedures; amendments.—

2027 (9) ELECTIONS AND BOARD VACANCIES.—

2028 (a) Elections of directors must be conducted in accordance
2029 with the procedures set forth in the governing documents of the
2030 association. Except as provided in paragraph (b), all members of

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2031 the association are eligible to serve on the board of directors,
2032 and a member may nominate himself or herself as a candidate for
2033 the board at a meeting where the election is to be held;
2034 provided, however, that if the election process allows
2035 candidates to be nominated in advance of the meeting, the
2036 association is not required to allow nominations at the meeting.
2037 An election is not required unless more candidates are nominated
2038 than vacancies exist. If an election is not required because
2039 there are either an equal number of candidates or fewer
2040 qualified candidates than vacancies, and if nominations from the
2041 floor are not required pursuant to this section or the bylaws,
2042 write-in nominations are not permitted, and such qualified
2043 candidates shall commence service on the board of directors,
2044 regardless of whether a quorum is attained at the annual
2045 meeting. Except as otherwise provided in the governing
2046 documents, boards of directors must be elected by a plurality of
2047 the votes cast by eligible voters. Any challenge to the election
2048 process must be commenced within 60 days after the election
2049 results are announced.

2050 Section 15. Paragraph (b) of subsection (3) of section
2051 720.3085, Florida Statutes, is amended to read:

2052 720.3085 Payment for assessments; lien claims.—

2053 (3) Assessments and installments on assessments that are
2054 not paid when due bear interest from the due date until paid at
2055 the rate provided in the declaration of covenants or the bylaws
2056 of the association, which rate may not exceed the rate allowed
2057 by law. If no rate is provided in the declaration or bylaws,
2058 interest accrues at the rate of 18 percent per year.

2059 (b) Any payment received by an association and accepted

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2060 must ~~shall~~ be applied first to any interest accrued, then to any
 2061 administrative late fee, then to any costs and reasonable
 2062 attorney fees incurred in collection, and then to the delinquent
 2063 assessment. This paragraph applies notwithstanding any
 2064 restrictive endorsement, designation, or instruction placed on
 2065 or accompanying a payment. A late fee is not subject to ~~the~~
 2066 ~~provisions of chapter 687 and is not a fine.~~ This paragraph is
 2067 applicable notwithstanding s. 673.3111, any purported accord and
 2068 satisfaction, or any restrictive endorsement, designation, or
 2069 instruction placed on or accompanying a payment. The preceding
 2070 sentence is intended to clarify existing law.

2071 Section 16. Paragraph (a) of subsection (1) of section
 2072 720.401, Florida Statutes, is amended to read:

2073 720.401 Prospective purchasers subject to association
 2074 membership requirement; disclosure required; covenants;
 2075 assessments; contract cancellation.—

2076 (1) (a) A prospective parcel owner in a community must be
 2077 presented a disclosure summary before executing the contract for
 2078 sale. The disclosure summary must be in a form substantially
 2079 similar to the following form:

2080
 2081 DISCLOSURE SUMMARY
 2082 FOR
 2083 (NAME OF COMMUNITY)
 2084

2085 1. AS A PURCHASER OF PROPERTY IN THIS COMMUNITY, YOU WILL
 2086 BE OBLIGATED TO BE A MEMBER OF A HOMEOWNERS' ASSOCIATION.

2087 2. THERE HAVE BEEN OR WILL BE RECORDED RESTRICTIVE
 2088 COVENANTS GOVERNING THE USE AND OCCUPANCY OF PROPERTIES IN THIS

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2089 COMMUNITY.

2090 3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE
 2091 ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF
 2092 APPLICABLE, THE CURRENT AMOUNT IS \$.... PER

2093 YOU WILL ALSO
 2094 BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE
 2095 ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE.
 2096 IF APPLICABLE, THE CURRENT AMOUNT IS \$.... PER

2096 4. YOU MAY BE OBLIGATED TO PAY SPECIAL ASSESSMENTS TO THE
 2097 RESPECTIVE MUNICIPALITY, COUNTY, OR SPECIAL DISTRICT. ALL
 2098 ASSESSMENTS ARE SUBJECT TO PERIODIC CHANGE.

2099 5. YOUR FAILURE TO PAY SPECIAL ASSESSMENTS OR ASSESSMENTS
 2100 LEVIED BY A MANDATORY HOMEOWNERS' ASSOCIATION COULD RESULT IN A
 2101 LIEN ON YOUR PROPERTY.

2102 6. THE BUDGET OF THE ASSOCIATION DOES NOT NECESSARILY
 2103 INCLUDE RESERVE FUNDS FOR DEFERRED MAINTENANCE SUFFICIENT TO
 2104 COVER THE FULL COST OF DEFERRED MAINTENANCE OF COMMON AREAS. YOU
 2105 SHOULD REVIEW THE BUDGET TO DETERMINE THE LEVEL OF RESERVE
 2106 FUNDING, IF ANY.

2107 ~~7.6.~~ THERE MAY BE AN OBLIGATION TO PAY RENT OR LAND USE
 2108 FEES FOR RECREATIONAL OR OTHER COMMONLY USED FACILITIES AS AN
 2109 OBLIGATION OF MEMBERSHIP IN THE HOMEOWNERS' ASSOCIATION. IF
 2110 APPLICABLE, THE CURRENT AMOUNT IS \$.... PER

2111 ~~8.7.~~ THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE
 2112 RESTRICTIVE COVENANTS WITHOUT THE APPROVAL OF THE ASSOCIATION
 2113 MEMBERSHIP OR THE APPROVAL OF THE PARCEL OWNERS.

2114 ~~9.8.~~ THE STATEMENTS CONTAINED IN THIS DISCLOSURE FORM ARE
 2115 ONLY SUMMARY IN NATURE, AND, AS A PROSPECTIVE PURCHASER, YOU
 2116 SHOULD REFER TO THE COVENANTS AND THE ASSOCIATION GOVERNING
 2117 DOCUMENTS BEFORE PURCHASING PROPERTY.

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 1076

INTRODUCER: Senator Steube

SUBJECT: Franchises

DATE: January 30, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	McSwain	RI	Favorable
2.			JU	
3.			RC	

I. Summary:

SB 1076 creates the “Protect Florida Small Business Act” (act). The act regulates the conduct of franchisors and their representatives to prevent fraud, unfair business practices, unfair methods of competition, impositions, and other abuses upon franchisees in Florida. The bill addresses requirements for sale, transfer, or assignment of franchises.

The bill provides that a franchise agreement in violation of any provision in the act is void and unenforceable, as is any provision that restricts, to a jurisdiction outside of Florida, the location (venue) of an action related to a claim arising under a franchise agreement, if the claim involves a franchisee who was a resident of Florida when the franchise agreement was signed, or a business entity established in Florida, or a franchise either operating or to be operated in Florida. Furthermore, the bill provides the act does not apply to a franchise agreement between a Florida franchisor and a franchisee who has no connections to Florida (i.e., was not a resident of Florida when the franchise agreement was signed, or a business entity established in Florida, or involving a franchise either operating or to be operated in Florida), even if the franchise agreement says Florida law applies.

SB 1076 has an indeterminate fiscal impact on state government. See Section V. Fiscal Impact Statement.

The bill is effective upon becoming law.

II. Present Situation:

The regulation of franchising in Florida is addressed in multiple provisions of Florida law. Chapter 817, F.S. relating to Fraudulent Practices, includes provisions concerning False Pretenses and Frauds.¹

Florida Franchise Act

Section 817.416, F.S., deals with requirements for the relationship between a franchisee and a franchisor.² That statute defines the term “franchise or distributorship” to mean:

[A] contract or agreement, either expressed or implied, whether oral or written, between two or more persons:

1. Wherein a commercial relationship of definite duration or continuing indefinite duration is involved;
2. Wherein one party, hereinafter called the “franchisee,” is granted the right to offer, sell, and distribute goods or services manufactured, processed, distributed or, in the case of services, organized and directed by another party;
3. Wherein the franchisee as an independent business constitutes a component of franchisor’s distribution system; and
4. Wherein the operation of the franchisee’s business franchise is substantially reliant on franchisors for the basic supply of goods.³

The term “goods,” means “any article or thing without limitation, or any part of such article or thing, including any article or thing used or consumed by a franchisee in rendering a service established, organized, directed, or approved by a franchisor.”⁴

It is unlawful for any person selling or establishing a franchise or distributorship to intentionally:

- Misrepresent the prospects or chances for success of a proposed or existing franchise or distributorship;
- Misrepresent, by failure to disclose or otherwise, the known required total investment for such franchise or distributorship; or
- Misrepresent, or fail to disclose efforts to sell or establish more franchises or distributorships than is reasonable to expect the market or market area for the franchise or distributorship to sustain.⁵

The execution or carrying out of a scheme, plan, or corporate organization in violation of s. 817.416, F.S., if knowledge or intent is proved, is a second degree misdemeanor.⁶

¹ See part I of ch. 817, F.S.

² Section 817.416, F.S. has not been amended since 1971. See ch. 71-61, Laws of Fla. While popularly referred as the “Florida Franchise Act,” the law does not cite s. 817.416, F.S., as such.

³ See s. 817.416(1)(b), F.S.

⁴ Section 817.416(1)(c), F.S.

⁵ See s. 817.416(2), F.S.

⁶ Section 775.082, F.S., provides that a misdemeanor of the second degree is punishable by a term of imprisonment not to exceed 60 days. Section 775.083, F.S. provides that a misdemeanor of the second degree is punishable by a fine not to exceed \$500.

In addition, a person who proves a violation of s. 817.416, F.S., may be granted a judgment for all moneys invested in a franchise or distributorship. Upon such a showing of proof, a court may award the successful plaintiff reasonable attorney's fees and must award reasonable costs incurred in bringing the action.⁷

The Department of Legal Affairs, or the Department of Legal Affairs and the Department of Agriculture and Consumer Services jointly, on behalf of the people of Florida, may sue for injunctive relief against franchise or distributorship plans or activities that engage in the intentional misrepresentations described above.⁸

The Florida Sale of Business Opportunities Act

The Florida Sale of Business Opportunities Act (SBOA)⁹ requires persons offering business opportunities to make specified disclosures about the business to a prospective purchaser.¹⁰ The required disclosures must be made if the purchaser is required to pay an initial fee or sum of money exceeding \$500 to the seller, and if the seller represents that the seller:¹¹

- Will provide locations or assist the purchaser in finding locations for the use or operation of vending machines, racks, display cases, currency or card operated equipment, or other similar devices or currency-operated amusement machines or devices on premises neither owned nor leased by the purchaser or seller;
- Will purchase any or all products made, produced, fabricated, grown, bred, or modified by the purchaser using in whole or in part the supplies, services, or chattels sold to the purchaser;
- Guarantees a partial or full refund to the seller; or
- Provides a sales program or marketing program, excepting a sales or marketing program made in conjunction with the licensing of a registered trademark or service mark.

A "business opportunity" does not include the sale of ongoing businesses when the owner sells and intends to sell up to five businesses, the sale of not-for-profit demonstration equipment, materials, or samples for a price up to \$500 or any sales training course offered by the seller at a cost up to \$500, or the sale or lease of laundry and drycleaning equipment.¹²

The sale of a franchise is exempt from the required disclosures if the franchise satisfies the Federal Trade Commission's (FTC) definition of a franchise¹³ and applies for the exemption with the Department of Agriculture and Consumers (DACs).¹⁴

⁷ See s. 817.416(3), F.S.

⁸ See s. 817.416(4), F.S.

⁹ Part VII of ch. 559, F.S.

¹⁰ Section 559.803, F.S.

¹¹ Section 559.801(1)(a), F.S.

¹² Section 559.801(1)(b), F.S.

¹³ See *Federal Trade Commission, Franchise Rule, 16 CFR, Part 436 Compliance Guide*, (FTC Compliance Guide) at : <https://www.ftc.gov/system/files/documents/plain-language/bus70-franchise-rule-compliance-guide.pdf> (last visited Jan. 22, 2018). The FTC Compliance Guide provides a sample disclosure document and general instructions. See <https://www.ftc.gov/system/files/documents/plain-language/bus70-franchise-rule-compliance-guide.pdf> (last visited Jan. 22, 2018), at pages 34-154.

¹⁴ See s. 559.803, F.S.

The FTC defines “franchise” to mean any continuing commercial relationship or arrangement in which the purchaser’s business uses the trademark of the seller’s business, the seller exercises significant control over how the business operates, and the purchaser pays a fee to the seller.¹⁵

The application for the exemption through the DACS requires only the name of the applicant, the name of the franchise and the name under which the applicant intends to, or does, transact business, if different, the applicant’s principal business address, and the applicant’s federal employer identification number.¹⁶

Federal Trade Commission Regulations Affecting Franchises

The Federal Trade Commission’s rule on franchises gives prospective franchise purchasers information to weigh the risks and benefits of an investment in a franchise.¹⁷ The rule requires franchisors to provide all potential franchisees with a disclosure document with 23 specific items of information about the offered franchise, its officers, and other franchisees.¹⁸ The FTC Compliance Guide provides a sample disclosure document and general instructions concerning the mandatory disclosures.¹⁹

Florida Deceptive and Unfair Trade Practices Act

Part II of ch. 501, F.S., the “Florida Deceptive and Unfair Trade Practices Act” (FDUTPA) addresses protection of the public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce. Unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.²⁰

Section 501.203(2), F.S., addresses who is authorized to enforce the FDUTPA (enforcing authority), which includes the:

- Office of the state attorney when a violation occurs in or affects the judicial circuit under the jurisdiction of that state attorney; or
- Department of Legal Affairs, if the violation occurs in or affects more than one judicial circuit, or if the office of the state attorney defers to the department in writing, or fails to act upon a violation within 90 days after a written complaint has been filed with the state attorney.

The enforcing authority may pursue actions:

- To obtain a declaratory judgment that an act or practice violates the FDUTPA;

¹⁵ 16 C.F.R. s. 436.1(h) (2017).

¹⁶ Section 559.803(3), F.S., and Florida Admin. R. 5J-10.002 (2012). The form for the application is available at the DACS website: <http://www.freshfromflorida.com/Business-Services/Sellers-of-Business-Opportunities> (last visited Jan. 22, 2018).

¹⁷ See 16 C.F.R. Part 436.1(h). See also <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/franchise-rule> (last visited Jan. 22, 2018).

¹⁸ See <https://www.ftc.gov/enforcement/rules/rulemaking-regulatory-reform-proceedings/franchise-rule> (last visited Jan. 22, 2018).

¹⁹ *Id.* at pages 34-154.

²⁰ See s. 501.202, F.S.

- To enjoin any person who has violated, is violating, or is otherwise likely to violate, the FDUTPA; and
- For the actual damages caused by an act or practice in violation of the FDUTPA, on behalf of one or more consumers or governmental entities, except that damages are not recoverable against a retailer who has in good faith engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated the FDUTPA.²¹

Any person, firm, corporation, association, or entity, or any agent or employee of such persons, who is willfully using, or has willfully used, a method, act, or practice declared unlawful, or who is willfully violating any of the rules of the Department of Agriculture and Consumer Services (DACS) adopted under part II of ch. 501, F.S., is liable for a civil penalty of not more than \$10,000 for each such violation.²²

Willful violations occur when the person knew or should have known that his or her conduct was unfair or deceptive or prohibited by rule.²³ The civil penalty may be recovered in any action brought under FDUTPA by the enforcing authority; or the enforcing authority may terminate any investigation or action upon the agreement to pay a civil penalty by the person, firm, corporation, association, or entity, or their agent or employee.²⁴

The DACS or the court may waive a civil penalty if the person, firm, corporation, association, or entity, or the agent or employee of the foregoing, has previously made full restitution or reimbursement or has paid actual damages to the consumers or governmental entities who have been injured by the unlawful act or practice or rule violation.²⁵ If civil penalties are assessed in any litigation, the enforcing authority is entitled to reasonable attorney's fees and costs; a civil penalty accrues to the state.²⁶

Violations of the FDUTPA involving senior citizens, those with disabilities, or active duty or veteran members of the United States Armed Forces, may result in penalties of not more than \$15,000 for each violation, if the violator knew or should have known the conduct was unfair or deceptive.²⁷

III. Effect of Proposed Changes:

Section 1 of the bill provides that the act may be cited as the "Protect Florida Small Business Act" (act).

The act regulates the conduct of franchisors and their representatives to prevent fraud, unfair business practices, unfair methods of competition, impositions, and other actions taken as to franchisees in Florida.

²¹ See s. 501.207(1), F.S.

²² See s. 501.2075, F.S.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ See s. 501.2077, F.S.

Section 2 of the bill sets forth legislative findings and intent that the welfare of franchisees, including the success and failure of their franchise businesses, affects the state economy and the public, and requires promotion of fair business relations between franchisees and franchisors, and protection of franchisees against unfair treatment by franchisors.

Section 3 of the bill creates s. 686.103, F.S., to define the following terms:

- “Area franchise” means a contract or agreement, expressed or implied, written or oral, regardless of whether the contract or agreement is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, between a franchisor and another person through which that person is granted the right, for consideration in whole or in part for such right:
 - To sell or negotiate the sale of a franchise in the name or on behalf of the franchisor; or
 - To become an area developer and develop a franchise for the benefit of that person or that person’s affiliates.
- “Area franchisee” means the owner of an area franchise.
- “Franchise” or “franchise agreement” means a contract or agreement, expressed or implied, written or oral, regardless of whether the contract or agreement is designated as a franchise, permit, license, resolution, contract, certificate, agreement, or otherwise, for a definite or indefinite time, between two or more persons by which:
 - A franchisee is granted the right to engage in the business of offering, selling, or distributing goods or services under a marketing plan or system prescribed in substantial part by a franchisor;
 - The operation of the franchise business pursuant to that marketing plan or system is substantially associated with the franchisor’s trademark, service mark, trade name, logotype, advertising, or other commercial symbol designating the franchisor or its affiliate; and
 - The franchisee is required to pay, directly or indirectly, a franchise fee.
- The term “franchise” or “franchise agreement” includes an area franchise, but does not include any of the following:
 - A franchise governed by the Agricultural Equipment Manufacturers and Dealers Act.
 - Any activity under by ss. 686.501-686.506, F.S., pertaining to art dealers.
 - A franchise governed by the Outdoor Power Equipment Manufacturers, Distributors, Wholesalers, and Servicing Dealers Act.
 - A motor vehicle franchise or agreement governed by ss. 320.60-320.70, F.S. F.S.
 - A business relationship between a beer distributor and a manufacturer governed by s. 563.022, F.S.
 - A professional sports franchise as described in s. 288.11625(2)(c), F.S.
- “Franchise fee” means a fee or charge greater than \$100 annually which a franchisee is required to pay or agrees to pay, directly or indirectly, to or for the benefit of the franchisor for the right to enter into or continue a franchise, including, but not limited to, a payment for goods or services. However, the term does not include a fee or charge that a franchisee pays or agrees to pay the franchisor for goods at a bona fide wholesale price, if no obligation is imposed upon the franchisee to purchase or pay for a quantity of goods in excess of that

which a reasonable person normally would purchase by way of a starting inventory or supply or to maintain an ongoing inventory or supply.

- “Franchisee” means a person to whom a franchise is offered or granted.
- “Franchisor” means a person who grants a franchise to a franchisee.
- “Person” means a natural person, corporation, limited liability company, association, partnership, trust, or other business entity and, in the case of a business entity, includes any other affiliate of such entity.

Section 4 of the bill creates s. 686.104, F.S., relating to termination or nonrenewal of a franchise. Except as otherwise provided in the act, a franchisor may not terminate or refuse to renew a franchise except for good cause. If a franchise is terminated without good cause, then that action constitutes an actionable unfair termination.

With limited exceptions, good cause is limited to the failure of the franchisee to substantially comply with the reasonable and material requirements imposed upon the franchisee by the franchise agreement after being given notice at least 90 days in advance of the termination and a reasonable opportunity of not less than 60 days after the date of the notice of noncompliance, to cure the failure. If the franchisee cures the failure within the time given to cure, the termination notice is void.

An immediate notice of termination may be given to a franchisee by a franchisor without an opportunity to cure if, during the period in which the franchise is in effect, any of the following events, relevant to the franchise, occurs:

- The franchisee has been judicially determined to be insolvent, has had all or a substantial part of its assets assigned to or for the benefit of any creditor, or has admitted its inability to pay its debts as they come due.
- The franchisee abandons, by failing to operate, the franchise business for 10 consecutive days during which, under the terms of the franchise, the franchisee is required to operate the franchise business, unless such failure to operate is due to an act of God; a work stoppage; a strike or labor difficulty; a fire, flood, hurricane, or sinkhole; or other cause beyond the franchisee’s control.
- The franchisee fails, for a period of 10 days after a notice of noncompliance, to comply with any federal, state, or local law or regulation, including, but not limited to, any health, safety, building, or labor law or regulation applicable to the operation of the franchise.
- The franchisee is convicted of a felony, if that felony significantly, directly, and adversely affects the operation of the franchise business.
- The franchisor makes a reasonable determination that continued operation of the franchise business by the franchisee will result in imminent and substantial danger to public health or safety.

Section 5 of the bill creates s. 686.105, F.S., relating to sales, transfers, and assignments of franchises.

A franchisor may not deny the surviving spouse, heir, or estate of a deceased franchisee (the survivors), or of a deceased person who controlled a majority interest in the franchise, the opportunity to participate in the ownership of the franchise or franchise business under a valid franchise agreement for at least 180 days after the death of the franchisee or the death of a person controlling a majority interest in the franchise (the status quo period). During the status quo period, the surviving spouse, heir, or estate must either meet all of the existing reasonable qualifications for a purchaser of a franchise or must sell, transfer, or assign the franchise to a person who meets the franchisor's existing reasonable qualifications for new franchisees. The surviving spouse, heir, or estate must maintain all standards and obligations of the franchise.

With the prior written consent of the franchisor, a franchisee may sell, transfer, or assign a franchise. The franchisor's consent may not be withheld unless the purchaser, transferee, or assignee does not meet the qualifications for new or renewing franchisees, or the franchisee and the purchaser, transferee, or assignee fail to comply with other reasonable transfer conditions specified in the franchise agreement.

A franchisor may not prevent a franchisee from selling, transferring, or assigning a franchise, all or substantially all of the assets of the franchise business, or an interest in the franchise to another person, if that person meets the franchisor's reasonable qualifications for the approval of new or renewing franchisees in effect at the time the franchisor receives notice of the proposed sale, transfer, or assignment. The franchisor must make the list of qualifications available to the franchisee, and must consistently apply such qualifications to similarly situated franchisees operating within the franchise brand.

Section 6 of the bill creates s. 686.106, F.S., concerning the rights and prohibitions that govern the relations between a franchisor and its franchisee, to require that the parties must deal with each other in good faith and in a commercially reasonable manner.²⁸

A franchisor may not:

- Terminate or fail to renew a franchise agreement in violation of the act.
- Prevent a sale, transfer, or assignment of a franchise in violation of the requirements regarding sales, transfers, and assignments set forth in proposed s. 686.105, F.S., created in this bill (*see Section 5* above).
- Violate the Florida Deceptive and Unfair Trade Practices Act²⁹ or s. 817.416, F.S., relating to claims for franchise misrepresentations, in connection with its business as a franchisor, or an officer, agent, or other representative thereof.
- Require a franchisee to assent to a release, assignment, novation, waiver, or estoppel that would relieve any person from liability imposed under the act, including, but not limited to, through the use of a disclaimer or checklist designed to avoid a protection under the act.
- Require a franchisee to assent to the use of a choice of law provision by selecting a different state's law to govern the relationship of the parties.

²⁸ For purposes of Florida's Uniform Commercial Code (ch. 670 through ch. 680, F.S.), (Code), s. 671.201(20), F.S., defines the term "good faith" to mean "honesty in fact and the observance of reasonable commercial standards of fair dealing" unless otherwise provided in the Code. *See* s. 672.103(1)(b), F.S., where the term is used in connection with sales of goods, and s. 677.102(1)(f), F.S., where the term is used in connection with documents of title.

²⁹ *See* ss. 501.201-213, F.S.

A person who proves in court that a violation of this section has occurred is entitled to the remedies set forth in proposed s. 686.109, F.S., created in this bill (*see Section 9* below).

Section 7 of the bill creates s. 686.107, F.S., and provides that a franchise agreement or other contract, any part thereof, or any practice under such contract, that violates any provision of the act is deemed against public policy and is void and unenforceable. The bill provides that an aggrieved party may choose to seek to void only the unenforceable portion of a franchise agreement and continue to enforce the remainder of the agreement.

Section 8 of the bill creates s. 686.108, F.S., to provide that provisions in a franchise agreement restricting the venue to a forum outside of Florida or selecting the law of any other state or jurisdiction other than Florida, are void with respect to any claim arising under or relating to a franchise agreement involving a franchisee that was, at the time of signing, a resident of Florida, or a business entity established in Florida, or a franchise business either operating or planning to be operated in Florida.

The bill also provides the act does not apply to a franchise agreement between a Florida-based franchisor and a franchisee that was not, at the time of signing, a resident of Florida, or a business entity established in Florida, or involving a franchise operating or to be operated in Florida, even if the agreement says Florida law applies.

Section 9 of the bill creates s. 686.109, F.S., and provides that in addition to relief specified in the act, any person aggrieved or injured in his or her business or property by a violation of the act may bring an action in state or federal court in Florida, to recover the damages sustained and the costs of such action, including reasonable attorney fees.

In addition to any other remedy or relief to which a person is entitled, any person aggrieved by a violation of the act also may bring an action to obtain a declaratory judgment stating that an action or a practice violates the act, and injunctive relief enjoining a franchisor that has violated, is violating, or is otherwise likely to violate the act from committing the violation.

These remedies are in addition to any other remedies provided by law or in equity, including, but not limited to, the Florida Deceptive and Unfair Trade Practices Act³⁰ and s. 817.416, F.S., relating to claims for franchise misrepresentations.

Section 10 of the bill creates s. 686.11, F.S., and provides that any person or franchisor who engages directly or indirectly in an agreement or contract in Florida concerning a franchise, and any franchise whose franchisee is a Florida resident or is domiciled in Florida, or whose franchise business is, has been, or is intended to be operated in Florida, is subject to the act and to the jurisdiction of Florida courts, in accordance with Florida law, for violations of the act.

The act expressly applies to:

- Any franchise entered into, renewed, amended, or revised after the effective date of the act;

³⁰ See ss. 501.201-.213, F.S.

- Any existing franchise of an indefinite duration which may be terminated by the franchisee or franchisor without cause; and
- Any existing franchise entered into before the effective date of the act, only to the extent that the act does not significantly impair the existing contract rights between the parties.

Section 11 of the bill amends s. 817.416, F.S., relating to claims for franchise misrepresentations, to substitute the term “area franchise” (defined in proposed s. 686.103, F.S., created in this bill (*see Section 3* above)), for the term “distributorship.” The bill also provides that the provisions of s. 817.416, F.S., “may not be waived by any choice of venue clause, choice of law clause, checklist, or any other contract provision, scheme, or device that would otherwise affect a person’s rights to make a claim” thereunder.

Section 12 of the bill directs the Division of Law Revision and Information to replace the phrase “the effective date of the act” wherever it occurs in the act, with the date that the act becomes a law.

Section 13 of the bill provides that the bill is effective upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

SB 1076 creates provisions affecting persons who engage, directly or indirectly, in an agreement or contract in Florida in connection with a franchise, and any franchise whose franchisee is a Florida resident or is domiciled in Florida, or whose franchise business is, has been, or is intended to be operating in this state. (*See Section 10* of the bill.) Such persons are made subject to the act and to jurisdiction of Florida courts for violations of the act. With respect to *existing* franchise agreements or contracts, certain provisions of the bill may implicate constitutional concerns relating to impairment of contract.³¹

In *Pomponio v. Claridge of Pompano Condominium, Inc.*,³² the Florida Supreme court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States

³¹ Article I, s. 10, U.S. Constitution and Art. I, s. 10, Fla. Const.

³² *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979).

Supreme Court. The Florida Supreme Court invalidated a statute, as an unconstitutional impairment of contract, which required the deposit of rent into a court registry during litigation involving obligations under a contract lease. The court set forth several factors to be considered in balancing whether a state law has in fact operated as a substantial impairment of a contractual relationship, stating “[t]he severity of the impairment measures the height of the hurdle the state legislation must clear.”³³

The court stated that if there is minimal alteration of contractual obligations, the inquiry may end at its first stage. Severe impairment pushes the inquiry into a careful examination of the nature and purpose of the state legislation. The factors to be considered are whether:

- The law was enacted to deal with a broad, generalized economic or social problem;
- The law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- The effect on the contractual relationships is temporary, or whether it is severe, permanent, immediate, and retroactive.³⁴

In *United States Fidelity & Guaranty Co. v. Department of Insurance*,³⁵ the Florida Supreme Court followed *Pomponio* and said that the method requires a balancing of a person’s interest to not have his or her contracts impaired, with the state’s interest in exercising its legitimate police power. The court adopted the method used by the U.S. Supreme Court, in which the threshold inquiry is “whether the state law has, in fact, operated as a substantial impairment of a contractual relationship.”³⁶ The severity of the impairment increases the level of scrutiny.

Relevant to the extent of the impairment is whether the industry the complaining party had entered had been regulated in the past because if the party was already subject to regulation when the contract was entered, then it is understood that it would be subject to further legislation upon the same topic.³⁷ If the state regulation constitutes a substantial impairment, the state must have a significant and legitimate public purpose³⁸ and any adjustment of the rights and responsibilities of the contracting parties must be appropriate to the public purpose justifying the legislation.³⁹

Furthermore, although retroactive application of a law may be constitutional in certain situations,⁴⁰ in 2011, the Florida Supreme Court unanimously held, in *Cohn v. The Grand Condominium Association, Inc.*,⁴¹ that by changing the distribution of voting power between residential owners and other owners in a mixed-use condominium (i.e., a provision of an existing contract), the retroactive application of the law at issue in that case altered the rights of the unit owners in contravention of their contractual agreement and, thus, impaired the obligation of contract as applied.

³³ *Pomponio*, 378 So. 2d at 779.

³⁴ *Id.*

³⁵ *United States Fidelity & Guaranty Co. v. Department of Insurance*, 453 So. 2d 1355 (Fla. 1984).

³⁶ *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (quoting *Allied Structural Steel Co., v. Spannaus*, 438 U.S. 234, 244 (1978)).

³⁷ *Id.* (citing *Allied Structural Steel Co.*, 438 U.S. at 242, n. 13).

³⁸ *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (citing *U.S. Trust Co. of New York v. New Jersey*, 431 U.S. 1, 22 (1977)).

³⁹ *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1361.

⁴⁰ *Century Village, Inc. v. Wellington*, 361 So. 2d 128 (Fla. 1978).

⁴¹ *Cohn*, 62 So. 3d 1120, 1122 (Fla. 2011).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

SB 1076 may impact the financial interests of persons who engage, directly or indirectly, in an agreement or contract in Florida in connection with a franchise, and any franchise whose franchisee is a Florida resident or is domiciled in Florida, or whose franchise business is, has been, or is intended to be operating in this state.

C. Government Sector Impact:

The Department of Legal Affairs, or the Department of Legal Affairs and the Department of Agriculture and Consumer Services jointly, are authorized to sue for injunctive relief against franchise or area franchise plans or activities in which a person intentionally misrepresents or fails to disclose certain information, in violation of s. 817.416(2), F.S. There may be additional costs associated with enforcement deemed necessary in connection with activities conducted pursuant to the act.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 817.416 of the Florida Statutes.

This bill creates the following sections of the Florida Statutes: 686.101, 686.102, 686.103, 686.104, 686.105, 686.106, 686.107, 686.108, 686.109, and 686.11.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

By Senator Steube

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1 A bill to be entitled
2 An act relating to franchises; creating s. 686.101,
3 F.S.; providing a short title; creating s. 686.102,
4 F.S.; providing legislative findings and intent;
5 providing construction; creating s. 686.103, F.S.;
6 defining terms; creating s. 686.104, F.S.; prohibiting
7 a franchisor from terminating or not renewing a
8 franchise under certain circumstances; providing
9 limitations on what constitutes good cause;
10 authorizing the franchisor to give immediate notice of
11 termination of a franchise for specified reasons under
12 certain circumstances; creating s. 686.105, F.S.;
13 prohibiting a franchisor from denying certain persons
14 the opportunity to participate in the ownership of a
15 franchise for a specified period after the death of
16 the franchisee or the death of a person controlling a
17 majority interest in the franchise; requiring
18 specified persons to meet certain requirements or to
19 sell, transfer, or assign the franchise after the
20 death of the franchisee or the death of the person
21 controlling a majority interest in the franchise;
22 authorizing a franchisee to sell, transfer, or assign
23 a franchise, specified assets, or an interest in the
24 franchise under certain circumstances; prohibiting a
25 franchisor from preventing a franchisee from selling
26 or transferring a franchise, assets of the franchise
27 business, or an interest in the franchise under
28 certain circumstances; requiring the franchisor to
29 make available and to apply specified requirements for

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30 the approval of new or renewing franchises, under
31 certain circumstances; creating s. 686.106, F.S.;
32 requiring a franchisor and a franchisee to deal with
33 each other in good faith; prohibiting the franchisor
34 from acting in a certain manner; providing remedies;
35 creating s. 686.107, F.S.; voiding certain contracts,
36 contract provisions, or practices; creating s.
37 686.108, F.S.; prohibiting the use of certain choice
38 of venue and choice of law provisions, under certain
39 circumstances; creating s. 686.109, F.S.; providing
40 remedies for a franchisee or an aggrieved or injured
41 person under certain circumstances; clarifying that
42 specified remedies are in addition to existing
43 remedies; creating s. 686.11, F.S.; providing
44 applicability; amending s. 817.416, F.S.; defining the
45 term "area franchise"; prohibiting waivers through
46 certain contract provisions that would affect a
47 person's rights to make a claim; providing a directive
48 to the Division of Law Revision and Information;
49 providing an effective date.

50
51 Be It Enacted by the Legislature of the State of Florida:

52
53 Section 1. Section 686.101, Florida Statutes, is created to
54 read:

55 686.101 Short title.—Sections 686.101-686.11 may be cited
56 as the "Protect Florida Small Business Act."

57 Section 2. Section 686.102, Florida Statutes, is created to
58 read:

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59 686.102 Legislative findings and intent; construction of
60 the act.-

61 (1) The Legislature finds that the welfare of franchisees,
62 including the success and failure of their franchise businesses,
63 greatly affects the general economy of this state, the public
64 interest, and the public welfare. It is the intent of the
65 Legislature to promote fair business relations between
66 franchisees and franchisors and to protect franchisees against
67 unfair treatment by franchisors. Therefore, it is necessary to
68 regulate the conduct of franchisors and their representatives in
69 order to prevent fraud, unfair business practices, unfair
70 methods of competition, impositions, and other abuses upon
71 franchisees in this state.

72 (2) In order to promote the intent and policies announced
73 in this section, the provisions of this act shall be liberally
74 construed.

75 Section 3. Section 686.103, Florida Statutes, is created to
76 read:

77 686.103 Definitions.-As used in this act, the term:

78 (1) "Area franchise" means a contract or agreement,
79 expressed or implied, written or oral, regardless of whether the
80 contract or agreement is designated as a franchise, permit,
81 license, resolution, contract, certificate, agreement, or
82 otherwise, between a franchisor and another person through which
83 that person is granted the right, for consideration in whole or
84 in part for such right:

85 (a) To sell or negotiate the sale of a franchise in the
86 name or on behalf of the franchisor; or

87 (b) To become an area developer and develop a franchise for

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88 the benefit of that person or that person's affiliates.

89 (2) "Area franchisee" means the owner of an area franchise.

90 (3) (a) "Franchise" or "franchise agreement" means a
91 contract or agreement, expressed or implied, written or oral,
92 regardless of whether the contract or agreement is designated as
93 a franchise, permit, license, resolution, contract, certificate,
94 agreement, or otherwise, for a definite or indefinite time,
95 between two or more persons by which:

96 1. A franchisee is granted the right to engage in the
97 business of offering, selling, or distributing goods or services
98 under a marketing plan or system prescribed in substantial part
99 by a franchisor;

100 2. The operation of the franchise business pursuant to that
101 marketing plan or system is substantially associated with the
102 franchisor's trademark, service mark, trade name, logotype,
103 advertising, or other commercial symbol designating the
104 franchisor or its affiliate; and

105 3. The franchisee is required to pay, directly or
106 indirectly, a franchise fee.

107 (b) The term includes an area franchise.

108 (c) The term does not include any of the following:

109 1. A franchise governed by the Agricultural Equipment
110 Manufacturers and Dealers Act.

111 2. Any activity under ss. 686.501-686.506.

112 3. A franchise governed by the Outdoor Power Equipment
113 Manufacturers, Distributors, Wholesalers, and Servicing Dealers
114 Act.

115 4. A motor vehicle franchise or agreement governed by ss.
116 320.60-320.70.

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117 5. A business relationship between a beer distributor and a
118 manufacturer governed by s. 563.022.

119 6. A professional sports franchise as described in s.
120 288.11625(2)(c).

121 (4) "Franchise fee" means a fee or charge greater than \$100
122 annually which a franchisee is required to pay or agrees to pay,
123 directly or indirectly, to or for the benefit of the franchisor
124 for the right to enter into or continue a franchise, including,
125 but not limited to, a payment for goods or services. However, a
126 fee or charge that a franchisee pays or agrees to pay the
127 franchisor for goods at a bona fide wholesale price if no
128 obligation is imposed upon the franchisee to purchase or pay for
129 a quantity of goods in excess of that which a reasonable person
130 normally would purchase by way of a starting inventory or supply
131 or to maintain an ongoing inventory or supply is not considered
132 a franchise fee.

133 (5) "Franchisee" means a person to whom a franchise is
134 offered or granted.

135 (6) "Franchisor" means a person who grants a franchise to a
136 franchisee.

137 (7) "Person" means a natural person, corporation, limited
138 liability company, association, partnership, trust, or other
139 business entity and, in the case of a business entity, includes
140 any other affiliate of such entity.

141 Section 4. Section 686.104, Florida Statutes, is created to
142 read:

143 686.104 Termination or nonrenewal.—

144 (1) Except as otherwise provided in this act, a franchisor
145 may not terminate or refuse to renew a franchise except for good

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146 cause. The termination or nonrenewal of a franchise without good
147 cause constitutes an actionable unfair termination. Except as
148 provided in subsection (2), good cause is limited to the failure
149 of the franchisee to substantially comply with the reasonable
150 and material requirements imposed upon the franchisee by the
151 franchise agreement after being given notice at least 90 days in
152 advance of the termination and a reasonable opportunity, which
153 may not be less than 60 days after the date of the notice of
154 noncompliance, to cure the failure. If the franchisee cures the
155 failure within the time given to cure, the termination notice is
156 void.

157 (2) A franchisor may give to a franchisee an immediate
158 notice of termination without an opportunity to cure if, during
159 the period in which the franchise is in effect, any one of the
160 following events relevant to the franchise occurs:

161 (a) The franchisee has been judicially determined to be
162 insolvent, has had all or a substantial part of its assets
163 assigned to or for the benefit of any creditor, or has admitted
164 its inability to pay its debts as they come due.

165 (b) The franchisee abandons, by failing to operate, the
166 franchise business for 10 consecutive days during which, under
167 the terms of the franchise, the franchisee is required to
168 operate the franchise business unless such failure to operate is
169 due to an act of God; a work stoppage; a strike or labor
170 difficulty; a fire, flood, hurricane, or sinkhole; or other
171 cause beyond the franchisee's control.

172 (c) The franchisee fails, for a period of 10 days after a
173 notice of noncompliance, to comply with any federal, state, or
174 local law or regulation, including, but not limited to, any

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175 health, safety, building, or labor law or regulation applicable
176 to the operation of the franchise.

177 (d) The franchisee is convicted of a felony if that felony
178 significantly, directly, and adversely affects the operation of
179 the franchise business.

180 (e) The franchisor makes a reasonable determination that
181 continued operation of the franchise business by the franchisee
182 will result in imminent and substantial danger to public health
183 or safety.

184 Section 5. Section 686.105, Florida Statutes, is created to
185 read:

186 686.105 Sales, transfers, and assignments.—

187 (1) A franchisor may not deny the surviving spouse, heir,
188 or estate of a deceased franchisee or of a deceased person who
189 controlled a majority interest in the franchise the opportunity
190 to participate in the ownership of the franchise or franchise
191 business under a valid franchise agreement for at least 180 days
192 after the death of the franchisee or the death of a person
193 controlling a majority interest in the franchise. During that
194 time, the surviving spouse, heir, or estate of the deceased must
195 either meet all of the existing reasonable qualifications for a
196 purchaser of a franchise or must sell, transfer, or assign the
197 franchise to a person who meets the franchisor's existing
198 reasonable qualifications for new franchisees. The rights
199 granted to the surviving spouse, heir, or estate under this
200 section are granted subject to the surviving spouse, heir, or
201 estate of the deceased maintaining all standards and obligations
202 of the franchise.

203 (2) (a) A franchisee may sell, transfer, or assign a

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204 franchise, all or substantially all of the assets of the
205 franchise business, or an interest in the franchise with the
206 prior written consent of the franchisor. The franchisor's
207 consent may not be withheld unless the purchaser, transferee, or
208 assignee does not meet the qualifications for new or renewing
209 franchisees described in paragraph (b) or the franchisee and the
210 purchaser, transferee, or assignee fail to comply with other
211 reasonable transfer conditions specified in the franchise
212 agreement.

213 (b) A franchisor may not prevent a franchisee from selling,
214 transferring, or assigning a franchise, all or substantially all
215 of the assets of the franchise business, or an interest in the
216 franchise to another person if the other person meets the
217 franchisor's reasonable qualifications for the approval of new
218 or renewing franchisees in effect at the time the franchisor
219 receives notice of the proposed sale, transfer, or assignment.
220 The franchisor shall make this list of qualifications available
221 to the franchisee, and the franchisor shall consistently apply
222 such qualifications to similarly situated franchisees operating
223 within the franchise brand.

224 Section 6. Section 686.106, Florida Statutes, is created to
225 read:

226 686.106 Rights and prohibitions.—The following rights and
227 prohibitions govern the relations between a franchisor and its
228 franchisee:

229 (1) The parties shall deal with each other in good faith
230 and in a commercially reasonable manner.

231 (2) A franchisor may not:

232 (a) Terminate or fail to renew a franchise agreement in

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233 violation of this act;

234 (b) Prevent a sale, transfer, or assignment of a franchise
235 in violation of s. 686.105;

236 (c) Violate the Florida Deceptive and Unfair Trade
237 Practices Act or s. 817.416 in connection with its business as a
238 franchisor, or an officer, agent, or other representative
239 thereof;

240 (d) Require a franchisee to assent to a release,
241 assignment, novation, waiver, or estoppel that would relieve any
242 person from liability imposed under this act, including, but not
243 limited to, through the use of a disclaimer or checklist
244 designed to avoid a protection under this act; or

245 (e) Require a franchisee to assent to the use of a choice
246 of law provision by selecting a different state's law to govern
247 the relationship of the parties.

248 (3) A person who shows in a civil court of law a violation
249 of this section is entitled to the remedies under s. 686.109.

250 Section 7. Section 686.107, Florida Statutes, is created to
251 read:

252 686.107 Unenforceable franchise agreement or other contract
253 or part thereof.—A franchise agreement or other contract, or a
254 part thereof or practice thereunder, which is in violation of
255 any provision of this act is deemed against public policy and is
256 void and unenforceable. An aggrieved party may choose to seek to
257 void the portion of the agreement that is unenforceable and
258 continue to enforce the remainder of the agreement.

259 Section 8. Section 686.108, Florida Statutes, is created to
260 read:

261 686.108 Venue; choice of law.—A provision in a franchise

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262 agreement restricting the venue to a forum outside of this state
263 or selecting the law of any other state or jurisdiction other
264 than this state is void with respect to any claim arising under
265 or relating to a franchise agreement involving a franchisee that
266 was, at the time of signing, a resident of this state or a
267 business entity established in this state or involving a
268 franchise business either operating or planning to be operated
269 in this state. An agreement between a Florida-based franchisor
270 and a franchisee with none of these stated connections to this
271 state is not subject to this act, regardless of whether the
272 franchise agreement contains a choice of law provision selecting
273 this state.

274 Section 9. Section 686.109, Florida Statutes, is created to
275 read:

276 686.109 Remedies.-

277 (1) In addition to any relief specified in this act, any
278 person aggrieved or injured in his or her business or property
279 by any violation of this act may bring an action in the
280 appropriate state or federal court of this state and shall
281 recover the damages sustained and the costs of such action,
282 including reasonable attorney fees.

283 (2) Without regard and in addition to any other remedy or
284 relief to which a person is entitled, any person aggrieved by a
285 violation of this act may bring an action to obtain a
286 declaratory judgment stating that an action or a practice
287 violates this act and may obtain injunctive relief enjoining a
288 franchisor that has violated, is violating, or is otherwise
289 likely to violate these sections from committing the violation.

290 (3) The remedies provided in this section are in addition

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291 to any other remedies provided by law or in equity, including,
292 but not limited to, the Florida Deceptive and Unfair Trade
293 Practices Act and s. 817.416.

294 Section 10. Section 686.11, Florida Statutes, is created to
295 read:

296 686.11 Applicability.—

297 (1) Any person or franchisor who engages directly or
298 indirectly in an agreement or contract within this state in
299 connection with a franchise; or any franchise whose franchisee
300 is a resident of this state or is domiciled in this state or
301 whose franchise business is, has been, or is intended to be
302 operated in this state, is subject to this act and to the
303 jurisdiction of the courts of this state, in accordance with the
304 laws of this state, for violations of this act.

305 (2) This act applies to:

306 (a) Any franchise entered into, renewed, amended, or
307 revised after the effective date of this act;

308 (b) Any existing franchise of an indefinite duration which
309 may be terminated by the franchisee or franchisor without cause;
310 and

311 (c) Any existing franchise entered into before the
312 effective date of this act, only to the extent that this act
313 does not significantly impair the existing contract rights
314 between the parties.

315 Section 11. Section 817.416, Florida Statutes, is amended
316 to read:

317 817.416 Franchises and distributorships;
318 misrepresentations.—

319 (1) DEFINITIONS.—For the purpose of this section, the term:

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320 (a) "Area franchise" has the same meaning as in s. 686.103.

321 (d) ~~(a)~~ The term "Person" means an individual, partnership,
322 corporation, association, or other entity doing business in this
323 state Florida.

324 ~~(b) The term "Franchise or distributorship" means a~~
325 contract or agreement, either expressed or implied, whether oral
326 or written, between two or more persons:

327 1. Wherein a commercial relationship of definite duration
328 or continuing indefinite duration is involved;

329 2. Wherein one party, ~~hereinafter called~~ the "franchisee,"
330 is granted the right to offer, sell, and distribute goods or
331 services manufactured, processed, distributed or, in the case of
332 services, organized and directed by another party;

333 3. Wherein the franchisee as an independent business
334 constitutes a component of franchisor's distribution system; and

335 4. Wherein the operation of the franchisee's business
336 franchise is substantially reliant on franchisors for the basic
337 supply of goods.

338 ~~(c) The term "Goods" means any article or thing without~~
339 limitation, or any part of such article or thing, including any
340 article or thing used or consumed by a franchisee in rendering a
341 service established, organized, directed, or approved by a
342 franchisor.

343 (2) DECLARATIONS.—

344 (a) It is unlawful, when selling or establishing a
345 franchise or area franchise distributorship, for any person to:

346 1. Intentionally ~~to~~ misrepresent the prospects or chances
347 for success of a proposed or existing franchise or area
348 franchise distributorship;

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349 2. Intentionally ~~to~~ misrepresent, by failure to disclose or
350 otherwise, the known required total investment for such
351 franchise or area franchise distributorship; or

352 3. Intentionally ~~to~~ misrepresent or fail to disclose
353 efforts to sell or establish more franchises or area franchises
354 ~~distributorships~~ than is reasonable to expect the market or
355 market area for the particular franchise or area franchise
356 ~~distributorship~~ to sustain.

357 (b) The execution or carrying out of a scheme, plan, or
358 corporate organization which violates any of the provisions of
359 this section, if knowledge or intent be proved, is ~~shall be~~ a
360 misdemeanor of the second degree, punishable as provided in ss.
361 775.082 and 775.083.

362 (3) WAIVER.—The applicability of this section may not be
363 waived by any choice of venue clause, choice of law clause,
364 checklist, or any other contract provision, scheme, or device
365 that would otherwise affect a person's rights to make a claim
366 under this section.

367 (4) ~~(3)~~ CIVIL PROVISIONS.—Any person~~r~~ who shows in a civil
368 court of law a violation of this section may receive a judgment
369 for all moneys invested in the ~~such~~ franchise or area franchise
370 ~~distributorship~~. Upon such a showing, the court may award any
371 person bringing said action reasonable attorney fees ~~attorney's~~
372 ~~fees~~ and shall award such person reasonable costs incurred in
373 bringing the action, and execution shall thereupon issue.

374 (5) ~~(4)~~ INJUNCTIONS.—The Department of Legal Affairs, or the
375 Department of Legal Affairs and the Department of Agriculture
376 and Consumer Services jointly, may sue in behalf of the people
377 of this state for injunctive relief against franchise or area

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378 franchise ~~distributorship~~ plans or activities in violation of
379 paragraph (2) (a).

380 Section 12. The Division of Law Revision and Information is
381 directed to replace the phrase "the effective date of this act"
382 wherever it occurs in this act with the date the act becomes a
383 law.

384 Section 13. This act shall take effect upon becoming a law.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/30/18

Meeting Date

1076

Bill Number (if applicable)

Topic Franchise

Amendment Barcode (if applicable)

Name Doug Bell

Job Title _____

Address 119 S. Monroe

Phone 205-9000

Street

TLH

FL

Email doug.bell@whdfla.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing McDonald's Restaurants

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/30/14

SB 1076

Meeting Date

Bill Number (if applicable)

Topic Franchises

Amendment Barcode (if applicable)

Name Ron Book

Job Title _____

Address 104 W. Jefferson

Phone 850-224-3427

Street TLH

32301

Email RON@RLBOOK.PA.COM

City _____ State _____ Zip _____

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing 7-11

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

7/30/18
Meeting Date

1076
Bill Number (if applicable)

Topic Franchise

Amendment Barcode (if applicable)

Name Jim Magill

Job Title Lobbyist

Address 101 N. Monroe St Suite 1090
Street
RM

Phone 681-0411

Email JAMES.MAGILL@BIPC.COM

City State Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Pinch A Penny Pools

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

This form is part of the public record for this meeting.

THE FLORIDA SENATE

APPEARANCE RECORD

JAN. 30th 2018
Meeting Date

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1076
Bill Number (if applicable)

Topic FRANCHISE LAW

Amendment Barcode (if applicable)

Name DAVE REID

Job Title COO OF WORLD OF BEER

Address 230 S. ADAMS ST.

Phone 850.224.2250

Street

Tallahassee FL 32301

City

State

Zip

Email DAVE.REID@WOBFRANCHISING.COM

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing World of Beer

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/30/18
Meeting Date

1076
Bill Number (if applicable)

Topic FRANCHISE LAW

Amendment Barcode (if applicable)

Name Chris Holmes

Job Title Franchisee

Address 3018 Kimmer Rowe Dr.

Phone (850) 567-5171

Street

Tallahassee
City

FL
State

32309
Zip

Email cholmes@firehousesubs.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing FIREHOUSE SUBS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-30-18

Meeting Date

1076

Bill Number (if applicable)

Topic Franchise Law

Amendment Barcode (if applicable)

Name Marilyn Buck

Job Title owner

Address 1920 W. Monroe St.

Phone 850-894-2400

Street

Tallahassee FL 32303

Email Marilyn.Buck@fastsigns.com

City

State

Zip

Speaking: For [] Against [X] Information []

Waive Speaking: In Support [] Against [] (The Chair will read this information into the record.)

Representing FASTSIGNS

Appearing at request of Chair: Yes [] No [X]

Lobbyist registered with Legislature: Yes [] No [X]

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/30/18
Meeting Date

SB-1076
Bill Number (if applicable)

Topic SB-1076 (favor)

Amendment Barcode (if applicable)

Name Rakesh Bhula

Job Title owner

Address 2020 Atlantic Pkwy

Phone 850-766-5808

Street Tallahassee

Email RKBhula@gmail.com

City Tallahassee State FL Zip 32301

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Tallahassee Franchisee Hotel owners

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/30/18

Meeting Date

SB 1076

Bill Number (if applicable)

Topic SB-1076 (favour)

Amendment Barcode (if applicable)

Name Hemant "Henry" Patel

Job Title President

Address 7150 Biscayne Blvd

Phone 305-9929099

Street

City

miami FL 33138

State

Zip

Email Hemantking@yahoo

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing self & south Florida hotel owners (franchise)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/30/18

Meeting Date

1074

Bill Number (if applicable)

Topic Small Business Act

Amendment Barcode (if applicable)

Name Michael Jorgensen

Job Title Franchise owner

Address 11590 4th St. N.

Phone 347-251-1828

Street

St. Pete

FL

33716

Email mcjorge@yahoo.com

City

State

Zip

Speaking: [X] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing self

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/30/18

Meeting Date

1074

Bill Number (if applicable)

Topic Small Business Act

Amendment Barcode (if applicable)

Name Jeffery Haff

Job Title Attorney

Address 80 South Eighth St.

Phone 612-359-3514

Street

Minneapolis MN 55402

Email jhaff@dadygarden.com

City

State

Zip

Speaking: [X] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing Coalition for Franchise Association

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/30/18
Meeting Date

1076
Bill Number (if applicable)

Topic Franchise

Amendment Barcode (if applicable)

Name Aimee Diaz Lyon

Job Title _____

Address 119 S. Monroe Street Suite 200
Street

Phone 205-9000

TLH FL 32301
City State Zip

Email aimee.diazlyon@mbdlim.com

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Business Law Section - FL Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-30-18

Meeting Date

SB 1076

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Andrew Hosek

Job Title Policy Analyst

Address 200 W College Ave.

Phone _____

Street

Tallahassee

FL

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Americans for Prosperity

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

01/30/18
Meeting Date

1070
Bill Number (if applicable)

Topic Franchises

Amendment Barcode (if applicable)

Name Richard Turner

Job Title Senior VP Legal & Legislative Affairs

Address 230 S. Adams St.

Phone 850-224-2250

Street

Tallahassee

City

FL

State

32301

Zip

Email rturner@frla.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Restaurant & Lodging ASSO.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

APPEARANCE RECORD

1/30/18

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1076

Meeting Date

Bill Number (if applicable)

Topic Franchises

Amendment Barcode (if applicable)

Name JAKE FARMER

Job Title Legislative Coordinator

Address 227 S Adams St.

Phone 352 359 6835

Street

Tallahassee FL

32301

Email Jake@frf.org

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Florida Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/30/18
Meeting Date

SB 1076
Bill Number (if applicable)

Topic Franchise

Amendment Barcode (if applicable)

Name Jeff Hanscom

Job Title VP, State Gov't Relations

Address 1900 K ST NW #700

Phone 202-662-4179

Washington DC 20006
City State Zip

Email jhanscom@franchise.org

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing International Franchise Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/30/18

Meeting Date

1074

Bill Number (if applicable)

Topic Small Business Act

Amendment Barcode (if applicable)

Name Sunny Gahcawat

Job Title Franchise owner

Address 18015 Cozumel Isle Drive

Phone 850-300-8068

Street

Tampa

FL

33647

City

State

Zip

Email sunny33272@gmail.com

Speaking: [X] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing self

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/31/18

Meeting Date

1074

Bill Number (if applicable)

Topic Small Business Act

Amendment Barcode (if applicable)

Name Terry Hutchinson

Job Title Franchise owner

Address 1075 7th Ave N.

Phone 239-777-1042

Street

City Naples FL State Zip 34102

Email thutchinsonT1@gmail.com

Speaking: [X] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing self

Appearing at request of Chair: [] Yes [] No Lobbyist registered with Legislature: [] Yes [] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE

APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1/30/18

Meeting Date

1076

Bill Number (if applicable)

Topic Small Business Act

Amendment Barcode (if applicable)

Name Leon Hirzel

Job Title Attorney

Address 2333 Brickell Ave

Phone 305-615-1117

Street Miami FL 33129

Email leon.hirzel@hirzeladvfuss.com

City State Zip

Speaking: [X] For [] Against [] Information

Waive Speaking: [] In Support [] Against (The Chair will read this information into the record.)

Representing self

Appearing at request of Chair: [] Yes [X] No

Lobbyist registered with Legislature: [] Yes [X] No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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THE FLORIDA SENATE
APPEARANCE RECORD

(Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

1-30-18

Meeting Date

SB 1076

Bill Number (if applicable)

Topic SB 1076 (Franchising Law)

Amendment Barcode (if applicable)

Name MATTHEW J. HOLMES

Job Title Franchisee owner Firehouse subs

Address 14213 Oden Road

Phone 850-509-4759

Street

Tallahassee FL

32312

Email mholmes@firehousesubs.com

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against
(The Chair will read this information into the record.)

Representing Firehouse subs

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

While it is a Senate tradition to encourage public testimony, time may not permit all persons wishing to speak to be heard at this meeting. Those who do speak may be asked to limit their remarks so that as many persons as possible can be heard.

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S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 1728

INTRODUCER: Senator Hutson

SUBJECT: Veterinary Medicine

DATE: January 29, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Kraemer</u>	<u>McSwain</u>	<u>RI</u>	<u>Pre-meeting</u>
2.	_____	_____	<u>AGG</u>	_____
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 1728 revises the laws governing the practice of veterinary medicine in ch. 474, F.S., to include veterinary dentistry and veterinary telemedicine. The bill also includes “complementary and alternative and integrative therapy” within veterinary medicine, but those terms are not defined in the bill.

The bill specifies activities included in the practice of veterinary dentistry, and whether they must be performed by a veterinarian or by a person under the veterinarian’s immediate supervision.

Under the bill, the practice of veterinary telemedicine includes continuing patient care, treatment, or service by a veterinarian through medical information exchanged electronically from one site to another. The use of veterinary telemedicine is authorized subsequent to the establishment of a veterinarian/client/patient relationship, in which the veterinarian has examined the patient or made “medically appropriate” visits to the premises where the patient is kept. SB 1728 does not define the term “medically appropriate.”

The term “examination,” as defined in the bill, does not apply in the context of investigations pursuant to s. 474.2185, F.S., concerning physical examinations related to lawful investigation of a complaint against a licensed veterinarian (or of an application for licensure).

The bill has no fiscal impact on state government.

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

II. Present Situation:

Veterinary Medicine, the Practice of Veterinary Medicine, and Exempted Persons

In 1979, the Legislature determined the practice of veterinary medicine is potentially dangerous to public health and safety if conducted by incompetent and unlicensed practitioners and that minimum requirements for the safe practice of veterinary medicine are necessary.¹ The Board of Veterinary Medicine (board) in the Department of Business and Professional Regulation (DBPR) implements the provisions of ch. 474, F.S., on Veterinary Medical Practice.² A veterinarian is a health care practitioner licensed to engage in the practice of veterinary medicine in Florida under ch. 474, F.S.³

Veterinary medicine includes, with respect to animals:⁴

- Surgery;
- Acupuncture;
- Obstetrics;
- Dentistry;
- Physical therapy;
- Radiology;
- Theriogenology (reproductive medicine);⁵ and
- Other branches or specialties of veterinary medicine.

The practice of veterinary medicine is the diagnosis of medical conditions of animals, and the prescribing or administering of medicine and treatment to animals for the prevention, cure, or relief of a wound, fracture, bodily injury, or disease, or holding oneself out as performing any of these functions.⁶ Veterinarians who are incompetent or present a danger to the public are subject to discipline and may be prohibited from practicing in the state.⁷

¹ See s. 474.201, F.S.

² See ss. 474.204 through 474.2125, F.S., concerning the powers and duties of the board.

³ See s. 474.202(11), F.S.

⁴ See s. 474.202(13), F.S. Section 474.202(1), F.S., defines “animal” as “any mammal other than a human being or any bird, amphibian, fish, or reptile, wild or domestic, living or dead.”

⁵ The Society for Theriogenology, established in 1954, is composed of veterinarians dedicated to standards of excellence in animal reproduction. See <http://www.therio.org/> (last visited Jan. 26, 2018).

⁶ See s. 474.202(9), F.S. Also included is the determination of the health, fitness, or soundness of an animal, and the performance of any manual procedure for the diagnosis or treatment of pregnancy or fertility or infertility of animals.

⁷ See s. 474.213, F.S., on prohibited acts, and s. 474.214, F.S., on disciplinary proceedings.

Eight categories of persons are exempt from complying with ch. 474, F.S.:⁸

- Faculty veterinarians when they have assigned teaching duties at accredited⁹ institutions;
- Intern/resident veterinarians at accredited institutions who are graduates of an accredited institution, but only until they complete or terminate their training;
- Students in a school or college of veterinary medicine who perform assigned duties by an instructor (no accreditation of the institution is required), or work as preceptors¹⁰ (if the preceptorship is required for graduation from an accredited institution);
- Doctors of veterinary medicine employed by a state agency or the United States Government while actually engaged in the performance of official duties at the installations for which the services were engaged;
- Persons or their employees caring for the persons' own animals, as well as part-time or temporary employees, or independent contractors, who are hired by an owner to help with herd management and animal husbandry tasks (excluding immunization or treatment of diseases that are communicable to humans and significant to public health) for herd/flock animals, with certain limitations; however, the exemption is not available to a person licensed as a veterinarian in another state and temporarily practicing in Florida, or convicted of violating ch. 828, F.S., on animal cruelty, or of any similar offense in another jurisdiction, and employment may not be provided for the purpose of circumventing ch. 474, F.S.;
- Certain entities or persons¹¹ that conduct experiments and scientific research on animals as part of the development of pharmaceuticals, biologicals, serums, or treatment methods of treatment or techniques to diagnose or treatment of human ailments, or in the study and development of methods and techniques applicable to the practice of veterinary medicine;
- Veterinary aides, nurses, laboratory technicians, preceptors, or other employees of a licensed veterinarian, who administer medication or provide help or support under the responsible supervision¹² of a licensed veterinarian; and
- Certain non-Florida veterinarians who are licensed and actively practicing veterinary medicine in another state, are board certified in a specialty recognized by the Florida Board

⁸ See s. 474.203, F.S.

⁹ Sections 474.203(1) and (2), F.S., provide that accreditation of a school or college must be granted by the American Veterinary Medical Association (AVMA) Council on Education, or the AVMA Commission for Foreign Veterinary Graduates. The AVMA Council on Education is recognized by the Council for Higher Education Accreditation (CHEA) as the accrediting body for schools and programs that offer the professional Doctor of Veterinary Medicine degree (or its equivalent) in the United States and Canada, and may also approve foreign veterinary colleges. See <https://www.avma.org/professionaldevelopment/education/accreditation/colleges/pages/coe-pp-overview-of-the-coe.aspx> (last visited Jan. 26, 2018). The AVMA Commission for Foreign Veterinary Graduates assists graduates of foreign, non-accredited schools to meet the requirement of most states that such foreign graduates successfully complete an educational equivalency assessment certification program. See <https://www.avma.org/professionaldevelopment/education/foreign/pages/ecfv-g-about-us.aspx> (last visited Jan. 26, 2018). In turn, the Council for Higher Education Accreditation, a national advocate for regulation of academic quality through accreditation, is an association of 3,000 degree-granting colleges and universities and recognizes 60 institutional and programmatic accrediting organizations. See <http://chea.org/> (last visited Jan. 26, 2018).

¹⁰ A preceptor is a skilled practitioner or faculty member, who directs, teaches, supervises, and evaluates students in a clinical setting to allow practical experience with patients. See also <https://www.merriam-webster.com/dictionary/preceptor#medicalDictionary> (last visited Jan. 26, 2018).

¹¹ See s. 474.203(6), F.S., which states that the exemption applies to “[s]tate agencies, accredited schools, institutions, foundations, business corporations or associations, physicians licensed to practice medicine and surgery in all its branches, graduate doctors of veterinary medicine, or persons under the direct supervision thereof”

¹² The term “responsible supervision” is defined in s. 474.202(10), F.S., as the “control, direction, and regulation by a licensed doctor of veterinary medicine of the duties involving veterinary services” delegated to unlicensed personnel.

of Veterinary Medicine, and are assisting upon request of a Florida-licensed veterinarian to consult on the treatment of a specific animal or on the treatment on a specific case of the animals of a single owner.

Veterinarian/Client/Patient Relationship

Section 474.202(12), F.S., defines a “veterinarian/client/patient relationship” as one in which a veterinarian has assumed responsibility for making medical judgments about the health of an animal and its need for medical treatment. The term “patient” means any animal “for which a veterinarian practices veterinary medicine.”¹³

Telemedicine

The use of electronic communications to facilitate patient health care (telemedicine) is not addressed in ch. 474, F.S., and is not authorized for practitioners of veterinary medicine in Florida. However, the Florida Mental Health Act (popularly known as “The Baker Act”),¹⁴ contains a legislative finding that “the use of telemedicine for patient evaluation, case management, and ongoing care will improve management of patient care and reduce costs of transportation.”¹⁵

III. Effect of Proposed Changes:

SB 1728 amends s. 474.202(13), F.S., to include complementary and alternative and integrative therapy, as well as veterinary telemedicine, within the practice of veterinary medicine. The bill does not define the terms “complementary and alternative and integrative therapy.” However, the in the Standards of Practice adopted in 2005 by the DBPR, the term “complementary, alternative and integrative therapies”¹⁶ is defined as:

[A] heterogenous group of preventive, diagnostic and therapeutic philosophies and practices, which at the time they are performed may differ from current scientific knowledge, or whose theoretical basis and techniques may diverge from veterinary medicine routinely taught in accredited veterinary medical colleges, or both. These therapies include, but are not limited to, veterinary acupuncture, acuthery¹⁷ and acupressure, veterinary homeopathy, veterinary manual or manipulative therapy (i.e., therapies based on techniques practiced in osteopathy,

¹³ See s. 474.202(8), F.S.

¹⁴ See s. 394.451, F.S.

¹⁵ See s. 394.453(3), F.S.

¹⁶ See Fla. Admin. Code R. 61G18-19.002 (2018) at <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=61G18-19> (last visited Jan. 26, 2018). The rule requires that a licensed veterinarian who offers such treatment must inform the owner of the patient of the treatment and explain (orally or in writing) the associated benefits and risks, along with the veterinarian’s education, experience, and credentials for the proposed treatment option.

¹⁷ Acuthery utilizes needles or non-needle techniques with electrical stimulation or pressure. See <http://medical-dictionary.thefreedictionary.com/acuthery> (last visited Jan. 26, 2018).

chiropractic medicine, or physical medicine and therapy); veterinary nutraceutical¹⁸ therapy and veterinary physiotherapy.

The bill creates s. 474.202(16), F.S., to include veterinary telemedicine by veterinarians within the practice of veterinary medicine. Veterinary telemedicine includes continuing patient care, treatment, or service by a veterinarian through medical information exchanged from one site to another by means of electronic communications.¹⁹ The use of veterinary telemedicine is authorized subsequent to the establishment of a veterinarian/client/patient relationship, in which the veterinarian has examined the patient or made “medically appropriate” visits to the premises where the patient is kept. SB 1728 does not define the term “medically appropriate.”

Veterinary telemedicine does not include emergency teletriage²⁰ or poison control services.

The bill creates s. 474.202(5), F.S., to define “examination” as the evaluation of a patient by personal inspection, palpation,²¹ and auscultation (listening to sounds using a stethoscope). The term “examination” does not apply in the context of investigations pursuant to s. 474.2185, F.S., concerning physical examinations related to lawful investigation of a complaint against a licensed veterinarian (or of an application for licensure).

SB 1728 amends the current definition of “patient” in s. 474.202(8), F.S., to also include a “herd, collection, or group of animals.”

The bill amends the current definition of “veterinarian/client/patient relationship” in s. 474.202(12), F.S., which is a relationship in which a veterinarian has assumed responsibility for making medical judgments about the health of an animal and its need for medical treatment.²² The existing definition is revised by the bill to require the veterinarian to examine the patient or make “medically appropriate” visits to the premises where the patient is kept. The term “medically appropriate” is not defined in the bill.

The bill creates s. 474.202(14), F.S., to include the following activities in the practice of veterinary dentistry performed either by a veterinarian or by a person under his or her immediate supervision:²³

¹⁸ A “nutraceutical” is a food or dietary supplement that is believed to provide health benefits. *See the Dictionary of Cancer Terms of the National Cancer Institute at the National Institutes of Health, available at <https://www.cancer.gov/publications/dictionaries/cancer-terms?cdrid=454743>* (last visited Jan. 26, 2018).

¹⁹ Electronic communication” is defined in 18 U.S. Code s. 2510(12) to mean, in pertinent part, any transfer of signals, writing, images, sounds, data, or intelligence of any nature transmitted by a wire, radio, electromagnetic, photo-electronic or photo-optical system, excluding (a) any wire or oral communication; (b) any communication made through a tone-only paging device; (c) any communication from a tracking device; or (d) electronic funds transfer information stored by a financial institution in an electronic communications system used for the storage and transfer of funds.

²⁰ The term “triage means the sorting of patients, as in an emergency, according to the urgency of their need for care. *See <https://www.merriam-webster.com/dictionary/triage#medicalDictionary>* (last visited Jan. 26, 2018).

²¹ Palpation is an examination that includes pressing on the body to feel organs and tissues underneath. *See the Dictionary of Cancer Terms of the National Cancer Institute at the National Institutes of Health, available at <https://www.cancer.gov/publications/dictionaries/cancer-terms?cdrid=454743>* (last visited Jan. 26, 2018).

²² *See* s. 474.202(12), F.S.

²³ The term “immediate supervision” is defined in s. 474.202(5), F.S., to mean “a licensed doctor of veterinary medicine is on the premises whenever veterinary services are being provided.” Section 474.215, F.S., requires a premises permit from the DBPR for any permanent or mobile establishment where a licensed veterinarian practices. *See also* Fla. Admin. Code

- The examination, evaluation, diagnosis, prevention, and surgical and nonsurgical treatment of conditions, diseases, and disorders of the oral cavity, maxillofacial (jaw and facial) area and adjacent and associated structures; and
- Dental cleaning, which includes:
 - Removal of plaque and calcified dental plaque from gums and teeth;²⁴ and
 - Teeth polishing using power or hand instruments.²⁵

The treatment of diseased periodontal tissues (periodontal therapy) is also included in veterinary dentistry; periodontal therapy includes dental cleaning and one or more of the following treatments:

- Root planing (trimming);
- Gum trimming (gingival curettage);
- Removal or repositioning of soft tissue (periodontal flap surgery);
- Extractions of teeth;
- Regenerative surgery (for natural renewal of a tissue or part);
- Procedures to remove or re-contour gums (gingivectomy or gingivoplasty); and
- Local administration of antiseptics and antibiotics.

The bill provides that the practice of veterinary dentistry does not include nonveterinary polishing or brushing of an animal's teeth with toothpastes or whiteners (for animals) readily available to the public.

SB 1728 revises s. 474.2165, F.S., to substitute the term "examination" for "physical examination," to conform to the definition "examination" created in s. 474.202(5), F.S., proposed in the bill.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

R. Ch. 61G18-15 (2018) at <https://www.flrules.org/gateway/ChapterHome.asp?Chapter=61G18-15> (last visited Jan. 26, 2018), for the requirements for issuance of a premises permit by the DBPR.

²⁴ The technical terms in the bill are scaling and supragingival and subgingival plaque and calculus removal.

²⁵ Section 474.203(5)(b), F.S., authorizes part-time or temporary employees and independent contractors of horse owners to manually hand float (file) teeth without being licensed as veterinarians. A "float" is used to smooth or contour a horse's teeth, which grow continually. See <https://www.bing.com/search?q=floating+teeth+horses&FORM=QSRE3> (last visited Jan. 26, 2018).

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

By specifying the practice of veterinary medicine includes complementary and alternative and integrative therapy, veterinary telemedicine, and veterinary dentistry, as defined in SB 1728, and requiring that certain activities be performed by veterinarians (and others if properly supervised), SB 1728 may adversely affect persons who have previously engaged in these regulated activities, but are not licensed as veterinarians in Florida.

Prosecution of the unlicensed practice of veterinary medicine by the DBPR is based upon the definition of “veterinary medicine” in s. 474.202(13), F.S.²⁶ The revised definition of veterinary medicine and “veterinarian/client/patient relationship” may increase the number of persons deemed to be engaging in the unlicensed practice of veterinary medicine.

C. Government Sector Impact:

The DBPR indicates the bill has no fiscal impact.

VI. Technical Deficiencies:

The DBPR noted the term “examination” is used elsewhere in ch. 474, F.S.²⁷ See s. 474.2065, F.S., relating to Fees, s. 474.207, F.S., relating to Licensure by Examination, and ss. 474.214(1)(h) and (2)(a), F.S., relating to Disciplinary Proceedings.²⁸ The definition of the term “examination” proposed in SB 1728, however, refers to the evaluation of a patient, meaning an animal upon which a veterinarian practices veterinary medicine.

An amendment should be considered to the definition of “examination” to provide that term does not apply to ss. 474.2065, 474.207, or 474.214(1)(h) and (2)(a), F.S.

VII. Related Issues:

None.

²⁶ See 2018 Agency Legislative Bill Analysis (AGENCY: Department of Business and Professional Regulation) for HB 1221 (identical to SB 1728), dated Jan. 25, 2018 (on file with Senate Committee on Regulated Industries) at page 2.

²⁷ *Id.* at page 6.

²⁸ *Id.*

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 474.202 and 474.2165.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

By Senator Hutson

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1 A bill to be entitled
 2 An act relating to veterinary medicine; amending s.
 3 474.202, F.S.; providing and revising definitions
 4 relating to veterinary medical practice; amending s.
 5 474.2165, F.S.; conforming provisions to changes made
 6 by the act; providing an effective date.

7
 8 Be It Enacted by the Legislature of the State of Florida:
 9

10 Section 1. Present subsections (5) through (12) of section
 11 474.202, Florida Statutes, are redesignated as subsections (6)
 12 through (13), respectively, present subsections (8), (12), and
 13 (13) are amended, and new subsection (5) and subsections (14)
 14 and (16) are added to that section, to read:

15 474.202 Definitions.—As used in this chapter:

16 (5) "Examination" means the evaluation of a patient by
 17 personal inspection, palpation, and auscultation. The term does
 18 not apply to s. 474.2185.

19 (9)~~(8)~~ "Patient" means any animal or herd, collection, or
 20 group of animals for which the veterinarian practices veterinary
 21 medicine.

22 (13)~~(12)~~ "Veterinarian/client/patient relationship" means a
 23 relationship where the veterinarian has examined the patient or
 24 made medically appropriate visits to the premises where the
 25 patient is kept and assumed the responsibility for making
 26 medical judgments regarding the health of the patient animal and
 27 its need for medical treatment.

28 (14) "Veterinary dentistry" means, with respect to animals,
 29 a discipline within the scope of veterinary medicine that

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30 involves the professional examination, evaluation, diagnosis,
31 prevention, and surgical and nonsurgical treatment of
32 conditions, diseases, and disorders of a patient's oral cavity
33 and maxillofacial area and adjacent and associated structures; a
34 veterinary dental cleaning, which includes scaling of,
35 supragingival and subgingival plaque and calculus removal from,
36 and polishing of a patient's teeth with power or hand
37 instruments by a veterinarian or a person under the
38 veterinarian's immediate supervision; and veterinary periodontal
39 therapy to treat a patient's diseased periodontal tissues,
40 including root planing, gingival curettage, periodontal flap
41 surgery, extractions, regenerative surgery, gingivectomy and
42 gingivoplasty, and local administration of antiseptics and
43 antibiotics. The term does not include nonveterinary polishing
44 or brushing of an animal's teeth with animal toothpastes or
45 whiteners that are readily available to the public.

46 (15)~~(13)~~ "Veterinary medicine" includes, with respect to
47 animals, surgery, acupuncture, obstetrics, veterinary dentistry,
48 physical therapy, radiology, theriogenology, complementary and
49 alternative and integrative therapy, veterinary telemedicine,
50 and other branches or specialties of veterinary medicine.

51 (16) "Veterinary telemedicine" means the practice of
52 veterinary medicine by a veterinarian subsequent to the
53 establishment of a veterinarian/client/patient relationship
54 where continuing patient care, treatment, or service is provided
55 through the use of medical information exchanged from one site
56 to another via electronic communications. The term does not
57 include emergency teletriage or poison control services.

58 Section 2. Subsection (1) of section 474.2165, Florida

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59 Statutes, is amended to read:

60 474.2165 Ownership and control of veterinary medical
61 patient records; report or copies of records to be furnished.—

62 (1) As used in this section, the term "records owner" means
63 a ~~any~~ veterinarian who generates a medical record after making
64 an ~~a physical~~ examination of, or administering treatment or
65 dispensing legend drugs to, a ~~any~~ patient; a ~~any~~ veterinarian to
66 whom records are transferred by a previous records owner; or a
67 ~~any~~ veterinarian's employer, provided the employment contract or
68 agreement between the employer and the veterinarian designates
69 the employer as the records owner.

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