Tab 1	**SB 1012** by **Calatayud**; (Similar to H 00751) Employment of Ex-offenders

Tab 2	**SB 1142** by **Hooper**; (Identical to H 01579) Occupational Licensing

Tab 3	**SB 676** by **Bradley**; (Similar to H 01099) Food Delivery Platforms

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Tab 4	**SB 1178** by **Bradley (CO-INTRODUCERS) Pizzo**; (Similar to H 01021) Condominium and Cooperative Associations

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Tab 5	**SB 1588** by **Gruters**; Heated Tobacco Products

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Gruters, Chair
Senator Hooper, Vice Chair

MEETING DATE: Monday, January 22, 2024
TIME: 1:30—3:30 p.m.
PLACE: *James E. "Jim" King, Jr Committee Room,* 401 Senate Building

MEMBERS: Senator Gruters, Chair; Senator Hooper, Vice Chair; Senators Bradley, Brodeur, Hutson, Jones, and Osgood

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 1012** Calatayud (Similar H 751)	Employment of Ex-offenders; Prohibiting the denial of a license, permit, or certification because of an arrest for a crime not followed by a conviction; providing the circumstances and mitigating factors that an agency must consider to determine whether granting a license, permit, or certification to a person would pose a direct and substantial risk to public safety; authorizing a person to petition a state agency at any time for a decision as to whether his or her prior conviction disqualifies him or her from obtaining a license, permit, or certification; requiring an agency to provide applicants with certain written notice if the agency intends to base its denial of an application for a license on a prior conviction, etc. RI 01/22/2024 CJ FP	
2	**SB 1142** Hooper (Identical H 1579)	Occupational Licensing; Requiring the Construction Industry Licensing Board within the Department of Business and Professional Regulation to issue registrations to eligible persons under certain circumstances; providing that the board is responsible for disciplining such licensees; providing for the fees for the issuance of the registrations and renewal registrations, etc. RI 01/22/2024 FP	
3	**SB 676** Bradley (Similar H 1099)	Food Delivery Platforms; Prohibiting food delivery platforms from taking or arranging for the delivery or pickup of orders from a food service establishment without the food service establishment's consent; requiring food delivery platforms to provide food service establishments with a method of contacting and responding to consumers by a specified date; providing circumstances under which a food delivery platform must remove a food service establishment's listing on its platform; preempting regulation of food delivery platforms to the state, etc. RI 01/22/2024 AEG FP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 1178** Bradley (Similar H 1021)	Condominium and Cooperative Associations; Requiring community association managers and management firms to return official records of an association within a specified period following termination of a contract; requiring community association managers and management firms to disclose certain conflicts of interest to the association's board; providing criminal penalties for any officer, director, or manager of an association who unlawfully solicits, offers to accept, or accepts any thing or service of value or kickback; authorizing, rather than requiring, certain hurricane protection specifications; specifying when the cost of installation of hurricane protection is not a common expense, etc. RI 01/22/2024 AEG FP	
5	**SB 1588** Gruters	Heated Tobacco Products; Revising the definition of the term "cigarette"; revising the definition of the term "tobacco products"; prohibiting its application to heated tobacco products; defining the term "heated tobacco product", etc. RI 01/22/2024 FT AP	
	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:	SB 1012
INTRODUCER:	Senator Calatayud
SUBJECT:	Employment of Ex-offenders
DATE:	January 19, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			CJ	
3.			FP	

I. Summary:

SB 1012 revises the procedures and criteria that state agencies must follow and consider before denying a license, permit, or certification to a person previously convicted of a crime.

The bill defines the term "conviction" to mean a determination of guilt which is the result of a plea or trial, regardless of whether adjudication is withheld, under the laws of Florida or another state.

The bill provides that, notwithstanding any other law, a person may not be denied a license, permit, or certification to pursue, practice, or engage in an occupation, a trade, a vocation, a profession, or a business if the person has been arrested for a crime but not convicted. However, if criminal charges are pending that may serve as the basis for the denial of a license, permit, or certification to pursue, practice, or engage in an occupation, a trade, a vocation, a profession, or a business, a state agency may defer its decision on the person's application for a license, permit, or certification pending resolution of the criminal charges.

Under the bill, notwithstanding any laws, a license, permit, or certification may only be denied based on a prior conviction for the following crimes:

- A forcible felony as defined in s. 776.08, F.S.;
- An offense involving a breach of fiduciary duty;
- An offense for a fraudulent practice under ch. 817, F.S., relating to fraudulent practices, or a substantially similar offense under the laws of another state;
- A felony or first-degree misdemeanor for which the person was not incarcerated, and he or she was convicted less than three years before a state agency began considering his or her application for the license, permit, or certification; or
- A felony or first-degree misdemeanor for which the person was incarcerated, and his or her incarceration ended less than three years before a state agency began considering his or her application for the license, permit, or certification.

In addition, a license, permit, or certification may be denied if the conviction directly and specifically relates to the duties and responsibilities of the occupation, trade, vocation, profession, or business for which the license, permit, or certification is sought. Also, if granting the license, permit, or certification pose a direct and substantial risk to public safety.

The bill provides a list of mitigating circumstances and factors for agencies to consider when determining if granting a license, permit, or certification to a person would pose a direct and substantial risk to public safety, including the age of the person at the time the crime was committed, the amount of time that has elapsed since the person committed the crime, and other evidence of rehabilitation.

The bill specifies the written notice requirements for an agency's decision on the granting or denying of a license, permit, or certificate application.

The bill permits a person with a prior conviction to petition an agency to determine if their prior conviction is disqualifying for a license, permit, or certification, including a requirement that the agency consider the mitigating circumstance and factors provided in the bill when making that determination.

Notwithstanding any other law, the bill prohibits a state agency from using vague terms, including, but not limited to, "good moral character," "moral turpitude," or "character and fitness," in its decision to disqualify a person from a license, permit, or certification based on the person's prior conviction for a crime.

The bill revises the requirements for denial of a license under the Administrative Procedures Act, by:

- Requiring state agencies to inform a license applicant before a license denial becomes final;
- Allowing applicants to provide a rebuttal with additional evidence of circumstances or rehabilitation, including written support provided by character witnesses;
- Requiring agencies to give the applicant at least 30 days to provide a rebuttal before issuing a decision on the application for license; and
- Requiring agencies to provide written notice of denial or approval of an application within 60 days after the deadline for submitting a rebuttal.

The bill deletes the criminal record disqualification for a deputy pilot certification by the Board of Pilot Commissioners within the Department of Business and Professional Regulation (DBPR).

Notwithstanding any basis for disqualification based on a person's criminal record, the bill affects applications for the professional licenses issued by the DBPR, the prohibition against being employed as a manager, person in charge, or bartender for an alcoholic beverages vendor if the person has been convicted in the past five years of any felony in Florida, any other state, or the United States, licenses issued under the Florida Insurance Code, including, but not limited to, agents, agencies, adjusters, adjusting firms, or customer representatives, and registration as a health insurance exchange navigator and licensure as a bail bond agent's license.

The bill may affect other persons seeking a license, permit, or certification who would otherwise be disqualified because of a criminal record, including health care professionals; persons with a

direct or indirect interest in business with an alcoholic beverages license; racetrack and jai alai employees; horseracing, greyhound, and jai alai fronton permitholders, and persons engaged in the manufacture, compounding, combining, production, or distribution, dealing, or use of explosives.

The bill takes effect July 1, 2024.

II. Present Situation:

Licensing Determinations and Criminal History

Section 112.011, F.S., outlines general guidelines for considering criminal convictions during licensure determinations. Generally, a person may be denied a professional license based on his or her prior conviction of a crime if the crime was a felony[1] or first-degree misdemeanor[2] that is directly related to the standards determined by the regulatory authority to be necessary and reasonably related to the protection of the public health, safety, and welfare for the specific profession for which the license is sought.[3] Notwithstanding any law to the contrary, a state agency may not deny an application for a license based solely on the applicant's lack of civil rights.[4]

Section 112.011, F.S., does not apply to:
- Deputy pilot certification;[5]
- Licensure under the Florida Insurance Code, including, but not limited to, agents, agencies, adjusters, adjusting firms, or customer representatives;[6]

[1] Section 775.08(1), F.S., defines "felony" as any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by death or a term of imprisonment in a state penitentiary that exceeds one year.
[2] Section 775.08(2), F.S., defines "misdemeanor" as any criminal offense that is punishable under the laws of this state, or that would be punishable if committed in this state, by a term of imprisonment in a county correctional facility of less than one year. A first degree misdemeanor is punishable by a term of imprisonment not exceeding one year and a fine not exceeding $1,000. Sections 775.082 and 775.083, F.S.
[3] Section 112.011(1)(b), F.S. *See also*, e.g., *State ex rel. Sbordy v. Rowlett*, 138 Fla. 330, 190 So. 59, 63 (1939), holding that "the preservation of the public health is one of the duties of sovereignty and in a conflict between the right of a citizen to follow a profession and the right of a sovereignty to guard the health and welfare, it logically follows that the rights of the citizen to pursue his profession must yield to the power of the State to prescribe such restrictions and regulations as shall fully protect the people from ignorance, incapacity, deception, and fraud."
[4] Section 112.011(1)(c), F.S.
[5] However, s. 310.071(4), F.S., disqualifies applicants for a deputy pilot's certificate issued by the Board of Pilot Commissioners within the Department of Business and Professional Regulation, including persons who've had their civil rights restored, who, regardless of adjudication, have ever been found guilty of, or pled guilty or nolo contendere to, a felony or first degree misdemeanor which directly related to the navigation or operation of a vessel, or a felony involving the sale of or trafficking in, or conspiracy to sell or traffic in, a controlled substance as defined by ch. 893, F.S., or an offense under the laws of any state or country which, if committed in this state, would constitute the felony of selling or trafficking in, or conspiracy to sell or traffic in, such controlled substance.
[6] Section 626.207(9), F.S. However, s. 626.207(2), F.S., provides that applicants for license under ch. 626, F.S., including insurance agents, service representatives, adjusters, and insurance agencies, are disqualified from licensure, and permanently barred from licensure, if the person has been found guilty of or has pleaded guilty or nolo contendere to any of the specified crimes.

- Registration as a health insurance exchange navigator;[7] and
- Licensure as a bail bond agent.[8]

Section 112.011, F.S., also does not apply to any law enforcement or correctional agency.[9]

Section 112.0111, F.S., requires each state agency, including the state agencies responsible for professional and occupational regulatory boards, to ensure the appropriate restrictions necessary to protect the overall health, safety, and welfare of the general public are in place, and by December 31, 2011, and every four years thereafter, submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report that includes:

- A list of all agency or board statutes or rules that disqualify from employment or licensure persons who have been convicted of a crime and have completed any incarceration and restitution to which they have been sentenced for such crime.
- A determination of whether the disqualifying statutes or rules are readily available to prospective employers and licensees.
- The identification and evaluation of alternatives to the disqualifying statutes or rules which protect the health, safety, and welfare of the general public without impeding the gainful employment of ex-offenders.

Department of Business and Professional Regulation

Licensure, Generally

The Department of Business and Professional Regulation (DBPR) has 11 divisions that are tasked with the licensure and general regulation of several professions and businesses in Florida.[10] Fifteen boards and programs exist within the Division of Professions,[11] two boards

[7] Section 626.994, F.S. Section 626.9951(3), F.S., defines the term "navigator" to mean "an individual authorized by an exchange to serve as a navigator, or who works on behalf of an entity authorized by an exchange to serve as a navigator, pursuant to 42 U.S.C. s. 18031(i)(1), who facilitates the selection of a qualified health plan through the exchange and performs any other duties specified under 42 U.S.C. s. 18031(i)(3)." A person is disqualified from registration as a navigator if they have a criminal record for the felonies specified in s. 262.9954(2), F.S., including permanent disqualifications, seven-year, and 15-year disqualifications for specified felonies.

[8] Section 648.34(7), F.S. However, s. 648.34(2)(e), F.S., disqualifies an applicant for a bail bond agent license to a person who has "been convicted of or pleaded guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by imprisonment of 1 year or more under the law of any state, territory, or country, whether or not a judgment or conviction has been entered."

[9] Section 112.011(2)(a), F.S.

[10] *See* s. 20.165, F.S, creating the divisions of Administration; Alcoholic Beverages and Tobacco; Certified Public Accounting; Drugs, Devices, and Cosmetics; Florida Condominiums, Timeshares, and Mobile Homes; Hotels and Restaurants; Pari-mutuel Wagering; Professions; Real Estate; Regulation; Service Operations; and Technology.

[11] Section 20.165(4)(a), F.S., establishes the following boards and programs which are noted with the implementing statutes: Board of Architecture and Interior Design, part I of ch. 481, F.S.; Florida Board of Auctioneers, part VI of ch. 468, F.S.; Barbers' Board, ch. 476, F.S.; Florida Building Code Administrators and Inspectors Board, part XII of ch. 468, F.S.; Construction Industry Licensing Board, part I of ch. 489, F.S.; Board of Cosmetology, ch. 477, F.S.; Electrical Contractors' Licensing Board, part II of ch. 489, F.S.; Board of Employee Leasing Companies, part XI of ch. 468, F.S.; Board of Landscape Architecture, part II of ch. 481, F.S.; Board of Pilot Commissioners, ch. 310, F.S.; Board of Professional Engineers, ch. 471, F.S.; Board of Professional Geologists, ch. 492, F.S.; Board of Veterinary Medicine, ch. 474, F.S.; Home Inspection Services Licensing Program, part XV of ch. 468, F.S.; and Mold-related Services Licensing Program, part XVI of ch. 468, F.S.

exist within the Division of Real Estate,[12] and one board exists in the Division of Certified Public Accounting.[13]

Sections 455.203 and 455.213, F.S., establish the DBPR's general licensing authority, including its authority to charge license fees and license renewal fees. Each board within the DBPR must determine by rule the amount of license fees for each profession, based on estimates of the required revenue to implement the regulatory laws affecting the profession.[14] When a person is authorized to engage in a profession or occupation in Florida, the DBPR issues a "permit, registration, certificate, or license" to the licensee.[15]

In Fiscal Year 2022-2023, there were 950,380 active licensees regulated by the DBPR or a board within the department, including 39,336 active licensees in the Division of Certified Public Accounting, 486,336 active licensees in the Division of Professions, and 67, 827 active licensees under the Board of Professional Engineers.[16]

Denial of Professional Licensure - DBPR

Chapter 455, F.S., provides procedural and administrative framework for the regulation of professionals by the DBPR, and boards housed in the DBPR, including the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation.[17]

The DBPR may regulate professions "only for the preservation of the health, safety, and welfare of the public under the police powers of the state."[18] Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;
- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.[19]

However, "neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention," or a regulation that unreasonably restricts the ability of those who desire to engage in a profession or occupation to find employment.[20]

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[12] *See* s. 20.165(4)(b), F.S. Florida Real Estate Appraisal Board, created under part II of ch. 475, F.S., and Florida Real Estate Commission, created under part I of ch. 475, F.S.
[13] *See* s. 20.165(4)(c), F.S., which establishes the Board of Accountancy, created under ch. 473, F.S.
[14] Section 455.219(1), F.S.
[15] Section 455.01(4) and (5), F.S.
[16] *See* Department of Business and Professional Regulation, Division of Professions, Division of Certified Public Accounting, Division of Real Estate, and Division of Regulation, *Annual Report, Fiscal Year 2022-2023*, p. 18, available at http://www.myfloridalicense.com/DBPR/os/documents/Division%20Annual%20Report%20FY%2022-23.pdf (last visited Jan. 15, 2024).
[17] *See* ss. 455.01(6) and 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by providing DBPR staff counsel. *See* s. 455.221(1), F.S.
[18] Section 455.201(2), F.S.
[19] Section 455.201(2), F.S.
[20] Section 455.201(4)(b), F.S.

The DBPR or a pertinent regulatory board may deny an application for licensure based on the grounds set forth in s. 455.227(1), F.S., or in the profession's practice act.[21] Specifically, the DBPR or regulatory board may deny a licensure application for any person who was:

> …convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.[22] (Emphasis added.)

Section 455.227, F.S., does not specifically require the DBPR or the applicable regulatory board to consider the passage of time since the disqualifying criminal offense before denying or granting a license.

Licensing and Criminal Background for Certain Professions

However, in 2019, the Legislature created a process for reviewing the criminal history of applicants for specified professions or occupations regulated by the DBPR.[23] The process applies to:

- Barbers;
- Cosmetologists and cosmetology specialists;
- Construction professionals, including:
  - Air-conditioning contractors;
  - Electrical contractors;
  - Mechanical contractors;
  - Plumbing contractors;
  - Pollutant storage systems contractors;
  - Roofing contractors;
  - Sheet metal contractors;
  - Solar contractors;
  - Swimming pool and spa contractors;
  - Underground utility and excavation contractors; and
  - Other specialty contractors; and
- Any other profession for which the DBPR issues a license, provided the profession is offered to prisoners in any correctional institution or correctional facility as a vocational training or through an industry certification program.[24]

Under this process, a prisoner may apply for a license before he or she is lawfully released from confinement or supervision.[25] The application may not be denied solely on the basis of the applicant's current confinement or supervision.

[21] Section 455.227(2), F.S.
[22] Section 455.227(1)(c), F.S.
[23] Chapter 2019-167, Laws of Fla., codified at s. 455.213(3), F.S.
[24] Section 455.213(3)(a), F.S.
[25] Section 455.213.(3)(c), F.S.

The DBPR may not deny a license for one of the above-listed occupations based on a conviction for a crime more than five years before the date of application.[26] However, a board may deny a license if the applicant's criminal history includes a crime listed in s. 775.21(4)(a)1., F.S., relating to sexual predator crimes, or s. 776.08, F.S., relating to forcible felonies, if such criminal history relates to the practice of the applicable profession.[27] A regulatory board may also consider the criminal history of an applicant if such criminal history is found to relate to good moral character.[28]

Additionally, a board must:

- Permit a person to apply for a license while under criminal confinement (incarceration) or supervision;[29]
- Compile a list of crimes by rule that do not impair a person's qualifications for licensure;[30]
- Compile a list of crimes that have been used in the past two years as the basis for a license denial;[31] and
- Permit applicants who are incarcerated or under supervision to appear by teleconference or video conference at a meeting of a board or the agency for a hearing concerning the person's license application.[32]

The DBPR or a board may refuse to issue an initial license to any applicant who is under investigation or prosecution in any jurisdiction for an action that would constitute a violation of ch. 455, F.S., or the professional practice acts administered by the department and the boards, until such time as the investigation or prosecution is complete.[33]

License Qualifications Based on Moral Character

Several professions licensed by the DBPR or a regulatory board require the applicant to be of good moral character, including applicants for a license to practice the following professions:

- Boxing, kickboxing and mixed martial arts issued by the Florida Athletic Commission;[34]
- Construction contracting issued by the Construction Industry Licensing Board;[35]
- Electrical contracting issued by the Electrical Contractors' Board;[36]

[26] Section 455.213(3)(b)1., F.S. "Conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld.
[27] *Id.*
[28] Section 455.213(3)(b)2., F.S.
[29] Section 455.213(3)(c), F.S.
[30] Section 455.213(3)(d), F.S.
[31] Section 455.213(3)(e), F.S.
[32] Section 455.213(5), F.S.
[33] Section 455.213(4), F.S.
[34] Section 548.071(3), F.S., provides a basis for the Florida Athletic Commission to disqualify for a license any person who has been convicted of, has pleaded guilty to, has entered a plea of nolo contendere to, or has been found guilty of a crime involving moral turpitude in any jurisdiction within 10 years preceding the suspension or revocation.
[35] Section 489.111(2)(b) and (3), F.S., provides that the Construction Industry Licensing Board may refuse to certify an applicant for failure to satisfy the requirement of good moral character if there is a substantial connection between the lack of good moral character and the professional responsibility of the certified contractor; and the lack of good moral character is supported by clear and convincing evidence. The board may deny a license application if the applicant's criminal history directly relates to the practice of the profession.
[36] 489.511(1)(b), F.S. Section 489. 511(3)(a), F.S., defines good moral character as a history of honesty, fairness, and respect for the rights of others and for the laws of this state and nation and specifies that the Electrical Contractors' Licensing Board

- Athlete agents issued by the DBPR;[37]
- Building code administrators and inspectors issued by the Florida Building Code Administrators and Inspectors Board;[38]
- Certified public Accountants issued by the Board of Accountancy;[39]
- Engineer issued by the Board of Professional Engineers;[40] and
- Mold-related services issued by the DBPR.[41]

License Qualifications Based on Criminal History Related to the Profession

Many professional practice acts permit a license application to be denied if the applicant has a specified criminal history or the applicant's criminal history directly relates to, the practice of the profession, including a license to practice the following professions:

- Architecture issued by the Board of Architecture and Interior Design;[42]
- Asbestos contracting and consulting issued by the DBPR;[43]
- Auctioneering issued by the Florida Board of Auctioneers;[44]
- Barbering issued by the Barbers' Board;[45]
- Community association management issued by the Regulatory Council of Community Association Managers;[46]
- Professional geology issued by the Board of Professional Geologists;[47]
- Home inspection issued by the DBPR;[48]
- Landscape architecture issued by the Board of Landscape Architecture;[49]
- Real estate brokers and agents issued by the Florida Real Estate Commission;[50] and
- Veterinary medicine issued by the Board of Veterinary Medicine.[51]

License Disciplinary Action based on Section 455.227(1)(c), F.S.

Section 455.227(1)(c), F.S., authorizes a board, or the DBPR if there is no board for the profession, to take disciplinary action against a licensee if the person is convicted or found guilty

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may refuse to certify an applicant for failure to satisfy the requirement of good moral character if certain requirements are met. The board may deny a license application if the applicant's criminal history directly relates to the practice of the profession.

[37] Section 468.453(2)(b), F.S.

[38] Section 468.609(3)(b), F.S., also permits a license application to be denied if the applicant's criminal history directly relates to the practice of the profession.

[39] Section 473.308(5) and (6), F.S., also permits a license application to be denied if the applicant's criminal history directly relates to the practice of the profession.

[40] Section 471.013(2)(a), F.S.

[41] Section 468.8414(3), F.S.

[42] Section 481.225(1)(d), F.S.

[43] Section 469.009(1)(g), F.S.

[44] Section 468.389(1)(l), F.S.

[45] Section 476.144(6)(a)2.b., F.S., provides that the qualifications for a barber license include having no disciplinary history related to barbering for five years.

[46] Section 468.436(2)(b), F.S.

[47] Section 492.113(1)(d), F.S.

[48] Section 468.832(1)(d), F.S.

[49] Section 481.325(1)(d), F.S.

[50] Section 475.25(1)(f), F.S.

[51] Sections 474.214(1)(c), (p) and (2), F.S., authorize the Board of Veterinary Medicine to deny a license application based on criminal history, including conviction on a charge of cruelty to animals.

of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession. This grounds for discipline includes a criminal history that occurred prior to obtaining a license.[52] Disciplinary action includes refusal to certify, or to certify with restrictions, an application for a license and suspension or permanent revocation of a license.[53]

Several professions regulated by the DBPR, or a board within the DBPR, rely on the grounds for disciplinary action in s. 455.227(1)(c), F.S., as a basis for denial or grant of a license. A person may also be disqualified for a license based on s. 455.227(1)(c), F.S. The practice acts for the following professional licenses within the DBPR include the grounds for denial of a license set forth in s. 455.227(1)(c), F.S.:

- Barbers;[54]
- Engineers issued by the Board of Professional Engineers;[55]
- Professional geologists;[56]
- Home inspectors;[57]
- Mold-related service providers; and[58]
- Real estate brokers and agents.[59]

A license to engage in a regulated activity may require that persons with an interest in the business not have a criminal record or have good moral character. For example, an alcoholic beverages license may not be issued to any person, including persons who have a direct or indirect interest in the license or business, who does not evidence good moral character, and:[60]

> who has been convicted within the last past 5 years of any offense against the beverage laws of this state, the United States, or any other state; who has been convicted within the last past 5 years in this state or any other state or the United States of soliciting for prostitution, pandering, letting premises for prostitution, or keeping a disorderly place or of any criminal violation of chapter 893 or the controlled substance act of any other state or the Federal Government; or who has been convicted in the last past 15 years of any felony in this state or any other state or the United States; or to a corporation, any of the officers of which shall have been so convicted.

Persons with certain criminal records are also disqualified from having an occupational license to be employed at a racetrack and jai alai fronton,[61] and are disqualified from holding a horseracing, greyhound, or jai alai permit.[62]

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[52] Section 455.227(2), F.S.
[53] *Id.*
[54] Section 476.204(1)(h), F.S.
[55] Section 471.033(1)(a), F.S.
[56] Section 492.113(1)(d), F.S.
[57] Section 468.832(1)(a), F.S.
[58] Section 468.842(1)(a), F.S.
[59] Section 475.25(1)(f), F.S.
[60] Sections 561.15, F.S.
[61] Section 550.105(2), F.S.
[62] Section 550.1815, F.S.

Department of Health

The Department of Health (DOH) or an applicable board may deny the licensure of any applicant who has been "convicted of or pled guilty or nolo contendere to, regardless of adjudication, any felony or misdemeanor related to the practice of a health care profession regulated by this state"[63] or related to certain types of fraud,[64] or for other reasons in the applicable practice act. For example, certified nursing assistants may not have a felony record for certain specified felony financial crimes, including Medicaid fraud and forgery,[65] and pass an employment screening under ch. 435, F.S., which provides a listing of disqualifying crimes.

Other State Licenses

In addition to the licenses referenced above, it is common to disqualify a person from a license to engage in a profession, occupation, or business activity on the basis of a criminal record. For example, a license to engage in the manufacture, compounding, combining, production, or distribution, dealing, or use of explosives may be denied if the person has been convicted of a felony.[66]

Administrative Procedures Act

Chapter 120, F.S., the Administrative Procedure Act, provides uniform procedures for state agencies, including the conduct of rulemaking, implementing disciplinary actions, and the granting and denial of license applications.

Section 120.60, F.S., provides the process for the granting or denial of license applications upon receipt of a license application. An agency must examine the application and, within 30 days after such receipt, notify the applicant of any apparent errors or omissions and request any additional information the agency is permitted by law to require. An agency may not deny a license because of an applicant's failure to correct an error or omission or to supply additional information unless the agency has timely notified the applicant within this 30-day period. A license application is complete upon receipt by the agency of all requested information and correction of any error or omission for which the applicant was timely notified or when the time for such notification has expired.

An agency must approve or deny a license application within 90 days after receipt of a completed application unless a shorter period of time for agency action is provided by law. The 90-day time period is tolled by the initiation of a proceeding under ss. 120.569 and 120.57, F.S.[67] Any application for a license which is not approved or denied within the 90-day or shorter time period, within 15 days after conclusion of a public hearing held on the application, or within 45

[63] Sections 456.024(3)(c); 456.072(1)(c), (x), (ii) and (ll); and 456.071(2)(a), F.S.
[64] Section 456.0635, F.S.
[65] *See* s. 408.809(4), F.S.
[66] Section 552.094, F.S.
[67] Section 120.569 F.S., provides the administrative process for all proceedings in which the substantial interests of a party are determined by an agency, unless the parties are proceeding under the mediation process in s. 120.573, F.S., or the summary hearing process in s. 120.574, F.S. Section 120.57, F.S., provides additional procedures for matters involving disputed issues of material fact before an administrative law judge assigned by the Division of Administrative Hearings.

days after a recommended order is submitted to the agency and the parties, whichever action and timeframe is latest and applicable, is considered approved unless the recommended order recommends that the agency deny the license.

Section 120.60(3), F.S., requires an agency to give a written notice, personally or by mail, that the agency intends to grant or deny, or has granted or denied, the application for license. The notice must state with particularity the grounds or basis for the issuance or denial of the license, except when issuance is a ministerial act. Unless waived by the applicant, a copy of the notice must be delivered or mailed to each party's attorney of record and to each person who has made a written request for notice of agency action. Each notice must inform the recipient of the basis for the agency decision, and inform the recipient of any administrative hearing pursuant to ss. 120.569 and 120.57, F.S., or judicial review pursuant to s. 120.68, F.S., which may be available. The notice must also indicate the procedure that must be followed, and state the applicable time limits. The issuing agency must certify the date the notice was mailed or delivered, and the notice and the certification must be filed with the agency clerk.

III. Effect of Proposed Changes:

Chapter 112, F.S.

The bill revises the basis for disqualifying a person for a license based on a person's criminal history under s. 112.011, F.S. The bill amends s. 112.011(1), F.S., to define the following terms:

- "Conviction" to mean a determination of guilt which is the result of a plea or trial, regardless of whether adjudication is withheld, under the laws of this state or another state.
- "Fiduciary duty" to mean a duty to act for someone else's benefit while subordinating one's personal interest to that of the other person.

The bill provides that, notwithstanding any other law, a person may not be denied a license, permit, or certification[68] to pursue, practice, or engage in an occupation, a trade, a vocation, a profession, or a business if the person has been arrested for a crime but not convicted. However, if criminal charges are pending that may serve as the basis for the denial of a license, permit, or certification to pursue, practice, or engage in an occupation, a trade, a vocation, a profession, or a business, a state agency may defer its decision on the person's application for a license, permit, or certification pending resolution of the criminal charges.

Section 112.011(1)(c), F.S., as revised by the bill, provides that, notwithstanding any other law, a license, permit, or certification may only be denied based on a prior conviction for the following crimes:

- A forcible felony as defined in s. 776.08, F.S.;
- An offense involving a breach of fiduciary duty;
- An offense for a fraudulent practice under ch. 817, F.S., relating to fraudulent practices, or a substantially similar offense under the laws of another state;

[68] The Administrative Procedures Act in ch. 120, F.S., s. 120.52(10), F.S., defines the term "license" to mean "a franchise, permit, certification, registration, charter, or similar form of authorization required by law, but it does not include a license required primarily for revenue purposes when issuance of the license is merely a ministerial act."

- A felony or first-degree misdemeanor for which the person was not incarcerated, and he or she was convicted less than three years before a state agency began considering his or her application for the license, permit, or certification; or
- A felony or first-degree misdemeanor for which the person was incarcerated, and his or her incarceration ended less than three years before a state agency began considering his or her application for the license, permit, or certification.

In addition, under the bill a license, permit, or certification may be denied if the conviction directly and specifically relates to the duties and responsibilities of the occupation, trade, vocation, profession, or business for which the license, permit, or certification is sought.

The bill deletes the basis for denial of a license, permit, or certification if the crime is reasonably related to the protection of the public health, safety, and welfare for the specific profession for which the license is sought. Instead, the bill provides that a license, permit, or certification may be denied on the basis of clear and convincing evidence, that granting the license, permit, or certification would pose a direct and substantial risk to public safety because the person is unable to safely perform the duties and responsibilities of the specific occupation, trade, vocation, profession, or business for which the license, permit, or certification certificate is sought.

When determining if granting a license, permit, or certification to a person would pose a direct and substantial risk to public safety, a state agency must consider all of the following circumstances and mitigating factors:

- The age of the person when he or she committed the crime.
- The amount of time that has elapsed since the person committed the crime.
- The circumstances surrounding the nature of the crime.
- Whether the person completed his or her criminal sentence and, if completed, the amount of time since completing such sentence.
- Whether the person received a certificate of rehabilitation or good conduct.
- Whether the person completed or is an active participant in a rehabilitative substance abuse program.
- Any testimonials or recommendations, including progress reports from the person's probation or parole officer.
- Whether the person has received any education or training.
- The person's employment history and employment aspirations.
- The person's family responsibilities.
- Whether the occupation, trade, vocation, profession, or business requires that the person be bonded.
- Any other evidence of rehabilitation or information the person submits to the state agency.

The bill requires an agency to provide a written notification consistent with the requirements of s. 120.60(3), F.S., if a denial of a license, permit, or certification that is based on a person's prior conviction for a crime.

The bill allows a person with a prior conviction for a crime to petition a state agency at any time, including while in confinement, while under supervision, or before obtaining any required personal qualifications for a license, permit, or certification, for a decision as to whether the

person's prior conviction for a crime would disqualify him or her from obtaining the license, permit, or certification. The petition must include a record of his or her prior conviction for a crime or must authorize the state agency to obtain such record. When reviewing the petition, the state agency must determine whether granting the license, permit, or certification to the person would pose a direct and substantial risk to public safety because there is clear and convincing evidence that the person is unable to safely perform the duties and responsibilities of the specific occupation, trade, vocation, profession, or business for which the license, permit, or certification is sought. The bill requires the state agency to consider the circumstances and mitigating factors provided under the bill when reviewing and making its decision on the petition.

If a state agency determines that a person is not disqualified for a license, permit, or certification, the decision is binding on the state agency in any later ruling on the person's formal application unless the information contained in the petition is found to be inaccurate or incomplete, or the person is subsequently convicted of a crime.

If the state agency determines that a person is disqualified for a license, permit, or certification, the bill requires the agency to advise the person of an action, if any, he or she may take to remedy the disqualification. The bill allows a person to submit a revised petition reflecting completion of the remedial actions before a deadline set by the agency in its final decision on the petition. The bill prohibits a person from submitting a new petition to the state agency until one year after a final decision on the initial petition is rendered or the person obtains the required qualifications for a license, permit, or certification, whichever is earlier.

Notwithstanding any other law, the bill prohibits a state agency from using vague terms, including, but not limited to, "good moral character," "moral turpitude," or "character and fitness," in its decision to disqualify a person from a license, permit, or certification based on the person's prior conviction for a crime.

The bill amends s. 112.0111, F.S., to require agencies that issue licenses, permits, or certifications to pursue, practice, or engage in an occupation, a trade, a vocation, a profession, or a business to, beginning December 31, 2024, and annually each December 31 thereafter, submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives a report that includes the number of applicants with:

- A prior conviction for a crime who applied for each license, permit, or certification in the previous year, and of that number, the number of times the state agency granted the application for, and the number of times it denied, withheld, or refused to grant, a license, permit, or certification because of the applicant's criminal history.
- A prior conviction for a crime whose applications were denied, withheld, or refused who petitioned the state agency pursuant to s. 112.011(2)(e), F.S., in the previous year and the number of such petitions that were approved or denied.

The report must also specify the offense or offenses that served as the basis for each decision to approve, deny, withhold, or refuse to grant the license, permit, or certification.

Chapter 120, F.S.

The bill revises the administrative procedures for granting or denying a license under s. 120.60, F.S., to require each agency that intends to deny a license based upon a person's prior conviction for a crime pursuant to s. 112.011, F.S., to provide the applicant with written notice of the agency's intention. The notice must:

- State with particularity the grounds or the basis for the agency's intention to deny the license.
- Inform the recipient that, before the denial becomes final, he or she may provide a rebuttal with additional evidence of circumstances or rehabilitation, including written support provided by character witnesses.
- Allow the applicant at least 30 days to provide a rebuttal before issuing a decision on the application for license.

In addition, a copy of the notice must be delivered or mailed to each party's attorney of record, if applicable, and to each person who has made a written request for notice of agency action. The agency must certify the date the notice was delivered or mailed, and the notice and the certification must be filed with the agency clerk.

Within 60 days after the deadline for submitting a rebuttal, the agency must provide written notification of its decision on the application for license. If the agency denies or intends to deny the application for license, the agency must specify the clear and convincing evidence on which the agency based its determination.

The bill provides that the agency's decision is administratively reviewable pursuant to ss. 120.569 and 120.57, F.S., [69] and judicially reviewable pursuant to s. 120.68, F.S. The notification must indicate the procedure and applicable time limits that must be followed to seek administrative review, and must state the earliest date that the applicant may submit another application for license. A copy of the notice must be delivered or mailed to each party's attorney of record, if applicable, and to each person who has made a written request for notice of agency action. The agency must certify the date the notice was mailed or delivered, and the notice and the certification must be filed with the agency clerk.

Specific Professions and Occupations

Section 310.071(4), F.S., is revised by the bill to apply the criminal record review procedures in s. 112.011(2), F.S., to applications for a deputy pilot certification issued by the Board of Pilot Commissioners. However, the bill deletes the disqualification for a deputy pilot certification based on the criminal record of the applicant for the crimes specified in s. 112.011(2), F.S.

The bill amends s. 455.213, F.S., to apply the criminal record review procedures in s. 112.011(2), F.S., to applications for the professional licenses issued by the DBPR. The bill deletes the requirements for the DBPR's review of an applicant's criminal record.

[69] Section 120.569, F.S., provides the administrative procedures for proceeding in which the substantial interests of a party are determined by an agency. Section 120.57, F.S., provides the administrative procedure for hearings before the Division of Administrative Hearings in which there are disputed issues of material fact.

Section 562.13, F.S., is revised by the bill to delete the prohibition against being employed as a manager, person in charge, or bartender for an alcoholic beverages vendor if the person has been convicted in the past five years of any felony in Florida, any other state, or the United States.

The bill amends s. 626.207(9), F.S., to apply the criminal record review procedures in s. 112.011(2), F.S., to applications for licensure under the Florida Insurance Code, including, but not limited to, agents, agencies, adjusters, adjusting firms, or customer representatives.

The bill amends s. 626.9954(8), F.S., to apply the criminal record review procedures in s. 112.011(2), F.S., to applications for registration as a health insurance exchange navigator.

Section 648.34(7), F.S., is revised by the bill to apply the criminal record review procedures in s. 112.011(2), F.S., to applications for a bail bond agent's license.

Effective Date

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who may be currently disqualified from a license, permit, or certificate to engage in a profession or occupation may qualify for such license, permit, or certificate under the provisions in the bill.

C. Government Sector Impact:

State agencies may see an increase costs related to the additional procedures provided in the bill for review of an application from an applicant with a potentially disqualifying criminal record.

The Department of Financial Services (DFS) indicated that an "undetermined amount of revenue would be lost because of the new 'petitions' created by the bill."[70] Prospective applicants could submit applications for review in the same manner as license applications without charge.[71] The department estimated that the licensing unit would need one supervisor and 12 licensing technicians for a total of 13 FTEs. Salary would be $538,000, benefits would be $215,200 and the standard expense package of $143,663 for a total of $896,863.[72] Additional programming expense would total $83,100.[73]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 310.071(4), F.S., applies the procedures in s. 112.011(2), F.S., for agency review of a potentially disqualifying criminal record to applications for a deputy pilot certification issued by the Board of Pilot Commissioners. However, the bill deletes the disqualification for a deputy pilot certification based on the criminal record of the applicant specified in this subsection.

The Florida Department of Law Enforcement (FDLE) notes that the definition in the bill for the term "conviction" does not reference an entry of a plea of guilty or nolo contendere. The FDLE states that, if the definition does not reference a nolo contendere (no contest) plea, a person could argue that a nolo contendere plea is not a determination of guilt if adjudication withheld because the person did not admit guilt.[74]

Section 112.011(1)(g), F.S., permits a person with a prior conviction to petition an agency to determine if their prior conviction is disqualifying for a license, permit, or certification. The FDLE expressed the concern that requiring state agencies to give an advisory opinion on a person's eligibility prior to an application may be binding on the agency and could "result in

[70] *See* Department of Financial Services, *2024 Legislative Bill Analysis for SB 1012*, (Jan. 8, 2024) (on file with the Senate Regulated Industries Committee).
[71] *Id.*
[72] *Id.*
[73] *Id.*
[74] See Department of Law Enforcement, *2024 Agency Legislative Bill Analysis for SB 1012* (Jan. 16, 2024) (on file with the Senate Regulated Industries Committee).

substantial litigation over what was actually known by the state agency at the time of the advisory opinion."[75] The DFS expressed the concern that a response to the petition may involve giving legal advice to prospective applicants.[76]

The DFS states that it makes license eligibility determination for over 177,000 license applications each year and that approximately 15 percent of those applicants have a criminal record. The DFS also expressed the concern that requiring an agency to determine whether a person with a criminal records has been rehabilitated may produce more subjective licensing decisions than required under current law. Currently, the DFS states, such subject subjective decisions occur in only limited situations.[77]

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 112.011, 112.0111, 120.60, 310.071, 455.213, 562.13, 626.207, 626.9954, and 648.34.

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.

[75] *Id.*
[76] *Supra*, note 70.
[77] *Id.*

By Senator Calatayud

38-00608A-24 20241012__

A bill to be entitled

An act relating to employment of ex-offenders; amending s. 112.011, F.S.; defining terms; prohibiting the denial of a license, permit, or certification because of an arrest for a crime not followed by a conviction; authorizing a state agency to defer a decision on an application for a license, permit, or certification pending the resolution of criminal charges against the applicant; revising the circumstances under which a state agency may deny an application for a license, permit, or certification by reason of a prior conviction for a crime; providing the circumstances and mitigating factors that an agency must consider to determine whether granting a license, permit, or certification to a person would pose a direct and substantial risk to public safety; requiring a state agency to provide an applicant with a certain written notification to deny his or her application for a license, permit, or certification on the basis of a prior conviction; authorizing a person to petition a state agency at any time for a decision as to whether his or her prior conviction disqualifies him or her from obtaining a license, permit, or certification; requiring the state agency to review the petition according to specified procedures and make a certain determination; providing that a decision that the person is not disqualified for a specified license, permit, or certification is binding on the agency unless certain conditions exist;

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requiring the agency to advise the person of any actions he or she may take to remedy the disqualification; prohibiting a person from submitting a new petition to the state agency within a specified timeframe after a final decision is made; prohibiting a state agency from using specified terminology in a decision related to the denial of a license, permit, or certification; making technical changes; amending s. 112.0111, F.S.; revising legislative intent; requiring certain state agencies to submit to the Governor and the Legislature and post on their respective websites a specified report beginning on a specified date and annually thereafter; providing requirements for the report; amending s. 120.60, F.S.; requiring an agency to provide applicants with certain written notice if the agency intends to base its denial of an application for a license on a prior conviction; providing requirements for such notice; authorizing an applicant to submit a rebuttal; requiring the agency to provide written notice of its decision within a specified timeframe after the deadline to submit such rebuttal; providing that such decision is administratively and judicially reviewable; providing requirements for notice of such decision; making technical changes; amending ss. 310.071, 455.213, 562.13, 626.207, 626.9954, and 648.34, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

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

Section 1. Section 112.011, Florida Statutes, is amended to read:

112.011 Disqualification from licensing, permitting, certification, and public employment based on criminal conviction.—

(1) For the purposes of this section, the term:

(a) "Conviction" means a determination of guilt which is the result of a plea or trial, regardless of whether adjudication is withheld, under the laws of this state or another state.

(b) "Fiduciary duty" means a duty to act for someone else's benefit while subordinating one's personal interest to that of the other person.

(2)(a) Except as provided in s. 775.16, a person may not be disqualified from employment by the state, any of its agencies or political subdivisions, or any municipality solely because of a prior conviction for a crime. However, a person may be denied employment by the state, any of its agencies or political subdivisions, or any municipality by reason of the prior conviction for a crime if the crime was a felony or first-degree misdemeanor and directly related to the position of employment sought.

(b) Notwithstanding any other law, a person may not be denied a license, permit, or certification to pursue, practice, or engage in an occupation, a trade, a vocation, a profession, or a business by reason of the person's arrest for a crime not followed by a conviction. However, when a person has criminal

charges pending that may serve as the basis for the denial of a license, permit, or certification to pursue, practice, or engage in an occupation, a trade, a vocation, a profession, or a business under paragraph (c), a state agency may defer its decision on the person's application for a license, permit, or certification pending resolution of the criminal charges.

(c) Notwithstanding any other law ~~Except as provided in s. 775.16~~, a person may be denied a license, permit, or certification to pursue, practice, or engage in an occupation, a trade, a vocation, a profession, or a business by reason of the prior conviction for a crime only if all of the following apply:

1. The crime was:

a. A forcible felony as defined in s. 776.08;

b. An offense involving a breach of fiduciary duty;

c. An offense for a fraudulent practice under chapter 817 or a substantially similar offense under the laws of another state;

d. A felony or first-degree misdemeanor for which the person was not incarcerated, and he or she was convicted less than 3 years before a state agency began considering his or her application for the license, permit, or certification; or

e. A felony or first-degree misdemeanor for which the person was incarcerated, and his or her incarceration ended less than 3 years before a state agency began considering his or her application for the license, permit, or certification.

2. The conviction directly and specifically relates to the duties and responsibilities of the occupation, trade, vocation, profession, or business for which the license, permit, or certification is sought.

3. A determination is made pursuant to paragraph (e), with clear and convincing evidence, that granting the license, permit, or certification would pose a direct and substantial risk to public safety because the person is unable to safely perform the duties and responsibilities of ~~that is directly related to the standards determined by the regulatory authority to be necessary and reasonably related to the protection of the public health, safety, and welfare for~~ the specific occupation, trade, vocation, profession, or business for which the license, permit, or certification ~~certificate~~ is sought.

(d) ~~(c)~~ Notwithstanding any law to the contrary, a state agency may not deny an application for a license, a permit, a certification ~~certificate~~, or employment based solely on the applicant's lack of civil rights. However, this paragraph does not apply to applications for a license to carry a concealed weapon or firearm under chapter 790.

(e) To determine whether granting a license, a permit, or a certification to a person would pose a direct and substantial risk to public safety under paragraph (c), a state agency must consider the person's current circumstances and mitigating factors, including all of the following:

1. The age of the person when he or she committed the crime.

2. The amount of time that has elapsed since the person committed the crime.

3. The circumstances surrounding the nature of the crime.

4. Whether the person completed his or her criminal sentence and, if completed, the amount of time since completing such sentence.

5. Whether the person received a certificate of rehabilitation or good conduct.

6. Whether the person completed or is an active participant in a rehabilitative substance abuse program.

7. Any testimonials or recommendations, including progress reports from the person's probation or parole officer.

8. Whether the person has received any education or training.

9. The person's employment history and employment aspirations.

10. The person's family responsibilities.

11. Whether the occupation, trade, vocation, profession, or business requires that the person be bonded.

12. Any other evidence of rehabilitation or information the person submits to the state agency.

(f) A state agency may deny the application for a license, permit, or certification to pursue, practice, or engage in an occupation, a trade, a vocation, a profession, or a business based on a person's prior conviction for a crime only if the state agency provides written notification consistent with s. 120.60(3).

(g)1. Notwithstanding any other law, a person with a prior conviction for a crime may petition a state agency at any time, including while in confinement, while under supervision, or before obtaining any required personal qualifications for a license, permit, or certification, for a decision as to whether the person's prior conviction for a crime would disqualify him or her from obtaining the license, permit, or certification. In the petition, the person must include a record of his or her

prior conviction for a crime or must authorize the state agency to obtain such record. In reviewing the petition, the state agency shall determine whether granting the license, permit, or certification to the person would pose a direct and substantial risk to public safety because there is clear and convincing evidence that the person is unable to safely perform the duties and responsibilities of the specific occupation, trade, vocation, profession, or business for which the license, permit, or certification is sought. The state agency shall follow the procedure in paragraph (e) when reviewing and making its decision on the petition.

2. If a state agency determines under subparagraph 1. that a person is not disqualified for a license, permit, or certification, such decision is binding on the state agency in any later ruling on the person's formal application unless the information contained in the petition is found to be inaccurate or incomplete, or the person is subsequently convicted of a crime.

3. If the state agency determines under subparagraph 1. that a person is disqualified for a license, permit, or certification, the agency must advise the person of any action, if any, he or she may take to remedy the disqualification. The person may submit a revised petition reflecting completion of the remedial actions before a deadline set by the agency in its final decision on the petition.

4. A person may not otherwise submit a new petition to the state agency until 1 year after a final decision on the initial petition is rendered or the person obtains the required qualifications for a license, permit, or certification,

whichever is earlier.

(h) Notwithstanding any other law, a state agency may not use vague terms, including, but not limited to, "good moral character," "moral turpitude," or "character and fitness," in its decision to disqualify a person from a license, permit, or certification based on the person's prior conviction for a crime.

(3)(a) ~~(2)(a)~~ This section does not apply to any law enforcement or correctional agency.

(b) This section does not apply to the employment practices of any fire department relating to the hiring of firefighters.

(c) This section does not apply to the employment practices of any county or municipality relating to the hiring of personnel for positions deemed to be critical to security or public safety pursuant to ss. 125.5801 and 166.0442.

(4) ~~(3)~~ Any complaint concerning the violation of this section must ~~shall~~ be adjudicated in accordance with the procedures set forth in chapter 120 for administrative and judicial review.

Section 2. Section 112.0111, Florida Statutes, is amended to read:

112.0111 Restrictions on the employment of ex-offenders; legislative intent; state agency reporting requirements.—

(1) The Legislature declares that a goal of this state is to ~~clearly identify the occupations from which ex-offenders are disqualified based on the nature of their offenses. The Legislature seeks to~~ make employment opportunities available to ex-offenders in a manner that preserves and protects ~~serves to preserve and protect~~ the health, safety, and welfare of the

general public, yet encourages ex-offenders ~~them~~ to become productive members of society. To this end, state agencies that exercise regulatory authority ~~are in the best position to identify all restrictions on employment imposed by the agencies or by boards that regulate professions and occupations and~~ are obligated to protect the health, safety, and welfare of the general public ~~by clearly setting forth those restrictions~~ in keeping with standards in state law and protections determined by the agencies to be in the least restrictive manner.

(2) Beginning December 31, 2024, and annually each December 31 thereafter, each state agency~~, including, but not limited to, those state agencies~~ responsible for issuing licenses, permits, or certifications to pursue, practice, or engage in an occupation, a trade, a vocation, a profession, or a business shall ~~professional and occupational regulatory boards, shall ensure the appropriate restrictions necessary to protect the overall health, safety, and welfare of the general public are in place, and by December 31, 2011, and every 4 years thereafter,~~ submit to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and make publicly available on its website, a report that includes all of the following:

(a) The number of applicants with a prior conviction for a crime who applied for each license, permit, or certification in the previous year, and of that number, the number of times the state agency granted the application for, and the number of times it denied, withheld, or refused to grant, a license, permit, or certification because of the applicant's criminal history. The report must also specify the offense or offenses

that served as the basis for each decision to deny, withhold, or refuse to grant the license, permit, or certification ~~A list of all agency or board statutes or rules that disqualify from employment or licensure persons who have been convicted of a crime and have completed any incarceration and restitution to which they have been sentenced for such crime~~.

(b) The number of applicants with a prior conviction for a crime whose applications were denied, withheld, or refused who petitioned the state agency pursuant to s. 112.011(2)(e) in the previous year and the number of such petitions that were approved or denied. The report must also specify the offense or offenses that served as the basis for each decision to approve or deny a petition ~~A determination of whether the disqualifying statutes or rules are readily available to prospective employers and licensees~~.

(c) Any other data the agency deems relevant in fulfilling its purpose under subsection (1) ~~The identification and evaluation of alternatives to the disqualifying statutes or rules which protect the health, safety, and welfare of the general public without impeding the gainful employment of ex-offenders~~.

Section 3. Subsection (3) of section 120.60, Florida Statutes, is amended to read:

120.60 Licensing.—

(3)(a) Each applicant must ~~shall~~ be given written notice, personally or by mail, that the agency intends to grant or deny, or has granted or denied, the application for license; however, if the agency intends to deny the application for license based upon a person's prior conviction for a crime pursuant to s.

112.011, the agency must first provide the applicant with written notice of the agency's intention as stated in paragraph (b). The notice required by this paragraph must state with particularity the grounds or basis for the issuance or denial of the license, except when issuance is a ministerial act. Unless waived, a copy of the notice must ~~shall~~ be delivered or mailed to each party's attorney of record and to each person who has made a written request for notice of agency action. Each notice must inform the recipient of the basis for the agency decision, inform the recipient of any administrative hearing pursuant to ss. 120.569 and 120.57 or judicial review pursuant to s. 120.68 which may be available, indicate the procedure that must be followed, and state the applicable time limits. The issuing agency shall certify the date the notice was mailed or delivered, and the notice and the certification must be filed with the agency clerk.

(b)1. The agency may deny the application for license based upon a person's prior conviction for a crime consistent with s. 112.011 only if the agency provides the applicant with written notice, in person or by mail, of its intention to deny the application. The notice must state with particularity the grounds or the basis for the agency's intention to deny the license. The notice must inform the recipient that, before the denial becomes final, he or she may provide a rebuttal with additional evidence of circumstances or rehabilitation, including written support provided by character witnesses. Pursuant to subsection (1), the agency must allow the applicant at least 30 days to provide a rebuttal before issuing a decision on the application for license. A copy of the notice must be

delivered or mailed to each party's attorney of record, if applicable, and to each person who has made a written request for notice of agency action. The agency shall certify the date the notice was delivered or mailed, and the notice and the certification must be filed with the agency clerk.

2. The agency shall provide written notification of its decision on the application for license within 60 days after the deadline for submitting a rebuttal. If the agency denies or intends to deny the application for license, the agency must specify the clear and convincing evidence on which the agency based its determination. The agency's decision is administratively reviewable pursuant to ss. 120.569 and 120.57 and judicially reviewable pursuant to s. 120.68. The notification must indicate the procedure and applicable time limits that must be followed to seek administrative review, and must state the earliest date that the applicant may submit another application for license. A copy of the notice must be delivered or mailed to each party's attorney of record, if applicable, and to each person who has made a written request for notice of agency action. The agency shall certify the date the notice was mailed or delivered, and the notice and the certification must be filed with the agency clerk.

Section 4. Subsection (4) of section 310.071, Florida Statutes, is amended to read:

310.071 Deputy pilot certification.—

(4) The board must follow the requirements in s. 112.011(2) before ~~Notwithstanding s. 112.011 or any other provision of law relating to the restoration of civil rights,~~ an applicant may ~~shall~~ be disqualified from applying for or ~~and shall be~~ denied a

deputy pilot certificate ~~if the applicant, regardless of adjudication, has ever been found guilty of, or pled guilty or nolo contendere to, a charge which was:~~

~~(a) A felony or first degree misdemeanor which directly related to the navigation or operation of a vessel; or~~

~~(b) A felony involving the sale of or trafficking in, or conspiracy to sell or traffic in, a controlled substance as defined by chapter 893, or an offense under the laws of any state or country which, if committed in this state, would constitute the felony of selling or trafficking in, or conspiracy to sell or traffic in, such controlled substance~~.

Section 5. Subsections (3) and (11) of section 455.213, Florida Statutes, are amended to read:

455.213 General licensing provisions.—

(3)(a) Notwithstanding any other law, the applicable board shall use the process in s. 112.011(2) ~~this subsection~~ for review of an applicant's criminal record to determine his or her eligibility for licensure ~~as:~~

~~1. A barber under chapter 476;~~

~~2. A cosmetologist or cosmetology specialist under chapter 477;~~

~~3. Any of the following construction professions under chapter 489:~~

~~a. Air-conditioning contractor;~~

~~b. Electrical contractor;~~

~~c. Mechanical contractor;~~

~~d. Plumbing contractor;~~

~~e. Pollutant storage systems contractor;~~

~~f. Roofing contractor;~~

~~g. Sheet metal contractor;~~

~~h. Solar contractor;~~

~~i. Swimming pool and spa contractor;~~

~~j. Underground utility and excavation contractor; or~~

~~k. Other specialty contractors; or~~

~~4. Any other profession for which the department issues a license, provided the profession is offered to inmates in any correctional institution or correctional facility as vocational training or through an industry certification program~~.

(b)1. ~~A conviction, or any other adjudication, for a crime more than 5 years before the date the application is received by the applicable board may not be grounds for denial of a license specified in paragraph (a). For purposes of this paragraph, the term "conviction" means a determination of guilt that is the result of a plea or trial, regardless of whether adjudication is withheld. This paragraph does not limit the applicable board from considering an applicant's criminal history that includes a crime listed in s. 775.21(4)(a)1. or s. 776.08 at any time, but only if such criminal history has been found to relate to the practice of the applicable profession.~~

~~2. The applicable board may consider the criminal history of an applicant for licensure under subparagraph (a)3. if such criminal history has been found to relate to good moral character.~~

~~(c)1.~~ A person may apply for a license before his or her lawful release from confinement or supervision. The department may not charge an applicant an additional fee for being confined or under supervision. The applicable board may not deny an application for a license solely on the basis of the applicant's

current confinement or supervision.

2. After a license application is approved, the applicable board may stay the issuance of a license until the applicant is lawfully released from confinement or supervision and the applicant notifies the applicable board of such release. The applicable board must verify the applicant's release with the Department of Corrections before it issues a license.

3. If an applicant is unable to appear in person due to his or her confinement or supervision, the applicable board must allow ~~permit~~ the applicant to appear by teleconference or video conference, as appropriate, at any meeting of the applicable board or other hearing by the agency concerning his or her application.

4. If an applicant is confined or under supervision, the Department of Corrections and the applicable board must ~~shall~~ cooperate and coordinate to facilitate the appearance of the applicant at a board meeting or agency hearing in person, by teleconference, or by video conference, as appropriate.

(c) ~~(d)~~ Each applicable board shall compile a list of crimes that, if committed and regardless of adjudication, do not relate to the practice of the profession or the ability to practice the profession and do not constitute grounds for denial of a license. This list must be made available on the department's website and updated annually. Beginning October 1, 2019, each applicable board shall compile a list of crimes that although reported by an applicant for licensure, were not used as a basis for denial. The list must identify for each such license application the crime reported and the date of conviction and whether there was a finding of guilt, a plea, or an adjudication

entered or the date of sentencing.

(d) ~~(c)~~ Each applicable board shall compile a list of crimes that have been used as a basis for denial of a license in the past 2 years and shall make the list available on the department's website. Starting October 1, 2019, and updated quarterly thereafter, the applicable board shall compile a list indicating each crime used as a basis for denial. For each crime listed, the applicable board shall ~~must~~ identify the date of conviction, finding of guilt, plea, or adjudication entered, or date of sentencing. Such denials must be made available to the public upon request.

(11) For any profession requiring fingerprints as part of the registration, certification, or licensure process or for any profession requiring a criminal history record check ~~to determine good moral character~~, the fingerprints of the applicant must accompany all applications for registration, certification, or licensure. The fingerprints must ~~shall~~ be forwarded to the Division of Criminal Justice Information Systems within the Department of Law Enforcement for processing to determine whether the applicant has a criminal history record. The fingerprints must ~~shall~~ also be forwarded to the Federal Bureau of Investigation to determine whether the applicant has a criminal history record. The information obtained by the processing of the fingerprints by the Department of Law Enforcement and the Federal Bureau of Investigation must ~~shall~~ be sent to the department to determine whether the applicant is statutorily qualified for registration, certification, or licensure.

Section 6. Paragraph (a) of subsection (3) of section

562.13, Florida Statutes, is amended to read:

562.13 Employment of minors or certain other persons by certain vendors prohibited; exceptions.—

(3)(a) It is unlawful for any vendor licensed under the beverage law to employ as a manager or person in charge or as a bartender any person:

1. Who has been convicted within the last past 5 years of any offense against the beverage laws of this state, the United States, or any other state.

2. Who has been convicted within the last past 5 years in this state or any other state or the United States of soliciting for prostitution, pandering, letting premises for prostitution, keeping a disorderly place, or any felony violation of chapter 893 or the controlled substances act of any other state or the Federal Government.

~~3. Who has, in the last past 5 years, been convicted of any felony in this state, any other state, or the United States.~~

The term "conviction" shall include an adjudication of guilt on a plea of guilty or nolo contendere or forfeiture of a bond when such person is charged with a crime.

Section 7. Subsection (9) of section 626.207, Florida Statutes, is amended to read:

626.207 Disqualification of applicants and licensees; penalties against licensees; rulemaking authority.—

(9) Section 112.011(2) applies ~~112.011 does not apply~~ to any applicants for licensure under the Florida Insurance Code, including, but not limited to, agents, agencies, adjusters, adjusting firms, or customer representatives.

Section 8. Subsection (8) of section 626.9954, Florida Statutes, is amended to read:

626.9954 Disqualification from registration.—

(8) Section 112.011(2) applies ~~112.011 does not apply~~ to an applicant for registration as a navigator.

Section 9. Subsection (7) of section 648.34, Florida Statutes, is amended to read:

648.34 Bail bond agents; qualifications.—

(7) Section 112.011(2) applies ~~The provisions of s. 112.011 do not apply~~ to bail bond agents or to applicants for licensure as bail bond agents.

Section 10. This act shall take effect July 1, 2024.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Community Affairs, Chair
Appropriations Committee on Education
Education Pre-K 12
Fiscal Policy
Health Policy
Select Committee on Resiliency

SENATOR Alexis Calatayud
38th District

January 5, 2024

Honorable Senator Joe Gruters
Chair - Committee on Regulated Industries
Honorable Chair Gruters,

I respectfully request that **SB-1012 Employment of Ex-Offenders** be placed on the next committee agenda.

The bill prohibits the denial of a license, permit, or certification because of an arrest for a crime not followed by a conviction; providing the circumstances and mitigating factors that an agency must consider to determine whether granting a license, permit, or certification to a person would pose a direct and substantial risk to public safety; authorizing a person to petition a state agency at any time for a decision as to whether his or her prior conviction disqualifies him or her from obtaining a license, permit, or certification; requiring an agency to provide applicants with certain written notice if the agency intends to base its denial of an application for a license on a prior conviction.

Sincerely,

Alexis M. Calatayud

Senator Alexis M. Calatayud
Florida Senate, District 38

CC: Booter Imhof, Staff Director
Susan Datres, Committee Administrative Assistant

2024 FDLE LEGISLATIVE BILL ANALYSIS

BILL INFORMATION	
BILL NUMBER:	SB 1012
BILL TITLE:	Employment of Ex-Offenders
BILL SPONSOR:	Senator Calatayud
EFFECTIVE DATE:	July 1, 2024

COMMITTEES OF REFERENCE
1) Regulated Industries
2) Criminal Justice
3) Fiscal Policy
4)
5)

CURRENT COMMITTEE
Regulated Industries

SIMILAR BILLS	
BILL NUMBER:	HB 751
SPONSOR:	Rep. Hunschosky

IDENTICAL BILLS	
BILL NUMBER:	
SPONSOR:	

PREVIOUS LEGISLATION	
BILL NUMBER:	
SPONSOR:	
YEAR:	
LAST ACTION:	

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	January 16, 2024
LEAD AGENCY ANALYST:	Lucy Saunders
ADDITIONAL ANALYST(S):	Ashley Black, Becky Bezemek
LEGAL ANALYST:	Jim Martin, Chris Bufano
FISCAL ANALYST:	Elizabeth Martin

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Employment of Ex-offenders; Prohibiting the denial of a license, permit, or certification because of an arrest for a crime not followed by a conviction; providing the circumstances and mitigating factors that an agency must consider to determine whether granting a license, permit, or certification to a person would pose a direct and substantial risk to public safety; authorizing a person to petition a state agency at any time for a decision as to whether his or her prior conviction disqualifies him or her from obtaining a license, permit, or certification; requiring an agency to provide applicants with certain written notice if the agency intends to base its denial of an application for a license on a prior conviction. The bill takes effect July 1, 2024.

2. SUBSTANTIVE BILL ANALYSIS

1. **PRESENT SITUATION:** Section 112.011, F.S., codifies disqualification from licensing and public employment based on criminal conviction.

2. **EFFECT OF THE BILL:** The bill amends s. 112.011, F.S., to revise the criteria a state agency (that exercises regulatory authority) must consider before denying a license, permit, or certification to a person previously convicted of a crime. This bill also amends s. 455.213, F.S., requiring the applicable board to use the process in s. 112.011(2), F.S., for review of an applicant's criminal record to determine his or her eligibility for licensure, a permit, or certification.

3. **DOES THE LEGISLATION DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES OR PROCEDURES? Y ☐ N ☒**

If yes, explain:	
What is the expected impact to the agency's core mission?	
Rule(s) impacted (provide references to F.A.C., etc.):	

4. **WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

List any known proponents and opponents:	
Provide a summary of the proponents' and opponents' positions:	

5. **ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y ☐ N ☒**

If yes, provide a description:	
Date Due:	
Bill Section Number:	

6. **ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSION, ETC. REQUIRED BY THIS BILL? Y ☐ N ☒**

Board:	
Board Purpose:	
Who Appointments:	

Appointee Term:	
Changes:	
Bill Section Number(s):	

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y ☐ N ☒

Revenues:	
Expenditures:	
Does the legislation increase local taxes or fees?	
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y ☒ N ☐

Revenues:	The number of potential applicants who may utilize the petition process prior to applying for a license, permit, or certification is unknown; as such, the Florida Department of Law Enforcement (FDLE) is unable to accurately report any potential change(s) in revenue.
Expenditures:	
Does the legislation contain a State Government appropriation?	
If yes, was this appropriated last year?	

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y ☒ N ☐

Revenues:	
Expenditures:	The number of potential applicants who may utilize the petition process prior to applying for a license, permit, or certification is unknown; as such, FDLE is unable to accurately report the potential fiscal impact to the private sector.
Other:	

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y ☐ N ☒

Does the bill increase taxes, fees or fines?	
Does the bill decrease taxes, fees or fines?	

What is the impact of the increase or decrease?	
Bill Section Number:	

TECHNOLOGY IMPACT

1. DOES THE LEGISLATION IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E., IT SUPPORT, LICENSING, SOFTWARE, DATA STORAGE, ETC.)? Y ☒ N ☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	The impact of the bill is unknown.

FEDERAL IMPACT

1. DOES THE LEGISLATION HAVE A FEDERAL IMPACT (I.E., FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGECY INVOLVEMENT, ETC.)? Y ☐ N ☐

If yes, describe the anticipated impact including any fiscal impact.	.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments and recommended action:	Lines 67-70: To align with the definition of "conviction" used in s. 943.0584(1), F.S., FDLE recommends changing the definition of "conviction" to the following: "Conviction" means a determination of guilt that is the result of a ~~plea or~~ trial or the entry of a plea of guilty or nolo contedere, regardless of whether adjudication is withheld, under either the laws of this state or another jurisdiction. If left as is, there could be the argument that a nolo contendere plea would not be a determination of guilt on an adjudication withheld as the person is not contesting but not admitting guilt. Lines 167-192: This would require state agencies to give an advisory opinion on a person's eligibility prior to the application which would then be binding on the agency. This could result in substantial litigation over what was actually known by the state agency at the time of the advisory opinion. The information in a background check could change at any time and it can have strong consequences to have that advisory opinion be binding on a state agency. This binding advisory opinion will also give rise to rights to a petitioner under chapter 120, F.S., to claim their substantial interests are effective and therefore entitled to a formal hearing at the Division of Administrative Hearings. This would require agencies to litigate the matter before an Administrative Law Judge.

ADDITIONAL COMMENTS

- Lines 167 - 185: As written, it is unclear how the respective state agency will obtain the potential applicant's criminal history record without initiating an application for licensing, permitting, certification, or employment, which may include the submission of fingerprints for a state and national criminal history record check (i.e., Level 2 background check) and other required qualifications. If the intent of the bill is to leverage the existing statutory screening authority of the

respective agency, it should be noted that continued access to national criminal history record information is reliant upon the Federal Bureau of Investigation's (FBI) approval of the legislative changes. As such, FDLE recommends providing clarification within the bill to explain how the respective state agency will obtain criminal history record information if it is not provided by the potential applicant.

However, if the intent of the bill is to allow applicants to undergo separate Florida (state-only) criminal history record checks (i.e., Level 1 background checks) prior to their application, FDLE also recommends stating so specifically within the bill. Level 1 background checks only verify if an individual has been arrested or convicted within the state of Florida; arrests and/or convictions that occur outside the state are not included in a state-only criminal history record check.

- While the impact of this bill does not necessitate additional FTE or other resources, this bill, in combination with additional criminal history record check bills, could rise to the level requiring additional staffing and other resources.

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 1142
INTRODUCER:	Senator Hooper
SUBJECT:	Occupational Licensing
DATE:	January 19, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	**Pre-meeting**
2.			FP	

I. Summary:

SB 1142 amends s. 489.117, F.S., relating to the registration of specialty contractors, to authorize registered contractors in good standing who have been registered with a local jurisdiction during calendar years 2021, 2022, or 2023, to qualify for a registration when the local jurisdiction has determined not to continue issuing local licenses or exercising disciplinary oversight over such licensees. The bill requires the Construction Industry Licensing Board to issue licenses to eligible applicants in the circumstances specified in the bill.

To be eligible for registration under these circumstances, an applicant must provide:

- Evidence of the prior local registration during 2021, 2022, or 2023;
- Evidence that the local jurisdiction does not require a license for the category of work for which the applicant was issued a certification of registration or local license during 2021, 2022, or 2023, which may include a notification on the website of the local jurisdiction or an email or letter from the local building department;
- The required application fee; and
- Compliance with the insurance and financial responsibility requirements for contractors under current law.

The impact on state revenues and expenditures is indeterminate. There is no impact expected on local government revenues and expenditures. See Section V, Fiscal Impact Statement.

The bill takes effect July 1, 2024.

II. Present Situation:

State Preemption Relating to Certain Occupational Licensing

Current law expressly preempts the licensing of occupations to the state and supersedes any local government licensing of occupations, with the exception of local government licensing of

occupations authorized by general law or occupational licenses imposed by a local government before January 1, 2021.[1] Local government occupational licensing requirements imposed by that date may not be increased or modified, meaning that local governments are not authorized to increase existing occupational license fees, and the authority of local governments to license occupations and collect license fees expires on July 1, 2024.[2]

Section 489.117(4)(a), F.S., specifically prohibits local governments from requiring a license for a person whose job scope does not substantially correspond to that of a contractor licensed by the Construction Industry Licensing Board within the Department of Professional Regulation. It specifically precludes local governments from requiring a license for: painting, flooring, cabinetry, interior remodeling, driveway or tennis court installation, handyman services, decorative stone, tile, marble, granite, or terrazzo installation, plastering, stuccoing, caulking, and canvas awning and ornamental iron installation.

According to representatives from local government licensing agencies, many individuals and small businesses have faced issues due to local governments advising local licenses would no longer be issued after July 1, 2023, the initial date the local government exception was to expire.

Construction Professional Licenses

Chapter 489, F.S., relates to "contracting," with part I addressing the licensure and regulation of construction contracting, and part II addressing the licensure and regulation of electrical and alarm system contracting.

Construction Contracting

Construction contractors are either certified or registered by the Construction Industry Licensing Board (CILB) housed within the DBPR.[3] The CILB consists of 18 members who are appointed by the Governor and confirmed by the Senate.[4] The CILB meets to approve or deny applications for licensure, review disciplinary cases, and conduct informal hearings relating to discipline.[5]

"Certified contractors" are individuals who pass the state competency examination and obtain a certificate of competency issued by the DBPR. Certified contractors are able to obtain a certificate of competency for a specific license category and are permitted to practice in that category in any jurisdiction in the state.[6]

"Certified specialty contractors" are contractors whose scope of work is limited to a particular phase of construction, such as drywall or demolition. Certified specialty contractor licenses are created by the CILB through rulemaking. Certified specialty contractors are permitted to practice in any jurisdiction in the state.[7]

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[1] *See* s. 163.211(2), F.S., as enacted by ch. 2021-214, Laws of Fla., popularly known as "HB 735," and amended by ch. 2023-271, Laws of Florida. The exception for local government licensing expires July 1, 2024.
[2] *Id.*
[3] *See* ss. 489.105, 489.107, and 489.113, F.S.
[4] Section 489.107(1), F.S.
[5] Section 489.107, F.S.
[6] *See* ss. 489.105(6)-(8) and (11), F.S.
[7] *See* ss. 489.108, 489.113, 489.117, and 489.131, F.S.

"Registered contractors" are individuals who have paid the required fee, taken and passed a local competency examination and licensing requirements, if any, and may practice the specific category of contracting for which he or she is approved, only in the local jurisdiction for which the license is issued.[8]

In the local jurisdictions that are eliminating local licensing requirements, registered contractors will not be able to meet the current requirements to remain registered with the state, and under current law, they will be required to meet the statewide certification requirements, including an examination, to be able to continue to work in their trade category. Many registered contractors have been in business for many years and have successfully met either the examination or experience requirements, or both, for licensing in their local jurisdictions.

The following table provides examples of CILB licenses for contractors.[9]

Statutory Licenses
• Air Conditioning- Classes A, B, and C • Building • General • Mechanical • Plumbing • Pool/Spa- Classes A, B, and C • Residential • Roofing • Sheet Metal • Solar • Underground Excavation

Current law provides that local governments may approve or deny applications for licensure as a registered contractor, review disciplinary cases, and conduct informal hearings relating to discipline of registered contractors licensed in their jurisdiction.[10]

However, under current law, a local government, as defined in s. 163.211, F.S., may not require a person to obtain a license for a job scope which does not substantially correspond to the job scope of one of the contractor categories defined in s. 489.105(3)(a)-(o) and (q), F.S., or authorized in s. 489.1455(1), F.S. Job scopes for which a local government may not require a license include, but are not limited to, painting; flooring; cabinetry; interior remodeling; driveway or tennis court installation; handyman services; decorative stone, tile, marble, granite, or terrazzo installation; plastering; stuccoing; caulking; and canvas awning and ornamental iron installation.[11]

Further, effective July 1, 2024, local governments are prohibited from issuing and requiring construction licenses that are outside the scope of practice for a certified contractor or certified

[8] Section 489.117, F.S. *See also* s. 489.105(3)(a)-(o), F.S.
[9] *See* s. 489.105(a)-(q), F.S., and Fla. Admin. Code R. 61G4-15.015 through 61G4-15.040 (2021).
[10] Sections 489.117 and 489.131, F.S.
[11] *See* ch. 2021-214, Laws of Fla. (HB 735) (Reg. Sess. 2021).

specialty contractor.[12] Local governments may only collect licensing fees that cover the cost of regulation.[13]

Locally registered contractors who are required to hold a contracting license to practice their profession in accordance with state law must register with the DBPR after obtaining a local license.

However, persons holding a local construction license whose job scope does not substantially correspond to the job scope of a certified contractor or a certified specialty contractor are not required to register with the DBPR.[14]

Contractor Licensing Exemptions; Handyman Exemption

More than 20 categories of persons are exempt[15] from the contractor licensing requirements of ch. 489, F.S., including work falling under the so-called handyman exemption, meaning the work is of a "casual, minor, or inconsequential nature," and the total contract price for all labor, materials, and all other items is less than $2,500, subject to certain exceptions.[16]

Contractor Licensing Exemption for Eligible Specialty Contracting Services

In 2022, an exemption from local and state licensing was established by the Legislature for all persons performing certain specialty contracting services under the supervision of a certified or registered commercial pool/spa contractor, a residential pool/spa contractor, or a swimming pool/spa servicing contractor (a licensed pool contractor).[17] A contractual relationship between the supervising contractor and those performing the specialty contracting services is not required (i.e., the performance of such contracting services is outside the business of contracting and need not be undertaken through a contractor/subcontractor relationship).

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[12] *Id*.
[13] *See* State Affairs Committee and Local, Federal & Veterans Affairs Subcommittee, The Florida House of Representatives, *The Local Government Formation Manual 2018 - 2020, available at* https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3025&Session=2019&DocumentType=General%20Publications&FileName=2018-2020%20Local%20Government%20Formation%20Manual%20Final.pdf (last visited Jan. 13, 2024).
[14] Sections 489.105 and 489.117(4), F.S.
[15] Exemptions provided in s. 489.103, F.S., include: contractors in work on bridges, roads, streets, highways, or railroads, and other services defined by the CILB and the Florida Department of Transportation; employees of licensed contractors, if acting within the scope of the contractor's license, with that licensee's knowledge; certain employees of federal, state, or local governments or districts (excluding school and university boards), under limited circumstances; certain public utilities, on construction, maintenance, and development work by employees; property owners, when acting as their own contractor and providing "direct, onsite supervision" of all work not performed by licensed contractors on one-family or two-family residences, farm outbuildings, or commercial buildings at a cost not exceeding $75,000; work undertaken on federal property or when federal law supersedes part I of ch. 489, F.S.; registered architects and engineers acting within their licensed practice, including those exempt from such licensing, but not acting as a contractor unless licensed under ch. 489, F.S.; work on one-, two-, or three-family residences constructed or rehabilitated by Habitat for Humanity, International, Inc., or a local affiliate, subject to certain requirements; certain disaster recovery mitigation or other organizations repairing or replacing a one-family, two-family or three-family residence impacted by a disaster, subject to certain requirements; and employees of an apartment community or apartment community management company who make minor repairs to existing electric water heaters, electric heating, ventilating, and air-conditioning systems, subject to certain requirements *See* s. 489.103, F.S., for additional exemptions.
[16] *See* s. 489.103(9), F.S., and Fla. Admin. Code R. 61G-12.011(2).
[17] *See* s. 489.117(4)(e), F.S., as enacted by ch. 2022-90, Laws of Florida.

The services that may be performed by unlicensed persons under the supervision of a licensed pool contractor include the construction, remodeling, repair, or improvement of swimming pools, hot tubs, spas, and interactive water features, as defined in the Florida Building Code (building code).[18] The exemption is not available for persons required to be certified or registered as contractors for specified trade categories described in s. 489.105(3), F.S.,[19] or those in s. 489.505, F.S., relating to electrical and alarm system contracting.

Journeyman Licenses

A journeyman is a skilled worker in a building trade or craft. There is no state requirement for licensure as a journeyman, but the construction and electrical contractor practice acts account for the fact that counties and municipalities issue journeyman licenses. A person with a journeyman license must always work under the supervision of a licensed contractor, but the state does not regulate or issue a license to a journeyman.[20]

Counties and municipalities are expressly authorized by s. 489.1455(1), F.S., to issue journeyman licenses in the plumbing, pipe fitting, mechanical, or HVAC trades, as this authority is not preempted to the state. A tradesman may be licensed as a journeyman in one local jurisdiction and work in multiple jurisdictions (license reciprocity) without having to take another examination or pay an additional licensing fee to qualify to work in the other jurisdictions (county or municipality).[21] If eligible for license reciprocity, a journeyman with a valid, active journeyman license issued by a county or municipality in Florida need not take any additional examinations or pay additional license fees and may work in the:

- Plumbing/pipe fitting, mechanical, or HVAC trades;[22] or
- Electrical and alarm system trades.[23]

The statutory criteria for licensure reciprocity between local jurisdictions for journeymen include:[24]

- Scoring at least 75 percent on an approved proctored examination for that construction trade;
- Completing a registered apprenticeship program and demonstrating four years of verifiable practical experience in the particular trade, or alternatively demonstrating six years of such experience in the particular trade;

[18] The term "swimming pool" is defined as "[a]ny structure basin, chamber or tank containing an artificial body of water for swimming, diving or recreational bathing located in a residential area serving four or fewer living units having a depth of 2 feet (610mm) or more at any point as defined in Section 515.25, Florida Statutes, or the body of water is a public pool as defined in Section 514.011, Florida Statutes" (italics omitted). *See* ch. 2 of the 2020 Florida Building Code (7th Edition), available at https://codes.iccsafe.org/content/FLBC2020P1/chapter-2-definitions (last visited Jan. 13, 2024). The current code does not appear to define "interactive water features." However, the described scope of work for certification as a "swimming pool piping specialty contractor" includes construction of "decorative or interactive water displays or areas." *See* Fla. Admin. Code R. 61G4-15.032, relating to the certification requirements of swimming pool piping specialty contractors.

[19] *See* ss. 489.105(3)(a) through (i) and (m) through (o), F.S. The specified scopes of work are identified as general contractor, building contractor, residential contractor, sheet metal contractor, roofing contractor, Class A, B, and C air-conditioning contractor, mechanical contractor, plumbing contractor, underground utility and excavation contractor, and solar contractor.

[20] Sections 489.103, 489.1455, 489.503, and 489.5335, F.S.

[21] Section 489.1455(2), F.S.

[22] Section 489.1455, F.S.

[23] Section 489.5335, F.S.

[24] Sections 489.1455 and 489.5335, F.S.

- Completing coursework approved by the Florida Building Commission specific to the discipline within the required time frame; and
- Not having a license suspended or revoked within the last five years.

A local government may charge up to $25 as a registration fee for reciprocity.[25]

Contractor Grandfathering Provision

Section 489.118, F.S., authorizes the CILB to grandfather, or certify registered contractors with valid local licenses, in one of the contractor categories defined in s. 489.105(3)(a)-(p), F.S., in certain circumstances.[26] However, the CILB does not have the authority to "grandfather" a specialty contractor, defined in s. 489.105(3)(q) F.S., who is a "contractor whose scope of work and responsibility is limited to a particular phase of construction."[27]

III. Effect of Proposed Changes:

The bill revises the registration requirements for registered contractors, to require the CILB to issue a registration to an eligible applicant to engage in the business of a contractor in a specified local jurisdiction, provided each of the following conditions are satisfied:

- The applicant held, in any local jurisdiction in Florida during 2021, 2022, or 2023, a certificate of registration issued by the state, or a local license issued by a local jurisdiction, to perform work in a contractor trade category defined in s. 489.105(3)(a)-(o), F.S.[28]
- The applicant submits all of the following to the CILB:
  - Evidence of the certificate of registration or local license held by the applicant during 2021, 2022, or 2023.
  - Evidence that the specified local jurisdiction does not require a license for the category of work for which the applicant was issued a certification of registration or local license during 2021, 2022, or 2023, such as a notification on the website of the local jurisdiction or an email or letter from the office of the local building official or local building department stating that such licensing is not required or available in that local jurisdiction.
  - Evidence that the applicant has submitted the required fee.
  - Evidence of compliance with the insurance and financial responsibility requirements of s. 489.115(5), F.S.

Under the bill, an examination is not required for an applicant seeking a registration by supplying the above evidence to the CILB).

[25] *See* ss. 489.1455, F.S. and 489.5335, F.S.
[26] The specified scopes of work are identified as general contractor, building contractor, residential contractor, sheet metal contractor, roofing contractor, Class A, B, and C air-conditioning contractor, mechanical contractor, commercial and residential pool/spa contractor, residential pool/spa contractor, swimming pool/spa servicing contractor, plumbing contractor, underground utility and excavation contractor, solar contractor, and pollutant storage systems contractor.
[27] *See* s. 489.118(1), F.S.
[28] The specified scopes of work for the eligible contractor trade categories are identified as general contractor, building contractor, residential contractor, sheet metal contractor, roofing contractor, Class A, B, and C air-conditioning contractor, mechanical contractor, commercial and residential pool/spa contractor, residential pool/spa contractor, swimming pool/spa servicing contractor, plumbing contractor, underground utility and excavation contractor, and solar contractor.

The CILB is responsible for disciplining a licensee issued a registration pursuant to the requirements set forth in the bill. The CILB must make such licensure and disciplinary information available through the automated information system provided by the Department of Business and Professional Regulation as required by s. 455.2286, F.S., which provides instant notification to local building departments and other interested parties regarding the status of a certification or registration.

Under the bill, the fees for an applicant seeking a registration and renewal of such registration every two years are the same as the fees established by the CILB as set forth in s. 489.109, F.S., relating to applications, registration and renewal, and record making and recordkeeping. The department shall mail each registrant an application for renewal.

The bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None. There is no new fee payable by registered contractors who may choose to apply for a license using the method described in the bill, as they are subject to and must pay fees for initial licenses and for license renewals in current law in order to legally perform contracting services in the state. *See* s. 489.109, F.S., relating to fees applicable to registered contractors.

B. Private Sector Impact:

The method for obtaining a license as a registered contractor authorized in the bill will assist those contractors who chose registration in a local community rather than qualification as a statewide certified contractor, to remain in the workforce when the local jurisdiction determines not to issue local licenses.

C. Government Sector Impact:

The impact on state revenues and expenditures is indeterminate, but depends on the number of contractors who choose the method for obtaining a license as a registered contractor authorized in the bill. Under the bill, the board will be responsible for disciplining a licensee issued a registration pursuant to the requirements set forth in the bill.

No analysis by the DBPR of the impact of the bill on its operations, revenue, and expenditures has been provided as of the date of this analysis.

There is no impact expected on local government revenues and expenditures.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 489.117 of the Florida Statutes.

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 Hooper

21-01377-24 20241142__

A bill to be entitled

An act relating to occupational licensing; amending s. 489.117, F.S.; requiring the Construction Industry Licensing Board within the Department of Business and Professional Regulation to issue registrations to eligible persons under certain circumstances; providing that the board is responsible for disciplining such licensees; requiring the board to make licensure and disciplinary information available through the automated information system; providing for the fees for the issuance of the registrations and renewal registrations; requiring the department to mail registrants renewal applications; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Paragraphs (a) and (b) of subsection (1) and subsection (2) of section 489.117, Florida Statutes, are amended to read:

489.117 Registration; specialty contractors.—

(1)(a) A ~~Any~~ person engaged in the business of a contractor as defined in s. 489.105(3)(a)-(o) must be registered before engaging in business as a contractor in this state, unless he or she is certified. Except as provided in paragraph (2)(b), to be initially registered, the applicant must ~~shall~~ submit the required fee and file evidence of successful compliance with the local examination and licensing requirements, if any, in the

21-01377-24 20241142__

area for which registration is desired. An examination is not required for registration.

(b) Registration allows the registrant to engage in contracting only in the counties, municipalities, or development districts where he or she has complied with all local licensing requirements, if any, and only for the type of work covered by the registration.

(2)(a) Except as provided in paragraph (b), the board may not issue a ~~No~~ new registration ~~may be issued by the board~~ after July 1, 1993, based on any certificate of competency or license for a category of contractor defined in s. 489.105(3)(a)-(o) which is issued by a municipal or county government that does not exercise disciplinary control and oversight over such locally licensed contractors, including forwarding a recommended order in each action to the board as provided in s. 489.131(7). For purposes of this subsection and s. 489.131(10), the board shall determine the adequacy of such disciplinary control by reviewing the local government's ability to process and investigate complaints and to take disciplinary action against locally licensed contractors.

(b) The board shall issue a registration to an eligible applicant to engage in the business of a contractor in a specified local jurisdiction, provided each of the following conditions are satisfied:

1. The applicant held, in any local jurisdiction in this state during 2021, 2022, or 2023, a certificate of registration issued by the state or a local license issued by a local jurisdiction to perform work in a category of contractor defined in s. 489.105(3)(a)-(o).

2. The applicant submits all of the following to the board:

a. Evidence of the certificate of registration or local license held by the applicant as required by subparagraph 1.

b. Evidence that the specified local jurisdiction does not require a license for the category of work for which the applicant was issued a certification of registration or local license during 2021, 2022, or 2023, such as a notification on the website of the local jurisdiction or an email or letter from the office of the local building official or local building department stating that such licensing is not required or available in that local jurisdiction.

c. Evidence that the applicant has submitted the required fee.

d. Evidence of compliance with the insurance and financial responsibility requirements of s. 489.115(5).

An examination is not required for an applicant seeking a registration under paragraph (b).

(c) The board is responsible for disciplining licensees issued a registration under paragraph (b). The board shall make such licensure and disciplinary information available through the automated information system provided pursuant to s. 455.2286.

(d) The fees for an applicant seeking a registration under paragraph (b) and renewal of such registration every 2 years are the same as the fees established by the board for applications, registration and renewal, and record making and recordkeeping, as set forth in s. 489.109. The department shall mail each registrant an application for renewal.

Section 2. This act shall take effect July 1, 2024.

The Florida Senate

Committee Agenda Request

To: Senator Joe Gruters, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: January 17, 2024

I respectfully request that **Senate Bill # 1142**, relating to Occupational Licensing, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Ed Hooper
Florida Senate, District 21

File signed original with committee office

S-020 (03/2004)

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 676
INTRODUCER:	Senator Bradley
SUBJECT:	Food Delivery Platforms
DATE:	January 19, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			AEG	
3.			FP	

I. Summary:

The bill creates s. 509.103, F.S., to regulate food delivery platforms. The bill defines the term "food delivery platform" to mean a business that acts as a third-party intermediary for the consumer by taking and arranging for the delivery or pickup of orders from multiple food service establishments. The bill does not apply to delivery or pickup orders placed directly with, and fulfilled by, a food service establishment. The bill defines the term "food service establishment" to have the same meaning as the term "public food service establishment" as defined in s. 509.013(5), F.S.

The bill prohibits a food delivery platform from taking and arranging for the delivery or pickup of orders from a food service establishment without the express consent of that food service establishment. The food service establishment's consent must be in either a written or electronic format.

Under the bill, a food delivery platform must itemize and clearly disclose to the consumer the cost breakdown of each transaction. The food delivery platform must provide the consumer with information about the delivery, including the anticipated date and time of the delivery of the order.

By July 1, 2025, the bill requires a food delivery platform to provide a food service establishment with a method of contacting the consumer while the order is prepared and being delivered for up to 2 hours after the order is picked up from the food service establishment for delivery to the consumer and a method for responding to a consumer's ratings or reviews.

The bill requires a food delivery platform to remove a food service establishment's listing on the food delivery platform within 10 days after receiving the food service establishment's request for removal, unless there is an existing agreement between the two parties stating otherwise as provided in the bill.

Under the bill, a food delivery platform may not, without an agreement with the food service establishment, intentionally inflate, decrease, or alter a food service establishment's pricing.

The bill specifies the requirements for the agreement between a food delivery platform and a food service establishment, including clearly stating all fees, commissions, and charges that the food service establishment is expected to pay or absorb, policies related to alcoholic beverages, insurance requirements, the collection and remitting of taxes, and how disputes will be resolved.

The agreement between the food delivery platform and the food service establishment may not include a provision that requires a food service establishment to indemnify the food delivery platform, or any employee, contractor, or agent of the food delivery platform, for any damage or harm caused by the acts or omissions of the food delivery platform or any of its employees, contractors, or agents. A food delivery platform may also not unreasonably limit the value or number of transactions that may be disputed by a food service establishment with respect to orders, goods, or delivery errors for determining responsibility for errors and reconciling disputed transactions.

The bill expressly preempts the regulation of food delivery platforms to the state.

The bill takes effect upon becoming a law.

II. Present Situation:

Division of Hotels and Restaurants

The Division of Hotels and Restaurants (division) within the Department of Business and Professional Regulation (DBPR) is charged with enforcing the laws relating to the inspection and regulation of public food service establishments for the purpose of protecting the public health, safety, and welfare.[1]

Public Food Service Establishments

A "public food service establishment" is defined as:[2]

> …any building, vehicle, place, or structure, or any room or division in a building, vehicle, place, or structure where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption.

There are several exclusions from the definition of public food service establishment, including:[3]

- Any place maintained and operated by a public or private school, college, or university for the use of students and faculty or temporarily to serve events such as fairs, carnivals, and athletic contests;

[1] Section 509.032, F.S.
[2] Section 509.013(5)(a), F.S.
[3] Section 509.013(5)(b), F.S.

- Any eating place maintained and operated by a church or a religious, nonprofit fraternal, or nonprofit civic organization for the use of members and associates or temporarily to serve events such as fairs, carnivals, or athletic contests;
- Any eating place located on an airplane, train, bus, or watercraft which is a common carrier;
- Any eating place maintained by a facility certified or licensed and regulated by the Agency for Health Care Administration or the Department of Children and Families;
- Any place of business issued a permit or inspected by the Department of Agriculture and Consumer Services under s. 500.12, F.S.;
- Any vending machine that dispenses any food or beverage other than potentially hazardous food;
- Any place of business serving only ice, beverages, popcorn, and prepackaged items; and
- Any research and development test kitchen limited to use by employees and not open to the general public.

The regulation of public food service establishments is preempted to the state.[4]

Off-premises Options for Public Food Establishments

Due to the loss of business during the coronavirus pandemic, many public food establishments added new off-premises food options. The most common addition was curbside takeout by 67 percent of operators nationwide according to the National Restaurant Association.[5] Twenty-seven percent of the operators added food delivery by third party food delivery platforms and an additional 17 percent added in-house delivery options.[6] Food delivery platforms are third-party ordering apps that pick up and deliver food from public food service establishments for a fee.[7]

Regulation of Food Delivery Platforms

Food delivery platforms, which are third-party providers who, for a fee, deliver food orders from public food service establishments to the consumer are not regulated by the State of Florida.

United State Food and Drug Administration (FDA), in coordination with the U.S. Department of Agriculture and the Centers for Disease Control and Prevention, have developed best practices recommendations for the safe delivery of food, including when ordering food from online retailers, produce and meal-kit subscription services, ghost kitchens (which only prepare and fulfill orders for delivery, without a physical storefront), and third-party delivery services and programs.[8]

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[4] Section 509.032(7), F.S.
[5] *Consumers respond to new off-premise options at restaurants*, September 17, 2020, available at https://restaurant.org/education-and-resources/resource-library/consumers-respond-to-new-off-premises-options-at-restaurants/ (last visited January 16, 2024).
[6] *Id.*
[7] *See* https://cloudkitchens.com/blog/top-food-delivery-apps/ (last visited January 16, 2024).
[8] U.S. Food and Drug Administration, *FDA Highlights Best Practices on Food Safety for Online Delivery Services*, Dec. 9, 2022, available at: https://www.fda.gov/food/cfsan-constituent-updates/fda-highlights-best-practices-food-safety-online-delivery-services (last visited Jan. 14, 2024).

A proposed ordinance in Miami-Dade County would regulate food delivery platforms.[9] The proposed ordinance would require the food delivery service to itemize and clearly disclose the cost breakdown of each transaction. The proposed ordinance would permit public food service establishments to access the information about the customers who place orders for their food through a third-party food delivery application, including the consumer's name and address. It also would bar the food delivery service prohibiting a food delivery platform from restricting a public food service establishment from marketing to or contacting a customer under certain circumstances. This appears to be the first local ordinance of its kind in the United States.[10] However, the Board of County Commissioners has deferred action on this proposed ordinance.[11]

III. Effect of Proposed Changes:

The bill creates s. 509.103, F.S., to regulate food delivery platforms.

The bill defines the term "food delivery platform" to mean a business that acts as a third-party intermediary for the consumer by taking and arranging for the delivery or pickup of orders from multiple food service establishments. The bill exempts the following types of activities from the term:

- Delivery or pickup orders placed directly with, and fulfilled by, a food service establishment.
- Websites, mobile applications, or other electronic services that do not post food service establishment menus, logos, or pricing information on their platforms.

The bill defines the term "food service establishment" to have the same meaning as the term "public food service establishment" as defined in s. 509.013(5), F.S. It also defines the term "purchase price" to mean the price, as listed on the menu, for the items in a consumer's order. The term does not include fees, tips or gratuities, and taxes.

The bill prohibits a food delivery platform from taking and arranging for the delivery or pickup of orders from a food service establishment without the express consent of that food service establishment. The food service establishment's consent must be in either a written or electronic format.

Under the bill, a food delivery platform must itemize and clearly disclose to the consumer the cost breakdown of each transaction, including, but not limited to, the following information:

- The purchase price of the food and beverage.
- Any commission, delivery fee, or promotional fee charged to the consumer by the food delivery platform.
- Any tip or gratuity.

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[9] *See Memorandum to Honorable Chairman Oliver G. Gilbert, III and Members, Board of County Commissioners*, Sept. 11, 2023, available at: https://www.miamidade.gov/govaction/legistarfiles/Matters/Y2023/231055.pdf (last visited Jan. 14, 2024).

[10] Jesse Scheckner, *Miami-Dade sets table for food delivery app regulations amid privacy concerns*, Aug. 29, 2323, available at: https://floridapolitics.com/archives/631690-miami-dade-sets-table-for-food-delivery-app-regulations-amid-privacy-concerns/ (last visited Jan. 14, 2024).

[11] *See* Miami-Dade Legislative Item File Number: 231055, at: https://www.miamidade.gov/govaction/matter.asp?matter=231055&file=true&fileAnalysis=false&yearFolder=Y2023 (last visited Jan. 14, 2024).

- Any taxes due on the transaction.

In addition, a food delivery platform must clearly provide to the consumer:
- The anticipated date and time of the delivery of the order.
- The delivery address.
- Confirmation that the order has been successfully delivered or completed.
- A mechanism for the consumer to express order concerns directly to the food delivery platform.

By July 1, 2025, the bill requires a food delivery platform to provide a food service establishment with:
- A method of contacting the consumer while the order is prepared and being delivered for up to 2 hours after the order is picked up from the food service establishment for delivery to the consumer.
- A method for responding a consumer's ratings or reviews.

The bill requires a food delivery platform to remove a food service establishment's listing on the food delivery platform within 10 days after receiving the food service establishment's request for removal, unless there is an existing agreement between the two parties stating otherwise as provided in the bill.

Under the bill, a food delivery platform may not, without an agreement with the food service establishment, intentionally inflate, decrease, or alter a food service establishment's pricing.

The bill requires that the agreement between a food delivery platform and a food service establishment:
- Clearly state all fees, commissions, and charges that the food service establishment is expected to pay or absorb.
- Clearly state the policies of the food delivery platform, including, but not limited to, policies related to alcoholic beverages, marketing, menus and pricing, payment, and prohibited conduct.
- Include the insurance requirements for delivery partners of the food delivery platform and identify the party responsible for the cost of such insurance.
- Identify the party responsible for collecting and remitting applicable sales taxes.
- Clearly disclose policies regarding disputed transactions and the procedure for resolving those disputes.

The agreement between the food delivery platform and the food service establishment may not include a provision that requires a food service establishment to indemnify the food delivery platform, or any employee, contractor, or agent of the food delivery platform, for any damage or harm caused by the acts or omissions of the food delivery platform or any of its employees, contractors, or agents.

A food delivery platform may also not unreasonably limit the value or number of transactions that may be disputed by a food service establishment with respect to orders, goods, or delivery errors for determining responsibility for errors and reconciling disputed transactions.

The bill expressly preempts the regulation of food delivery platforms to the state.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Food delivery platforms may incur costs associated with the requirements of this bill.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 509.103 of the Florida Statutes.

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.

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LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment (with title amendment)

Delete line 108

and insert:

(10) If the division has probable cause to believe that a food delivery platform has violated this section or any rule adopted pursuant to this section, the division may issue to the food delivery platform a notice to cease and desist from the violation. The issuance of a notice to cease and desist does not constitute agency action for which a hearing under s. 120.569 or

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s. 120.57 may be sought. For the purpose of enforcing a cease and desist notice, the division may file a proceeding in the name of the state seeking the issuance of an injunction or a writ of mandamus against any person who violates the notice. If the division is required to seek enforcement of the notice for a penalty pursuant to s. 120.569, it is entitled to collect attorney fees and costs, together with any cost of collection.

(11) The division may impose a civil penalty on a food delivery platform in an amount not to exceed $1,000 per offense for each violation of this section or of a division rule. For purposes of this subsection, the division may regard as a separate offense each day or portion of a day in which there has been a violation of this section or rules of the division. The division shall issue to the food delivery platform a written notice of any violation and provide the food delivery platform 7 business days in which to cure the violation before imposing a civil penalty under this subsection or commencing any legal proceeding under subsection (10).

(12) Regulation of food delivery platforms is expressly

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

And the title is amended as follows:

Delete line 17

and insert:

service establishments; authorizing the Division of Hotels and Restaurants of the Department of Business and Professional Regulation to issue a notice to cease and desist to a food delivery platform for violations; providing that such notice does not constitute agency

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action; authorizing the division to enforce such notice and collect attorney fees and costs under certain circumstances; authorizing the division to impose a specified civil penalty; requiring the division to allow a food delivery platform to cure any violation within a specified timeframe before imposing such a civil penalty; preempting regulation of food

By Senator Bradley

6-00551A-24 2024676__

A bill to be entitled

An act relating to food delivery platforms; creating s. 509.103, F.S.; defining terms; prohibiting food delivery platforms from taking or arranging for the delivery or pickup of orders from a food service establishment without the food service establishment's consent; requiring food delivery platforms to disclose certain information to the consumer; requiring food delivery platforms to provide food service establishments with a method of contacting and responding to consumers by a specified date; providing circumstances under which a food delivery platform must remove a food service establishment's listing on its platform; prohibiting certain actions by food delivery platforms; providing requirements for agreements between food delivery platforms and food service establishments; preempting regulation of food delivery platforms to the state; providing an effective date.

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

Section 1. Section 509.103, Florida Statutes, is created to read:

509.103 Food delivery platforms.—

(1) As used in this section, the term:

(a) "Food delivery platform" means a business that acts as a third-party intermediary for the consumer by taking and arranging for the delivery or pickup of orders from multiple

6-00551A-24 2024676__

food service establishments. The term does not include:

1. Delivery or pickup orders placed directly with, and fulfilled by, a food service establishment.

2. Websites, mobile applications, or other electronic services that do not post food service establishment menus, logos, or pricing information on their platforms.

(b) "Food service establishment" has the same meaning as the term "public food service establishment" as defined in s. 509.013(5).

(c) "Purchase price" means the price, as listed on the menu, for the items in a consumer's order, excluding fees, tips or gratuities, and taxes.

(2) A food delivery platform may not take and arrange for the delivery or pickup of orders from a food service establishment without the express consent of that food service establishment. Such consent must be in either a written or electronic format.

(3) A food delivery platform shall itemize and clearly disclose to the consumer the cost breakdown of each transaction, including, but not limited to, the following information:

(a) The purchase price of the food and beverage.

(b) Any commission, delivery fee, or promotional fee charged to the consumer by the food delivery platform.

(c) Any tip or gratuity.

(d) Any taxes due on the transaction.

(4) A food delivery platform shall clearly provide to the consumer:

(a) The anticipated date and time of the delivery of the order.

(b) The address to which the order will be delivered.

(c) Confirmation that the order has been successfully delivered or that the delivery cannot be completed.

(d) A mechanism for the consumer to express order concerns directly to the food delivery platform.

(5) By July 1, 2025, a food delivery platform shall provide a food service establishment with:

(a) A method of contacting the consumer while preparing the order, during delivery of the order, and for up to 2 hours after the order is picked up from the food service establishment for delivery to the consumer.

(b) A method to respond to ratings or reviews that are left by the consumer.

(6) A food delivery platform shall remove a food service establishment's listing on the food delivery platform within 10 days after receiving the food service establishment's request for removal, unless there is an existing agreement between the two parties which includes the provisions specified in subsection (8) stating otherwise.

(7) A food delivery platform may not, without an agreement with the food service establishment, intentionally inflate, decrease, or alter a food service establishment's pricing.

(8) An agreement between a food delivery platform and a food service establishment must:

(a) Clearly state all fees, commissions, and charges that the food service establishment is expected to pay or absorb.

(b) Clearly state the policies of the food delivery platform, including, but not limited to, policies related to alcoholic beverages, marketing, menus and pricing, payment, and

prohibited conduct.

(c) Include the insurance requirements for delivery partners of the food delivery platform and identify the party responsible for the cost of such insurance.

(d) Identify the party responsible for collecting and remitting applicable sales taxes.

(e) Clearly disclose policies regarding disputed transactions and the procedure for resolving those disputes.

An agreement may not include a provision that requires a food service establishment to indemnify the food delivery platform, or any employee, contractor, or agent of the food delivery platform, for any damage or harm caused by the acts or omissions of the food delivery platform or any of its employees, contractors, or agents.

(9) A food delivery platform may not unreasonably limit the value or number of transactions that may be disputed by a food service establishment with respect to orders, goods, or delivery errors for determining responsibility for errors and reconciling disputed transactions.

(10) Regulation of food delivery platforms is expressly preempted to the state.

Section 2. This act shall take effect upon becoming a law.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Committee on Criminal and Civil Justice, *Chair*
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SENATOR JENNIFER BRADLEY
6th District

December 20, 2023

Senator Joe Gruters, Chairman
Senate Committee on Regulated Industries
413 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Gruters:

I respectfully request that Senate Bill 676 be placed on the committee's agenda at your earliest convenience. This bill relates to food delivery platforms.

Thank you for your consideration.

Sincerely,

Jennifer Bradley

cc: Booter Imhof, Staff Director
Susan Datres, Administrative Assistant

REPLY TO:
❒ 1845 East West Parkway, Suite 5, Fleming Island, Florida 32003 (904) 278-2085
❒ 124 Northwest Madison Street, Lake City, Florida 32055 (386) 719-2708
❒ 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: *www.flsenate.gov*

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

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 1178
INTRODUCER:	Senators Bradley and Pizzo
SUBJECT:	Condominium and Cooperative Associations
DATE:	January 19, 2024
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			AEG	
3.			FP	

I. Summary:

SB 1178 relates to the governance of condominium and cooperative associations and the practice of community association management. Regarding community association managers (CAMs) and CAM firms, the bill:

- Requires CAMs and CAM firms to return all community association records in their possession within 20 days of termination of a services agreement or a written request whichever occurs first, with license suspension and civil penalties for noncompliance.
- Provides conflict of interest disclosure requirements and a process for associations to follow when approving contracts with CAMs and CAM firms, or a relative, that may present a conflict of interest. The requirements are similar to those contracts with condominium association officers and directors.
- Provides grounds to discipline CAMs and CAM firms for failure to disclose a conflict of interest as required by the bill.

Regarding access to the official records of a condominium association, the bill:

- Requires official records be kept in an organized manner.
- Effective January 1, 2026, decreases from 150 units to 25 units the threshold requirement for an association to maintain specified records available for download on the association's website or by an application on a mobile device.
- Requires official records to be provided to the unit owner at no charge if the Division of Condominium, Timeshares, and Mobile Homes (division) subpoenas records an association has failed to timely provide in response to a unit owner's written request.
- Requires associations to maintain additional financial records (e.g., invoices and other documentation that substantiates any receipt or expenditure) to be maintained by a condominium association for inspection by association members as official records.
- Permits associations to fulfill records requests by directing unit owners to the records that are posted on the association's website.

- Requires associations to respond to a records request with a checklist of all records made available and a sworn affidavit as to the veracity of the checklist provided.

The bill provides the following criminal penalties related to condominium associations:
- Third degree felony for an officer, director, or manager of a condominium association to knowingly solicit, offer to accept, or accept anything or service of value or kickback;
- Second degree misdemeanor for any director or member of the board or association to knowingly, willfully, and "repeatedly" violate (two or more violations within a 12-month period) any specified requirements relating to inspection and copying of official records of an association; and
- Third degree felony to willfully and knowingly refuse to release or otherwise produce association records, with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape.

In addition, the bill provides that a person commits theft by use of a debit card, if the person uses a debit card issued in the name of, or billed directly to, an association for any expense that is not a lawful obligation of the association.

Regarding condominium association budgets, financial reporting, and reserves, the bill:
- Revises the term "deferred maintenance" to "planned maintenance."
- Prohibits associations from reducing the required type of financial statement (compiled, reviewed, or audited financial statements) for consecutive years.
- Provides for the investing of reserve funds by authorizing condominium associations, including multicondominium associations, to invest reserve funds and provides relevant procedures and requirements associations must follow when investing reserve funds, including limits on the types or permissible investments, record keeping requirements, and requiring the use of an independent investment adviser.
- Revises reserve maintenance requirements to:
  - Require an association to provide unit owners with a notice that the structural integrity reserve study is available for inspection and copying within 45 days of completion of the study. The notice may be provided electronically.
  - Clarify that the turnover report required under s. 718.301(4)(p), F.S., consists of a structural reserve study.
  - Allow associations to waive reserves and for the structural integrity reserve study to recommend a temporary suspension of reserve funding if the building or units are unsafe and uninhabitable as determined by the local enforcement agency.

Regarding meetings of the boards of administration for condominium associations, the bill:
- Requires condominium associations of 10 or more units to meet at least four times a year for the purpose of responding to inquiries from members and informing members on the status of the condominium, including the status of any construction or repair projects, the status of the association's revenue and expenditures during the fiscal year, or other issues affecting the association.
- Requires associations to include a copy of the proposed contract if the notice for a board meeting relates to the approval of a contract.

The bill provides education requirements for the officers and directors of condominium associations to:

- Require newly elected or appointed directors to submit both the written certification that they have read the association's governing documents, will work to uphold the documents to the best of their ability and will faithfully discharge their duties, and submit a certificate of completion of an approved condominium education course;
- Provide that the written certification and educational certificate are valid for 10 years;
- Provide that developer-appointed directors do not have to retake the education course for any subsequent appointment by a developer, provided that the previously submitted educational certificate is valid for only 10 years;
- Require the division to provide the required education curriculum to directors at no charge, including when the education curriculum is provided by a division-approved education provider;
- Require directors to annually complete continuing education about recent changes to the condominium laws and rules; and
- Require associations to annually certify that all directors have completed the required written certification and educational certificate requirements.

Regarding assessments levied by condominium associations, the bill:

- Provides a process for the board to may secure a line of credit and assess a contingent special assessment to fund repairs recommended by a milestone inspection required under s. 553.899, F.S., or a similar local inspection requirement or a structural integrity reserve study, or unanticipated repairs.
- Provides that, for a budget adopted on or before December 31, 2029, an association may secure a line of credit and assess a contingent special assessment to meet the reserve funding schedule recommended by the structural integrity reserve study.
- Requires notices of a special assessment and contingent special assessment to be recorded in the public record of the county where the condominium is located.

Regarding voting in condominium associations, the bill:

- Provides criminal penalties related to fraudulent voting activities that are punishable as first degree misdemeanors, including preventing members from voting, and menacing, threatening, or using bribery to directly or indirectly influence or deter a member from voting.
- Requires associations to send unit owners, whose right to vote has been suspended because of an unpaid financial obligation, a notice of such obligation within 90 days before an election or vote of the members.

The bill revises the requirements for the installation of hurricane protection in a condominium building to:

- Create a uniform definition for "hurricane protection," to include hurricane shutters, impact glass, code-compliant windows or doors, and other code-compliant hurricane protection products used to preserve and protect the condominium property or association property;
- Require condominium declarations to delineate the responsibilities of unit owners and associations for the costs of maintenance, repair, and replacement of hurricane protections, exterior doors, windows, and glass apertures;

- Provide when a majority vote of the unit owners is required to install hurricane protection;
- Provide a uniform procedure for approval of hurricane protection by the unit owners, including requiring the board to record a certificate in the public records evidencing that the association has voted to install hurricane protection; and
- Provide that unit owners are not responsible for the cost of removal and installation of hurricane protection if the removal is necessary to repair condominium property.

The bill revises the prohibitions against “strategic lawsuits against public participation" or "SLAPP suits,” which occur when association members are sued by individuals, business entities, or governmental entities for matters arising out of a unit owner's appearance and presentation before a governmental entity on matters related to the condominium association. The bill specifically includes condominium associations in the SLAPP suit prohibition, and protects unit owners from reporting complaints to government agencies or law enforcement, or making public statements critical of the operation or management of an association by:

- Prohibiting associations from retaliating against unit owners, such as by increasing assessments, threatening to bring an action for possession or other civil action, including a defamation, libel, slander, or tortious interference action; and
- Prohibiting associations from spending association funds in support of defamation, libel, or tortious interference actions against a unit owner.

Regarding officers and directors of a condominium association, the bill provides that the attendance of an officer or director at a meeting of the board is sufficient to constitute a quorum for the meeting and for any vote taken in his or her absence when the director is required to leave the room during the discussion and the taking of a vote on a contract in which the director, or his relative, has an interest.

The bill revises the jurisdiction of the division by deleting the limitation on its authority to enforce ch. 718, F.S., after turnover. Under the bill, the division may enforce and ensure compliance with ch. 718, F.S., and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium before and after control of the association is turned over to the nondeveloper members. In addition, the bill:

- Requires that the division must refer to local law enforcement authorities any person whom the division believes has engaged in fraud, theft, embezzlement, or other criminal activity or has cause to believe that fraud, theft, embezzlement, or other criminal activity has occurred.
- Provides that the division director or any officer or employee of the division, and the condominium ombudsman or employee of the office of the condominium ombudsman may attend and observe any meeting of the board or any unit owner meeting, including any meeting of a subcommittee or special committee, that is open to members of the association, for the purpose of performing the duties of the division or the office of the ombudsman under ch. 718, F.S.
- Requires the division to routinely conduct random audits of condominium associations to determine compliance with the requirement that certain official records must be available for download on the association’s website.

The bill also requires the division to submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations

committees and appropriate substantive committees, a review of the website or application requirements for official records under s. 718.111(12)(g), F.S., and make recommendations regarding any additional official records of a condominium association that should be included in the record maintenance requirement.

Regarding cooperative associations, the bill:

- Revises the term "deferred maintenance" to "planned maintenance."
- Requires an association to provide unit owners with a notice that the structural integrity reserve study is available for inspection and copying within 45 days of completion of the study. The notice may be provided electronically.
- Clarifies that the turnover report required under s. 719.301(4)(p), F.S., consists of a structural reserve study.

Except as otherwise expressly provided, the bill takes effect July 1, 2024.

II. Present Situation:

Milestone Inspections

Section 553.899, F.S., requires residential condominium and cooperative buildings that are three stories or more in height, as determined by the Florida Building Code, to have a milestone inspection by December 31 of the year in which the building reaches 30 years of age. However, if a building reaches 30 years of age before July 1, 2022, the initial milestone inspection must be performed before December 31, 2024. If a building reaches 30 years of age on or after July 1, 2022, and before December 31, 2024, the building's milestone inspection must be performed before December 31, 2025. The local enforcement agency will provide written notice of the required inspection to the association.[1]

Local enforcement agencies that are responsible with enforcing the milestone inspection requirements may set a 25-year inspection requirement if justified by local environmental conditions, including proximity to seawater.[2] Local enforcement agencies may also extend the inspection deadline for a building upon a petition showing good cause that the owner or owners of the buildings have entered into a contract with an architect or engineer to perform the milestone inspection services and the milestone inspection cannot reasonably be completed before the deadline.[3]

The milestone inspection requirement applies to buildings that in whole or in part are subject to the condominium or cooperative forms of ownership, such as mixed-ownership buildings. Consequently, all owners of a mixed-ownership building in which portions of the building are subject to the condominium or cooperative form of ownership are responsible for ensuring compliance and must share the costs of the inspection. However, condominium and cooperative buildings that are single-family, two-family, and three-family dwellings with three or fewer habitable stories above ground are exempt from the milestone inspection requirement.[4]

[1] Section 553.899(3), F.S.
[2] Section 553.899(3)(b), F.S.
[3] Section 553.899(3)(c), F.S.
[4] Section 533.899(3), F.S.

The purpose of a milestone inspection is to determine the life safety and adequacy of the structural components of the building and, to the extent reasonably possible, determine the general structural condition of the building as it affects the safety of such building, including a determination of any necessary maintenance, repair, or replacement of any structural component of the building.[5] The purpose of such inspection is not to determine if the condition of an existing building is in compliance with the Florida Building Code or the firesafety code.[6] The milestone inspection services may be provided by a team of professionals with an architect or engineer acting as a registered design professional in responsible charge with all work and reports signed and sealed by the appropriate qualified team member.[7]

In addition, s. 553.899, F.S.:

- Requires that a phase one milestone inspection must commence within 180 days after an association receives a written notice from the local enforcement agency.
- Provides the minimum contents of a milestone inspection report.
- Requires inspection report results to be provided to local building officials and the affected association.
- Requires that the contract between an association that is subject to the milestone inspection requirement and a community association manager (CAM) or CAM firm must require compliance with those requirements as directed by the board.
- Requires the local enforcement agency to review and determine if a building is safe for human occupancy if an association fails to submit proof that repairs for substantial deterioration have been scheduled or begun within at least 365 days after the local enforcement agency receives a phase two inspection report.

Within 45 days after receiving a milestone inspection report, the condominium or cooperative association must distribute a copy of an inspector-prepared summary of the inspection report to each condominium unit owner or cooperative unit owner. The inspector-prepared summary must be provided to unit owners, regardless of the findings or recommendations in the report, by United States mail or personal delivery at the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements under ch. 718, F.S., or ch. 719, F.S., as applicable, and by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to unit owners who previously consented to receive notice by electronic transmission. The association must also post a copy of the inspector-prepared summary in a conspicuous place on the condominium or cooperative property and must publish the full report and inspector-prepared summary on the association's website, if the association is required to have a website.

Condominium and Cooperative Associations

Chapters 718 and 719, F.S.

Chapter 718, F.S., relating to condominiums, and ch. 719, F.S., relating to cooperatives, provide for the governance of these community associations. The chapters delineate requirements for

[5] Section 553.899(2)(a), F.S.
[6] *Id.*
[7] *Id.*

notices of meetings,[8] recordkeeping requirements, including which records are accessible to the members of the association,[9] and financial reporting.[10] Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

The 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.

Condominiums

A condominium is a "form of ownership of real property created under ch. 718, F.S,"[11] the "Condominium Act." Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements, and members of the condominium association.[12] For unit owners, membership in the association is an unalienable right and required condition of unit ownership.[13]

A condominium association is administered by a board of directors referred to as a "board of administration."[14] The board of administration is comprised of individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements which are owned in undivided shares by unit owners.[15]

There are approximately 1,529,764 condominium units in Florida operated by 27,588 associations.[16] Approximately 912,376 of these condominium units in Florida are at least 30 years in age.[17] Further breakdown of the age of condominium units in Florida is as follows:

- 105,404 units – 50 years old or older;
- 479,435 units – 40-50 years old;
- 327,537 units – 30-40 years old;
- 141,773 units – 20-30 years old;
- 428,657 units – 10-20 years old; and
- 46,958 units – 0-10 years old.[18]

[8] *See* ss. 718.112(2) and 719.106(2)(c), F.S., for condominium and cooperative associations, respectively.
[9] *See* ss. 718.111(12) and 719.104(2), F.S., for condominium and cooperative associations, respectively.
[10] *See* ss. 718.111(13) and 719.104(4), F.S., for condominium and cooperative associations, respectively.
[11] Section 718.103(11), F.S.
[12] *See* s. 718.103, F.S., for the terms used in the Condominium Act.
[13] *Id.*
[14] Section 718.103(4), F.S.
[15] Section 718.103(2), F.S.
[16] Report of the Florida Bar RPPTL Condominium Law and Policy Life Safety Advisory Task Force (Task Force Report), p. 4, *available at:* https://www-media.floridabar.org/uploads/2021/10/Condominium-Law-and-Policy-Life-Safety-Advisory-Task-Force-Report.pdf (last visited Jan. 9, 2024).
[17] *Id.*
[18] *Id.*

It has been estimated that there are over 2 million residents occupying condominiums 30 years or older in Florida, based upon census data indicating an average of approximately 2.2 persons living in a condominium unit.[19]

Cooperatives

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 owner receives an exclusive right to occupy the unit based on their ownership interest in the cooperative entity as a whole. A cooperative owner is either a stockholder or member of a cooperative apartment corporation who is entitled, solely by reason of ownership of stock or membership in the corporation, to occupy an apartment in a building owned by the corporation.[20] The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.[21] There are 778 cooperative associations in Florida that are registered with the DBPR.[22]

Miami-Dade County Grand Jury Report "Addressing Condo Owners' Pleas for Help: Recommendations for Legislative Action"

The increasing numbers of condominiums in Florida, the increasing numbers of problems for people living in them, and the increasing numbers of complaints against the DBPR, motivated a Miami-Dade County grand jury to conduct an investigation of complaints by condominium residents and the DBPR's responses to their complaints.[23] The grand jury's report contains numerous findings and recommendations, but those relevant to the provisions of the bill are discussed below.

Additional Issues

For ease of reference to each of the topics addressed in the bill, 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.

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[19] *Id.*
[20] *See Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3d DCA 2019), *review dismissed* 2020 WL 3442763 (Fla. 2020).
[21] *See* ss. 719.106(1)(g) and 719.107, F.S.
[22] *See* Task Force Report, pp. 4-5.
[23] *Final Report of the Miami-Dade County Grand Jury (Addressing Condo Owner's Pleas for Help: Recommendations for Legislative Action)* (Filed Feb. 6, 2017), Eleventh Judicial Circuit, available at https://miamisao.com/wp-content/uploads/2021/02/2016-Spring-Grand-Jury-Report-Final.pdf (last visited on Jan. 13, 2024). This document is further cited in this analysis as "*Final Report of the Miami-Dade County Grand Jury*."

III. Effect of Proposed Changes:

Community Association Managers

Present Situation

Community Association Manager Regulation

Community association managers (CAMs) are licensed and regulated by the Department of Business and Professional Regulation (DBPR or department) pursuant to part VIII of ch. 468, F.S.

Section 468.431(2), F.S., defines "community association management" to mean:

> any of the following practices requiring substantial specialized knowledge, judgment, and managerial skill when done for remuneration and when the association or associations served contain more than 10 units or have an annual budget or budgets in excess of $100,000: controlling or disbursing funds of a community association, preparing budgets or other financial documents for a community association, assisting in the noticing or conduct of community association meetings, and coordinating maintenance for the residential development and other day-to-day services involved with the operation of a community association.

A license is not required for persons who perform clerical or ministerial functions under the direct supervision and control of a licensed manager or who only perform the maintenance of a community association and do not assist in any of the management services.[24]

Community association managers are regulated by the seven-member Regulatory Council of Community Association Managers. Five of the members must be licensed CAMs, one of whom must be a CAM for a timeshare. The other two must not be CAMs. Members are appointed to 4-year terms by the Governor and confirmed by the Senate.[25]

To become licensed as a CAM, a person must apply to the department to take the licensure examination and submit to a background check. Upon determination that the applicant is of good moral character, the applicant must attend a department-approved in-person training prior to taking the examination.[26] Community association managers must successfully complete an exam and pay a fee to become licensed. They must also complete continuing education hours as approved by the council to maintain their licenses.[27]

Practice Standards and Conflicts of Interest

Section 468.4334, F.S., delineates the professional practice standards for CAMs and CAM firms,

[24] Section 468.431(2), F.S.
[25] Section 468.4315(1), F.S.
[26] Section 468.433, F.S.
[27] Sections 468.4336 and 468.4337, F.S.

including the duty to "discharge the duties performed on behalf of the association as authorized by [ch. 468, F.S.], loyally, skillfully, and diligently; dealing honestly and fairly; in good faith; with care and full disclosure to the community association; accounting for all funds; and not charging unreasonable or excessive fees." In addition, if a CAM or CAM firm has a contract with a community association that has a building on the association's property that is subject to s. 553.899, F.S., the CAM or firm must comply with that section as directed by the board.

The license of a CAM or CAM firm may be disciplined, including a suspension or revocation of their license, or denial of a license renewal, for the grounds specified in s. 468.436, F.S., including contracting, on behalf of an association, with any entity in which the CAM or CAM firm has a financial interest that is not disclosed to the association.

Section 718.3027, F.S., provides the process for resolving potential conflict of interest for the officers and directors of condominium associations. It requires an officer or director of a condominium association (that is not a timeshare condominium association), to disclose any financial interest of the officer or director (or such person's relative) in a contract for goods or services, if such activity may reasonably be construed by the board to be a conflict of interest. The board of a condominium association must approve a contract for services or other transactions by an affirmative vote of two-thirds of all other directors present. Current law does not have a comparable process for a CAM's or CAM firm's disclosure of a potential conflict of interest or the process for an association's affirmative acceptance or approval of such a conflict of interest.

Effect of Proposed Changes

The bill revises the following requirements for CAM and CAM firms under part VIII of ch. 468, F.S., which apply to all CAM and CAM firms engaged in community association management in condominium associations under ch. 718, F.S., cooperative associations under ch. 719, F.S., and homeowners' associations under ch. 720, F.S.

The bill creates s. 468.4334(3), F.S., to require a CAM or CAM firm to return all community association records in his or her possession within 20 days of termination of services agreement or a written request whichever occurs first. If the CAM or CAM firm fails to timely return all of the official records within its possession to the community association, the bill creates a rebuttable presumption that the CAM association willfully failed to comply with this subsection. However, the bill also provides that CAM or CAM firm that fails to timely return community association records is subject to suspension of its license under s. 468.436, and a civil penalty of $1,000 per day for up to 10 days, assessed beginning on the 21st day after termination of a contractual agreement to provide community association management services to the community association or receipt of a written request from the association for return of the records, whichever occurs first.

The bill creates s. 468.4335, F.S., to provide additional conflict of interest disclosure requirements for CAMs and CAM firms and a process for associations to follow when approving contracts with a CAM or CAM firm, or a relative of a CAM, which may present a conflict of interest. The requirements are similar to those applicable to contracts between condominium associations and their officers and directors.

The bill requires a CAM or CAM firm, including the directors, officers, persons with a financial interest in the CAM firm and relatives of such persons, to disclose any activity which may reasonably be construed by the board to be a conflict of interest. The bill creates a rebuttable presumption of an existing conflict of interest if a CAM or CAM firm, including directors, officers, persons with a financial interest in a CAM firm, or the relative of such persons:

- Enters into a contract for goods or services with the association.
- Holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the association.

Under the bill, if the association receives and considers a bid to provide a good or service, other than community association management services, from a CAM or CAM firm, including directors, officers, persons with a financial interest in a CAM firm, or a relative of such persons, the association must also consider at least three bids from other third-party providers of such good or service.

The bill requires that the proposed activity that may be a conflict of interest must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the board's meeting agenda and entered into the written minutes of the meeting. The board must approve the contract or other transaction by an affirmative vote of two-thirds of all other directors present. At the next regular or special meeting of the members, the existence of the contract or other transaction must be disclosed to the members, and any member may move that the contract or transaction be brought up for a vote of the members. Under the bill, the proposed contract or transactions, may be canceled by a majority vote of the members present. If the contract is canceled, the bill provides that the association is liable only for the reasonable value of the goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

Under the bill, if the activity has not been properly disclosed as a conflict of interest or potential conflict of interest, the contract is voidable and terminates upon the association filing a written notice terminating the contract with its board of directors, which notice must contain the consent of at least 20 percent of the voting interests of the association.

The bill defines the term "relative" to mean a relative within the third degree of consanguinity[28] by blood or marriage of a board member or officer.

The bill revises the disciplinary grounds for CAMs and CAM firms to provide a disciplinary grounds on the basis of a CAM or CAM firm's failure to disclose a conflict of interest as required by s. 468.4335, F.S.

[28] Relatives of the third degree of consanguinity include great grandparent, aunt/uncle, niece/nephew, and great grandchild. *See*: https://www.uab.edu/humanresources/home/images/M_images/Relations/PDFS/FAMILY%20MEMBER%20CHART.pdf (last visited Feb. 11, 2021).

Condominium Officers and Directors

Present Situation

Breaches of a Fiduciary Duty and Prohibited Acts

Officers and directors of a condominium association have a fiduciary relationship to the unit owners, and may be sanctioned for breach of their fiduciary duty.[29] An officer, director, or manager may not solicit, offer to accept, or accept anything or service of value or a kickback for which consideration has not been provided for the benefit of such person (or immediate family members) from any person providing or proposing to provide goods or services to the association.[30]

Any such officer, director, or manager who knowingly solicits, offers to accept, or accepts anything or service of value or kickback is subject to a civil penalty pursuant to s. 718.501(1)(d), F.S., and, if applicable, a criminal penalty as provided in s. 718.111(1)(d), F.S.

Section 718.111(1)(d), F.S., requires an officer, director, or agent to discharge his or her duties in good faith, with the care an ordinarily prudent person in a similar position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the association. An officer, director, or agent is liable for monetary damages as provided in s. 617.0834, F.S., if such officer, director, or agent breaches or fails to perform his or her duties. The breach of, or failure to perform, such duties constitutes:

- A violation of criminal law as provided in s. 617.0834, F.S.;
- A transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or
- Recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Section 617.0834, F.S., relates to the provisions for the civil liability of officers and directors of not-for-profit corporations and associations.[31] Section 617.0834(1), F.S., provides that officers and directors of certain not-for-profit corporations and associations are not personally liable for monetary damages to any person for any statement, vote, decision, or failure to take an action, regarding organizational management or policy by an officer or director, unless the officer or director:

- Breached or failed to perform his or her duties as an officer or director; and
- Breached or failed to perform his or her duties, and the breach constitutes:
    - A criminal violation, unless he or she had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful.[32]

[29] Section 718.111(1)(a), F.S.
[30] Section 718.111(1)(a), F.S., does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs.
[31] Corporations that operate residential homeowners' associations are governed by ch. 720, F.S., relating to homeowners' associations, and are subject to part I of ch. 607, F.S., the Florida Business Corporation Act, or ch. 617, F.S., relating to corporations not-for-profit.
[32] Section 617.0834, F.S., does not provide criminal penalties nor reference the criminal law that is violated by the officer's or director's breach or failure to perform his or her duties.

- A transaction from which he or she derived an improper personal benefit, directly or indirectly; or
- A recklessness or an act or omission committed in bad faith or with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

The Miami-Dade County grand jury found:

> Although the directors have a legally mandated fiduciary obligation toward their unit owners, it appears that some of them are more involved in self-dealing and looking out for their own financial interests. The position of board director is not generally a paid position. Yet, some directors appear to view the ability to get into office as an opportunity to cash in. This should not be countenanced.[33]

Criminal Prohibitions

Section 718.111(1)(d), F.S., also criminalizes the following acts:

- Forgery of a ballot envelope or voting certificate used in a condominium association election is punishable as provided in s. 831.01, F.S.;
- Theft or embezzlement of funds of a condominium association is punishable as provided in s. 812.014, F.S.; and
- Destruction of or refusal to allow inspection or copying of an official record of a condominium association that is accessible to unit owners within the time periods required by general law in furtherance of any crime is punishable as tampering with physical evidence as provided in s. 918.13, F.S., or as obstruction of justice as provided in ch. 843, F.S.

Removal from Office

Section 718.112(2)(q), F.S., requires a board to immediately remove from office any officer or director who is charged with felony theft or embezzlement involving association funds. If the charges are resolved without a finding of guilt or without acceptance of a plea of guilt or nolo contendere, the director or officer must be reinstated for any remainder of his or her term of office.

Section 718.111(1)(d), F.S., also provides that an officer or director charged by information or indictment with any crime referenced in this paragraph[34] must be removed from office, and the vacancy must be filled as provided in s. 718.112(2)(d)2., F.S., until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first. If a

[33] *Final Report of the Miami-Dade County Grand Jury*, *supra* note 15, at page 10 (citation omitted).

[34] The only crimes specifically referenced in s. 718.111(1)(d), F.S., are the previously-described offenses relating to forgery of a ballot envelope or voting certificate, theft or embezzlement of association funds, and destruction of or refusal to allow inspection or copying of association records. Additionally, s. 718.111(1)(d), F.S., states that an officer, director, or agent shall be liable for monetary damages as provided in s. 617.0834, F.S., if such officer, director, or agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes a violation of criminal law as provided in s. 617.0834, F.S. The reference to criminal violations in s. 718.111(1)(d), F.S., is slightly different than the reference to criminal violations in s. 718.112(2)(o), F.S., which provides that a director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property must be removed from office. The latter provision appears to be more limited than the former provision.

criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any.

Defacing or Destroying Records

Section 718.111(12)(c)2., F.S., provides that any person who knowingly or intentionally defaces or destroys accounting records that are required to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d), F.S.[35]

Effect of Proposed Changes

Additional Criminal Prohibitions

The bill amends s. 718.111, F.S., to provide the following additional criminal prohibitions relating to the management of a condominium association, and provides penalties for violations:

- Third degree felony[36] for an officer, director, or manager of a condominium association to knowingly solicit, offer to accept, or accept anything or service of value or kickback;
- Second degree misdemeanor[37] for any director or member of the board or association to knowingly, willfully, and "repeatedly" violate (two or more violations within a 12-month period) any specified requirements relating to the inspection and copying of official records of an association;
- First degree misdemeanor[38] to knowingly or intentionally deface or destroy required accounting records or knowingly and intentionally fail to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members (and deletes the provision that such an offense is punishable by a civil penalty);[39]

[35] Section 718.501(1), F.S., authorizes the division to enforce and ensure compliance with the provisions of the Condominium Act, and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly violates a provision of the Condominium Act, an adopted rule, or a final order of the division.

[36] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.

[37] 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.

[38] Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S., provides that a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.

[39] This provision is similar to the Miami-Dade County grand jury's recommendation to criminally punish directors and members of the board or association who knowingly or intentionally deface or destroy accounting records or fail to create or maintain such records. The grand jury recommended a second degree misdemeanor for a first offense, and a first degree misdemeanor for any subsequent offenses. *Final Report of the Miami-Dade County Grand Jury*, *supra* note 15, at pages 8-9.

- Third degree felony[40] to willfully and knowingly refuse to release or otherwise produce association records, with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape;[41]

Use of Credit Cards

The bill amends s. 718.111(15), F.S., to revise the prohibitions related to use of an association's credit card. Under the bill, a person commits theft[42] by use of a debit card, if the person uses a debit card issued in the name of, or billed directly to, an association for any expense that is not a lawful obligation of the association. The bill defines a "lawful obligation of the association" as an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget. The bill deletes the provision in current law that the unlawful use of an association's credit card constitutes credit card fraud pursuant to s. 817.61, F.S.

Removal from Office

The bill amends s. 718.112(2)(q), F.S., to expand the number of crimes for which an officer or director charged by information or indictment must be removed from office to include:

- Forgery of a ballot envelope or voting certificate used in a condominium association election punishable as a felony crime as provided in s. 831.01, F.S.;[43] and
- Destruction of or refusal to allow inspection or copying of an official record of a condominium association that is accessible to unit owners within the time periods required by general law in furtherance of any crime which is punishable as tampering with physical evidence as provided in s. 918.13, F.S., or as obstruction of justice as provided in ch. 843, F.S.

Under the bill, a vacancy must be filled as provided by s. 718.112(2)(d), F.S., until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first.[44]

Under the bill, if a criminal charge is pending against an officer or director, he or she may not have access to the official records of any association, except pursuant to a court order.

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[40] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.

[41] This provision is similar to the Miami-Dade County grand jury's recommendation to make it a third degree felony for any association, board director, management company, or management company employee to willfully, knowingly, or intentionally refuse to release or otherwise produce official association records, if such refusal is done to facilitate or cover-up the commission of a crime. *Final Report of the Miami-Dade County Grand Jury*, *supra* note 15, at pages 8-9.

[42] Theft is generally punishable based upon the value of the property stolen. Petit theft is generally a second degree misdemeanor or first degree misdemeanor. Section 812.014(3)(a) and (b), F.S. Grand theft is generally a third degree felony, second degree felony, or first degree felony. Section 812.014(1)(a)-(c), F.S. A second degree felony is punishable by up to 15 years in state prison and a fine of up to $10,000. Sections 775.082 and 775.083, F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to $10,000. *Id.*

[43] Section 831.01, F.S., relates to the crime of forgery. A forgery violation is a felony of the third degree. Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.

[44] Section 720.306(9), F.S., relates to elections and vacancies on a board. It also prohibits convicted felons, including persons who've been convicted in another jurisdiction which would be considered a felony crime in Florida, of serving on a board for at least five years as of the date the person seeks election to the board, unless their civil rights have been restored.

Fraudulent Voting Activities

The bill creates s. 718.112(2)(r), F.S, to provide that each of the following actions relating to condominium association elections is a fraudulent voting activity and constitutes a misdemeanor of the first degree:[45]

- Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.
- Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.
- Preventing a member from voting, or preventing a member from voting as he or she intended, by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.
- Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when voting.
- Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This provision does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.
- Using or threatening to use, either directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on any particular ballot measure.

In addition, the bill provides that the following actions relating to condominium association elections are fraudulent voting activities and constitute a misdemeanor of the first degree:[46]

- Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.
- Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.
- Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment.

The criminal prohibitions in s. 718.112(2)(r), F.S., do not apply to a licensed attorney giving legal advice to a client.

[45] Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not to exceed one year. Section 775.083, F.S., provides that a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.
[46] *Id.*

Official Records – Condominiums

Present Situation

Section 718.111(12)(a), F.S., requires a condominium association to maintain various records, including but not limited to, the association's recorded bylaws and amendments to those bylaws, articles of incorporation and amendments to those articles, bills of sale or transfer for association-owned property, accounting records, voting ballots, contracts for work to be performed, and bids.

Section 718.111(12)(b), F.S., requires that some of these records (e.g., bylaws and articles of incorporation) be permanently maintained from the inception of the association. All other official records must be maintained within the state for at least seven years, unless otherwise provided by general law.[47] The records must be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 working days after receipt of a written request by the board or its designee. An association must make a copy of the records available for inspection or copying by a unit owner on the condominium property or association property or offer the option of making the records available electronically via the Internet or allow the records to be viewed in electronic format on a computer screen and printed upon request.

Section 718.111(12)(c)1., F.S., provides that official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times.[48] A renter of a unit has a right to inspect and copy the association's bylaws and rules. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with these requirements. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records.

Section 718.111(12)(g), F.S., provides that by January 1, 2019, an association managing a condominium with 150 or more units which does not contain timeshare units must post digital copies of specified records on its website. These documents include, but are not limited to: the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration, the recorded association bylaws and amendments to those bylaws, articles of incorporation of the association and amendments to those articles, the annual and proposed budget, and various contracts, including any contract or document regarding a conflict of interest or possible conflict of interest. The failure of the association to post required information is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

[47] Section 718.111(12)(b), F.S.

[48] The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying.

Effect of Proposed Changes

The bill amends the official records requirements for condominium associations in s. 718.111(12), F.S., to require official records be kept in an organized manner. In addition, the bill provides that the obligation to maintain official records includes the obligation to obtain and recreate those records to the fullest extent possible in the event that the records are lost, destroyed, or otherwise made unavailable.

Effective January 1, 2026, the bill amends the requirements for condominium associations to maintain specified records available for download on the association's website or by an application on a mobile device to decrease from 150 units to 25 units the threshold for that requirement.

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

- Require additional financial records (all invoices, transaction receipts, deposit slips, other underlying documentation that substantiates any receipt or expenditure of funds by the association) be maintained by a condominium association and made available for inspection by association members;
- Permit associations to comply with its obligations related to a member's right of access to certain official records and right to copies of such records by posting the records on the association's website and directing an authorized requester to such website;
- Require associations to respond to a statutorily compliant written request to inspect records with a checklist of all records made available, and not made available, for inspection and copying and a sworn affidavit in which the person facilitating or handling the association's compliance with the request attests to the veracity of the checklist provided to the requestor;
- Require associations to maintain the checklist provided in response to a statutorily compliant written request for seven years; and
- Require an association to maintain, and have available for download on the association's website or by an application on a mobile device, building permits related to ongoing or planned construction.

The bill amends s. 718.501(1)(d)7., F.S., to require the division to provide the official records to the unit owner at no charge when the division subpoenas the records the association failed to timely provide in response to a unit owner's written request.

Financial Reporting – Condominiums

Present Situation

Section 718.11(13), F.S., provides the financial reporting requirements for condominium associations. Within 90 days following the end of the fiscal or calendar year, or annually on such date as provided in the association's bylaws, the governing board of the association must complete, or contract with a third party to complete, the financial report. Within 21 days after the financial report is completed by the board 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 association must deliver the financial report, by mail or hand delivery to each unit owner at the address last furnished to the association by the unit owner, a copy of the most recent financial report or a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after receipt of a written request from the unit owner.

The type of financial reporting that an association must perform differs based on the association's total annual revenue. From the least stringent to the most stringent, an association that has a total annual revenue of:

- Less than $150,000 must prepare a report of cash receipts and expenditures.
- At least $150,000 but less than $300,000 must prepare *compiled* financial statements.[49]
- At least $300,000 but less than $500,000 must prepare *reviewed* financial statements.[50]
- $500,000 or more must prepare *audited* financial statements.[51]

An association may prepare a more or less stringent type financial report if approved by vote of the majority of the voting interest of the association.[52] An approval to provide a less stringent type of financial report is effective only for the year in which the vote is taken and for the following fiscal year.[53]

Effect of Proposed Changes

The bill amends the financial reporting requirements in s. 718.111(13), F.S., to:

- Revise the requirements for delivery of the financial statement to:
  - Require that the delivery be by hand delivery or mailed to each unit owner, by United States mail or personal delivery at the mailing address, property address, e-mail address, or facsimile number provided to fulfill the association's notice requirements;
  - Require associations to deliver a copy of the management letter or opinion letter,[54] as applicable, for the most recent financial report; and
  - Require associations to give unit owners a notice that a copy of the most recent financial report will be mailed or hand delivered to the unit owner, without charge, within 5 business days after receipt of a written request from the unit owner;

[49] 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).

[50] 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.*

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

[52] *See* s. 718.111(13)(c) and (d), F.S.

[53] *See* s. 718.111(13)(d), F.S.

[54] An opinion letter states whether the accounts accord with accounting principles. A management letter explains whether there are any problems identified with the company's internal controls. These letters are required by accounting standards and are intended to help provide investors with an overall picture of the operations of an organization. See Chron.com, *Opinion Letters Vs. Management Letters in the Accounting Field*, Sept. 21, 2020, available at: https://smallbusiness.chron.com/types-audit-opinion-letters-3787.html (last visited Jan. 13, 2024).

- Prohibit associations from reducing the required type of financial statement for consecutive years;
- Prohibit associations that invest funds pursuant to s. 718.111(16)(b), F.S., from reducing the required type of financial statement; and
- Require associations that invest funds pursuant to s. 718.111(16)(b), F.S., to prepare the required type of financial statement.

Investing Reserves – Condominiums

Present Situation

Reserve Funds

In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance.[55]

Commingling of Funds and Investing

Section 718.111(14), F.S., requires all funds collected by an association to be maintained separately in the association's name. Operating funds and reserve funds must be accounted for separately, and a commingled account cannot, at any time, be less than the amount identified as reserve funds. However, reserve funds may be commingled with operating funds of the association for investment purposes only.

Investment Advisers

Investment advisers are defined as "any person who receives compensation, directly or indirectly, and engages for all or part of her or his time, directly or indirectly, or through publications or writings, in the business of advising others as to the value of securities or as to the advisability of investments in, purchasing of, or selling of securities, except a dealer whose performance of these services is solely incidental to the conduct of her or his business as a dealer and who receives no special compensation for such services."[56] The term does not include:

- Any licensed practicing attorney whose performance of such services is solely incidental to the practice of her or his profession;
- Any licensed certified public accountant whose performance of such services is solely incidental to the practice of her or his profession;
- Any bank authorized to do business in this state;
- Any bank holding company as defined in the Bank Holding Company Act of 1956, as amended, authorized to do business in this state;
- Any trust company having trust powers which it is authorized to exercise in the state, which trust company renders or performs services in a fiduciary capacity incidental to the exercise of its trust powers;
- Any person who renders investment advice exclusively to insurance or investment companies;

[55] Section 718. 112(2)(f)2., F.S.
[56] Section 517.021(14)(a), F.S.

- Any person who does not hold herself or himself out to the general public as an investment adviser and has no more than 15 clients within 12 consecutive months in this state;
- Any person whose transactions in this state are limited to those transactions described in s. 222(d) of the Investment Advisers Act of 1940; or
- A federal covered adviser.[57]

An investment adviser must be registered with the Office of Financial Regulation (OFR) within the Financial Services Commission[58] to "sell or offer for sale any securities in or from offices in this state, or sell securities to persons in this state from offices outside this state, by mail or otherwise, unless the person has been registered with the [OFR] pursuant to the provisions of this section. The [OFR] shall not register any person as an associated person of a dealer unless the dealer with which the applicant seeks registration is lawfully registered with the [OFR] pursuant to [ch. 517, F.S.]"[59]

Effect of Proposed Changes

The bill creates s. 718.111(16), F.S., to authorize condominium associations, including multicondominium associations, to invest reserve funds. The bill provides procedures and requirements an association must follow when investing reserve funds, including limits on the types of permissible investments, recording keeping requirements, and requiring the use of an independent investment adviser. The bill:

- Requires the board to use its best efforts to make prudent investment decisions that carefully consider risk and return in an effort to maximize returns on invested funds;
- Permits reserve funds to be invested in one or any combination of depository accounts at a community bank, savings bank, commercial bank, savings and loan association, or credit union if the respective account balance at any institution does not exceed the amount of deposit insurance per account provided by any agency of the Federal Government or as otherwise available. Permits only reserve funds identified as reserve funds may be invested even if the declaration permits operating funds to be invested;
- Requires the board to create an investment committee composed of at least two board members and two-unit non-board member unit owners, adopt rules for invested funds, including, but not limited to, rules requiring periodic reviews of any investment manager's performance, the development of an investment policy statement, and that all meetings of the investment committee be recorded and made part of the official records of the association;
- Specifies the issues that must be addressed in the investment policy, including the requirement that it project reserve expenditures within, at minimum, the next 24 months to be held in cash or cash equivalents and projected expenditures relating to the milestone inspection, and prove protocols for proxy response;
- Requires the investment committee to recommend investment advisers to the board.
- Requires such investment advisers to be registered or have a notice filed under s. 517.12, F.S, which requires investment advisers to file a notice required under s. 517.1201, F.S., with the OFR, and to not be related by affinity or consanguinity to, or under common ownership with, any board member, community management company, reserve study provider, or unit owner;

[57] Section 517.021(14)(b), F.S.
[58] Section 517.021(8), F.S.
[59] Section 517.12(1), F.S.

- Requires the investment adviser to comply with the prudent investor rule in s. 518.11, F.S.,[60] to act as a fiduciary to the association in compliance with the standards set forth in the Employee Retirement Income Security Act of 1974;
- Requires that the association, at least once each calendar year, or sooner if a substantial financial obligation of the association becomes known to the board, to provide the investment adviser with the association's investment policy statement, the most recent reserve study report, the association's structural integrity report, if available, and the financial reports prepared pursuant to subsection s. 718.111(13), F.S.;
- Requires the investment adviser to:
  - Annually review these documents and provide the association with a portfolio allocation model that is suitably structured and prudently designed to match projected annual reserve fund requirements and liability, assets, and liquidity requirements;
  - Prepare a funding projection for each reserve component, including any of the component's redundancies;
  - Annually provide the association with a written certification of compliance with this section and a list of stocks, securities, and other obligations that are prohibited from being in association portfolio; and
  - Submit monthly, quarterly, and annual reports to the association which are prepared in accordance with established financial industry standards and in accordance with ch. 517, F.S, relating to the regulation of investment advisers.
- Require that there be a minimum of 24 months of projected reserves in cash or cash equivalents available to the association at all times;
- Prohibit investment in stocks, securities, or other obligations that the State Board of Administration or state agencies are prohibited from investing in under ss. 215.471, 215.4725, 215.472, and 215.473, F.S., as determined by the investment adviser;[61]
- Permit the investment adviser to withdraw investment fees, expenses, and commissions from invested funds;
- Require that any principal, earnings, or interest must be available at no cost or charge to the association within 15 business days after delivery of the association's written or electronic request; and
- Require unallocated income earned on reserve fund investments to be spent only on capital expenditures, planned maintenance, structural repairs, or other items for which the reserve accounts have been established.

[60] Section 518.11, F.S., sets forth the prudent investor rule. Generally, a fiduciary has a duty to invest and manage investment assets as a prudent investor would considering the purposes, terms, distribution requirements, and other circumstances of the trust.

[61] These provisions deal with investments in stocks, securities, or other obligations of companies doing business with Cuba or Venezuela, that boycott Israel or engage in a boycott of Israel, or that conduct certain business operations with [North] Sudan and Iran.

Meetings of the Board of Administration – Condominiums

Present Situation

Section 718.112(2)(c), F.S., requires that all meetings of the board in which a quorum is present to be open to all unit owners. Chapter 718, F.S., provides notice requirements for meetings of the board,[62] but does not mandate the frequency of such meetings.

If the board considers any special or regular assessment against unit owners, the notice for the meeting must specifically state that the assessments will be considered and provide the estimated cost and description of the purposes for such assessments.

Effect of Proposed Changes

The bill amends s. 718.112(2)(c), F.S., to:

- Require condominium associations of 10 or more units to meet at least four times a year for the purpose of responding to inquiries from members and informing members on the state of the condominium, including the status of any construction or repair projects, the status of the association's revenue and expenditures during the fiscal year, or other issues affecting the association; and
- Require associations to include a copy of the proposed contract if the notice for a board meeting relates to the approval of a contract.

Director and Officer Education – Condominiums

Present Situation

Section 718.112(2)(d)4.b., F.S., provides education or certification requirements for newly elected or appointed members of the board.[63] Within 90 days after being elected or appointed, a new board member for a condominium, cooperative, and homeowners' association must certify that he or she:

- Has read the declaration of condominium for all condominiums operated by the association and the declaration of condominium, articles of incorporation, bylaws, and current written policies;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum within one year before the election or 90 days after the election or appointment.[64] The curriculum must be administered by a condominium education provider approved by the division.[65] A certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

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[62] Section 718.112(2)(c), F.S.
[63] Sections 719.106(1)(d)b. and 720.720.303(1)(a), F.S., provide comparable post-election certification requirements for newly elected cooperative and homeowners' association board members, respectively.
[64] The division's Internet site provides a listing of approved educational providers for the certification of board members. *See* Department of Business and Professional Regulation, *Condominium & Cooperatives – Education, available at*: http://www.myfloridalicense.com/DBPR/condominiums-and-cooperatives/education/ (last visited Jan. 13, 2024).
[65] Sections 718.112(2)(d)4.b., F.S.

A board member is suspended from service on the board until he or she files the written certification or submits a certificate of completion of the educational curriculum.[66] If a suspension occurs, the board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for five years after a board director's election or the duration of the director's uninterrupted tenure, whichever is longer.[67] The validity of any action by the condominium board is not affected by the association's failure to have the certification on file.[68]

Effect of Proposed Changes

The bill amends the post-election certification requirements in s. 718.112(2)(d)4.b., F.S., to:

- Require newly elected or appointed directors to submit both the written certification that they have read the association's governing documents, will work to uphold the governing documents of the association to the best of their ability and will faithfully discharge their duties, and submit a certificate of completion of an education course and submit certification that they have completed an approved condominium education course;
- Provide that the written certification and educational certificate are valid for 10 years;
- Provide that developer-appointed directors do not have to retake the education course for any subsequent appointment by a developer, but the previously submitted educational certificate is valid for only 10 years; and
- Require directors to annually complete continuing education on recent changes to the condominium laws and rules.

The bill also amends s. 718.501(1)(c), F.S., to:

- Require the division to provide the required educational curriculum to directors at no charge, including when the required educational curriculum is provided by a division-approved condominium education provider; and
- Require associations to annually certify that all directors have completed the required written certification and educational certificate requirements.

Reserves and Structural Integrity Reserve Studies – Condominiums and Cooperatives

Present Situation

In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. Reserve accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000.[69]

The amount to be reserved must be computed using a formula based upon the estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each

[66] *Id.*
[67] *Id.*
[68] *Id.*
[69] *See* s. 718.112(2)(f) and 719.106(1)(j), F.S., relating to reserves requirements for condominium and cooperative associations, respectively.

reserve item. Replacement reserve assessments may be adjusted annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance.[70]

A "structural integrity reserve study" (SIRS) is a study of the reserve funds required for future major repairs and replacement of the common elements based on a visual inspection. A SIRS is required for condominium buildings that are three or more stories in height.[71]

Regarding the funding of reserves for the continued maintenance and repair of condominium and cooperative buildings, ss. 718.112(2)(f) and 719.106(1)(j), F.S., relating to condominium and cooperative associations, respectively, associations that are required to have a SIRS may not waive reserves for the SIRS items or use such reserves for other purposes.

Regarding the SIRS, ss. 718.112(2)(g) and 719.106(1)(k), F.S., relating to condominium and cooperative associations, respectively:

- Require condominium associations and cooperative associations to complete a structural integrity reserve study every 10 years for each building in an association that is three stories or higher in height, as determined by the Florida building code.
- Require associations existing on or before July 1, 2022, that are controlled by non-developer unit owners, to have a structural integrity reserve study completed by December 31, 2024.
- Require that the study include a visual inspection, and state the estimated remaining useful life and the estimated replacement cost of the following items (structural integrity items): roof, structure, fireproofing and fire protection systems, plumbing, electrical systems, waterproofing, windows and exterior doors, and any item with a deferred maintenance or replacement cost that exceeds $10,000.
- Require the visual inspection be performed or verified by a person licensed as an engineer, an architect, reserve specialist, or professional reserve analyst certified by the Community Associations Institute or the Association of Professional Reserve Analysts. However, any qualified person or entity may perform the other components of a SIRS.
- Provide that the SIRS may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost or deferred maintenance expense cannot be determined or for which the estimate of useful life is greater than 25 years, but the study may recommend a deferred maintenance amount for such items;
- Exempt from the SIRS requirement:
  - Buildings less than three stories in height;
  - Single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground; and
  - Any portion or component of a building that has not been submitted to the condominium or cooperative form of ownership; or any portion or component of a building that is maintained by a party other than the condominium or cooperative association.

Members of unit-owner-controlled associations may waive reserves upon a majority vote of the total voting interests of the association. However, after December 31, 2024, unit-owner-

[70] *Id.*
[71] *See* s. 718.112(2)(g) and 719.106(1)(k), F.S., relating to SIRS requirements for condominium and cooperative associations, respectively

controlled condominium and cooperative associations that must obtain a SIRS may not waive reserves. Associations that are required to obtain a SIRS also may not opt to provide less reserves or no reserves than are required for the structural integrity items. Nor may those reserves be used for any other purpose than their intended purpose.[72]

Before turnover of control to the unit owners, ss. 718.301(4)(p) and 719.301(4)(p), F.S., require the developer to perform a turnover inspection performed by a licensed professional engineer or architect, or a reserve specialist or professional reserve analyst certified by the Community Associations Institute or the Association of Professional Reserve Analysts. However, this provision does not require that the inspection comply with the SIRS requirements in ss. 718.112(2)(g) and 719.106(1)(k), F.S., relating to condominium and cooperative associations, respectively.

Effect of Proposed Changes

The bill revises the term "deferred maintenance" to "planned maintenance" in chs. 718 and 719, F.S.

In addition, the bill amends s. 718.112(2), F.S., to:

- Allow condominium associations to waive reserves and for the structural integrity reserve study to recommend a temporary suspension of reserve funding if the building or units are unsafe and uninhabitable as determined by the local enforcement agency, but the association may not waive or reduce reserve funding requirements after a building or units have been declared safe for occupancy by the local enforcement agency;[73] and
- Permit the SIRS to recommend a temporary pause in the funding of reserves or a reduction in reserve funding if the condominium building or units are unsafe and uninhabitable due to substantial damage or loss as determined by the local enforcement agency and it is in the best interests of the association to use revenues and existing reserve funds to perform necessary repairs to make the building safe and habitable, but the reserve funding schedule may not pause reserve funding after the building has been declared safe for occupancy by the local enforcement agency.

Relating to the SIRS requirements for condominium and cooperative associations, the bill amends ss. 718.112(2)(f) and 719.106(1)(j), F.S., respectively, to require associations to provide unit owners with a notice that the structural integrity reserve study is available for inspection and copying within 45 days of completion of the study. The notice may be provided electronically.[74]

The bill also clarifies that the turnover report required under ss. 718.301(4)(p) and 719.301(4)(p), F.S., consists of a structural reserve study.

[72] Sections 718.112(2)(f) and 719.106(1)(j), F.S., relating to condominium and cooperative associations, respectively.
[73] *See* s. 533.71(5), F.S., defining "local enforcement agency."
[74] This notice delivery requirement is identical to the requirement for delivery of the inspector-prepared summary of the milestone inspection report required under. s. 553.899, F.S.

Assessments – Condominiums

Present Situation

Section 718.112(2)(i), F.S., provides for the manner of collecting assessments from unit owners, which may be done not less than quarterly. Current law does not provide guidelines or requirements for condominium associations to obtain a line of credit in lieu of a special assessment for the funding of reserves or other expenditures. A special assessment is any assessment levied against a unit owner other than the assessment required by a budget adopted annually.[75]

Section 718.116(10), F.S., requires that the specific purpose or purposes of any special assessment, including any contingent special assessment levied in conjunction with the purchase of an insurance policy authorized by s. 718.111(11), F.S., approved in accordance with the condominium documents must be set forth in a written notice of assessment sent or delivered to each unit owner. Current law does not specify that a special assessment must be recorded in the public records.

Effect of Proposed Changes

In lieu of a special assessment, the bill amends the assessment provisions in s. 718.112(2)(i), F.S., to provide a process for the board to secure a line of credit and assess a contingent special assessment to fund repairs recommended by a milestone inspection required under s. 553.899, F.S., or a similar local inspection requirement or structural integrity reserve study, or unanticipated repairs.

A declaration of special assessments evidencing the levy of such special assessments must be recorded in the public record.

Under the bill, the board must have immediate access to the funding in the line of credit to fund required repairs, maintenance, or replacement expenses without further approval by the members of the association. A unit owner may opt to pay the contingent special assessment in full at the time it becomes due, or may be allowed to make amortized payments over a term of years as provided for by the line of credit. However, a unit owner may pay the remaining balance of the special assessment at any time during the amortization period.

A line of credit may not be used as an alternative to an association's reserve funding obligation. However, for a budget adopted on or before December 31, 2029, the bill permits an association to secure a line of credit and assess a contingent special assessment to meet the reserve funding schedule recommended by the structural integrity reserve study.

The bill amends s. 718.116(10), F.S., to require notices of a special assessment and contingent special assessments to be recorded in the public record.

[75] Section 718.103(25), F.S.

Hurricane Protection – Condominiums

Present Situation

Chapter 718, F.S., does not define the term "hurricane protection."

Section 718.113(5)(b), F.S., provides that a condominium association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection authorized by this subsection if such property is the responsibility of the association pursuant to the declaration of condominium. If the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection are the responsibility of the unit owners pursuant to the declaration of condominium, the maintenance, repair, and replacement of such items are the responsibility of the unit owner.

Section 718.113(5)(c), F.S., authorizes the board to operate shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection installed pursuant to this subsection without the permission of the unit owners only if such operation is necessary to preserve and protect the condominium property or and association property. The installation, replacement, operation, repair, and maintenance of such shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection in accordance with the procedures set forth in s. 718.113(5)(c), F.S., are not a material alteration to the common elements or association property.[76]

Section 718.113(5)(d), F.S., provides that, notwithstanding any other provision in the residential condominium documents, if approval is required by the documents, a board may not refuse to approve the installation or replacement of hurricane protection by a unit owner conforming to the specifications adopted by the board.

Section 718.115(1)(e), F.S., requires that the expense of installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by the board pursuant to s. 718.113(5), F.S., constitutes a common expense and shall be collected as provided in this section if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium. Section 718.115(1)(e)1., F.S., does not indicate that the costs of installation of hurricane protection are enforceable as an assessment and may be collected in the manner provided under s. 718.116, F.S.

Further, s. 718.115(1)(e), F.S., states that a unit owner who has previously installed code-compliant shutters, impact glass, windows, or doors, must receive a credit when code-compliant shutters, impact glass, windows, or doors are installed. A unit owner who has previously

[76] Section 718.110, F.S., provides the procedure for amending the declaration of condominium. It provides that, "unless otherwise provided in the declaration as originally recorded, no amendment may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium unless the record owner of the unit and all record owners of liens on the unit join in the execution of the amendment and unless all the record owners of all other units in the same condominium approve the amendment."

installed impact glass or code-compliant windows or doors that comply with the current applicable building code, must receive a credit when the impact glass or code-compliant windows or doors are installed. A unit owner who has installed other types of code-compliant hurricane protection that comply with the currently applicable building code is entitled to receive a credit when the same type of other code-compliant hurricane protection is installed, and the credit must be equal to the pro rata portion of the assessed installation cost assigned to each unit.

Effect of Proposed Changes

The bill substantially revises the existing hurricane protection provisions in ch. 718, F.S.

The bill creates s. 718.103(19), F.S., to define "hurricane protection" to mean "hurricane shutters, impact glass, code-compliant windows or doors, and other code-compliant hurricane protection products used to preserve and protect the condominium property or association property."

The bill clarifies the responsibilities of unit owners and associations for the costs of maintenance, repair, and replacement of hurricane protections exterior doors, windows, and glass apertures. The bill amends s. 718.104(4)(p), F.S., relating to the creation of condominiums, to require the declarations of residential condominiums and mixed-use condominiums specify whether the unit owner or the association is responsible for the installation, maintenance, repair, or replacement of hurricane protection that is for the preservation and protection of the condominium property and association property.

The bill amends s. 718.113(5), F.S., to provide that, to protect the health, safety, and welfare of the people of this state and to ensure uniformity and consistency in the hurricane protections installed by condominium associations and unit owners, the hurricane protection provisions apply to all residential and mixed-use condominiums in Florida, regardless of when the condominium is created pursuant to the declaration. The bill provides that the installation, maintenance, repair, replacement, and operation of hurricane protection in accordance with the hurricane protection requirements is not considered a material alteration or substantial addition to the common elements or association property.

Under the bill, a vote of the unit owners to require the installation of hurricane protection must be set forth in a certificate attesting to such vote and include the date that the hurricane protection must be installed. The board must record the certificate in the public records of the county where the condominium is located. The certificate must include the recording data identifying the declaration of the condominium and must be executed in the form required for the execution of a deed. Once the certificate is recorded, the board must mail or hand-deliver a copy of the recorded certificate to the unit owners at the owners' address as reflected in the records of the association. The board may provide a copy of the recorded certificate by electronic transmission to unit owners who previously consented to receive notice by electronic transmission. The board's failure to record the certificate or to send a copy of the recorded certificate to the unit owners does not affect the validity or enforceability of the vote of the unit owners.

The bill allows the board to require that unit owners adhere to an existing unified building scheme regarding the external appearance of the condominium.

Regarding a unit owner's responsibility for the costs of installation or removal of hurricane protection, the bill provides that the unit owner is not responsible for the cost of any removal or reinstallation of hurricane protection if the unit owner installed the hurricane protection and its removal is necessary for the maintenance, repair, or replacement of the condominium property or association property for which the association is responsible. If such removal or installation is completed by the association, the association may not charge that cost to the unit owner. If such installation of removal is completed by the unit owner, the association must reimburse the unit owner for the cost or apply the cost as a credit toward future assessments.

Under the bill, the board must determine if the removal or reinstallation of hurricane protection is the responsibility of the unit owner, including costs, and if such removal or reinstallation is completed by the association, then the costs incurred by the association may be charged to the unit owner. If the association charges a unit owner for the removal or installation of hurricane protection, such charges are enforceable as an assessment and may be collected in the manner provided under s. 718.116, F.S, for the collection of assessments.

The bill amends s. 718.115(1)(e)1., F.S., to delete the requirement that the expense of installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by the board pursuant to s. 718.113(5), F.S., constitutes a common expense and must be collected as a common expense if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium. Additionally, s. 718.115(1)(e)1., F.S., is also amended to provide that the costs of installation of hurricane protection are enforceable as an assessment and may be collected in the manner provided under s. 718.116, F.S.

The bill amends s. 718.115(1)(e)2., F.S., to delete the requirement that a unit owner who previously installed hurricane shutters in accordance with s. 718.113(5), F.S., that comply with the current applicable building codes receive a credit when the shutters are installed. A unit owner who has previously installed such items must receive a credit when the impact glass or code-compliant windows or doors are installed.

The provision is revised to provide that a credit is applicable if the installation of hurricane protection is for all other units that do not have hurricane protection and the cost of such installation is funded by the association's budget, including the use of reserve funds. The bill adds that the credit must be equal to the amount that the unit owner would have been assessed to install the hurricane protection and that expenses for the installation, replacement, operation, repair, or maintenance of hurricane protection on common elements and association property are common expenses.

SLAPP Defamation Law Suits – Condominiums

Present Situation

Section 718.1224, F.S., prohibits “strategic lawsuits against public participation" or "SLAPP suits,” and provides legislative findings that such lawsuits are against the public interest. A SLAPP lawsuit occurs when association members are sued by individuals, business entities, or governmental entities for matters arising out of a unit owner's appearance and presentation before a governmental entity on matters related to the condominium association.[77]

Under s. 718.1224, F.S., governmental entities, business organizations, and individuals are prohibited from filing or causing to be filed any lawsuit, cause of action, claim, cross-claim, or counterclaim against a condominium unit owner without merit and solely because such condominium unit owner has exercised the right to instruct his or her representatives or the right to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. Current law does not specifically prohibit condominium associations from engaging in SLAPP suits, instead the prohibition generally applies to governmental entities, business organizations, and individuals.

Section 718.1224, F.S., provides that unit owners have a right to an expeditious resolution of such an action, including the right to petition for a motion to dismiss or for a summary judgment. The court may award the unit owner actual damages for a violation of this prohibition and may also award treble damages. However, the court must state a basis for an award of treble damages. The court is further required to award the prevailing party reasonable attorney’s fees and costs. Governmental entities, business organizations, and individuals are barred from expending funds in prosecuting a SLAPP suit against a unit owner.[78]

Effect of Proposed Changes

The bill amends s. 718.1224, F.S., to revise the SLAPP suits prohibition to protect condominium unit owners’ exercise of their free speech rights before their association. The bill specifically prohibits condominium associations from engaging in a SLAPP suit.

The bill also amends s. 718.1224, F.S., to prohibit condominium associations from:

- Retaliating against a unit owner, such as by increasing a unit’s assessments, threatening to bring an action for possession or other civil action, including a defamation, libel, slander, or tortious interference action; and
- Spending association funds in support of defamation, libel, or tortious interference actions against a unit owner.

The unit owner must have acted in good faith and not for any improper purposes, such as to harass or cause unnecessary delay, for frivolous purposes, or needless increase in the cost of litigation in order for the unit owner to raise the defense of retaliatory conduct. The bill provides

[77] *See* s. 718.1224(1), F.S., providing legislative intent.
[78] A similar prohibition against SLAPP suits by homeowners' associations is contained in s. 720.304(4), F.S.

examples of conduct for which a condominium association, officer, director, or agent of an association may not retaliate include, but are not limited to, situations where:

- The unit owner has in good faith complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the condominium;
- The unit owner has organized, encouraged, or participated in a unit owners organization;
- The unit owner submitted information or filed a complaint alleging criminal violations or violations of this chapter or the rules of the division with the division, the Office of the Condominium Ombudsman, a law enforcement agency, a state attorney, the Attorney General, or any other governmental agency;
- The unit owner has exercised his or her rights under ch. 718, F.S.;
- The unit owner has complained to the association or any of its representatives for their failure to comply with ch. 718, F.S., or ch. 617, F.S.; or
- The unit owner has made public statements critical of the operation or management of the association.

The bill allows the unit owner to present evidence of retaliatory conduct as a defense in any action brought against him or her for possession.

In addition, the bill prohibits associations from expending association funds in support of a defamation, libel, slander, or tortious interference action against a unit owner or any other claim against a unit owner based on conduct described in the bill.

Conflicts of Interests – Condominiums

Present Situation

Section 718.3027, F.S., provides the process for resolving potential conflict of interest for the officers and directors of condominium associations. It requires an officer or director of a condominium association (that is not a timeshare condominium association), to disclose any financial interest of the officer or director (or such person's relative) in a contract for goods or services, if such activity may reasonably be construed by the board to be a conflict of interest. The board of a condominium association must approve a contract for services or other transactions by an affirmative vote of two-thirds of all other directors present. A director or officer who is a party to, or has an interest in, the activity that may be a potential conflict of interest must leave the board meeting during the discussion and vote, and must recuse himself or herself from the vote.

Effect of Proposed Changes

The bill amends s. 718.3027, F.S., to provide that the attendance of an officer or director at the meeting of the board is sufficient to constitute a quorum for the meeting and for the vote taken in his or her absence when the director is required to leave the room during the discussion and vote on a contract in which the director, or his relative, has an interest.

Nonpayment of Monetary Obligations

Present Situation

Section 718.303(5), F.S., allows an association to suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than $1,000 and more than 90 days delinquent. The association must send the unit owner proof of such obligation 30 days before such suspension takes effect. The suspension ends when the full payment of all past due obligations currently due the association are paid.

Effect of Proposed Changes

The bill amends s. 718.303(5), F.S., to require an association to send unit owners, whose right to vote has been suspended because of an unpaid financial obligation, a notice of such obligation within 90 days of an election or vote of the members.

Division of Condominiums, Cooperatives, and Mobile Homes

Present Situation

Section 718.501, F.S., provides the investigative and enforcement authority of the Division of Condominium, Timeshares, and Mobile Homes (division). The division may enforce and ensure compliance with ch. 718, F.S., and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units and complaints related to the procedural completion of milestone inspections under s. 553.899, F.S. The division may investigate complaints and enforce compliance with ch. 718, F.S., for associations that are still under developer control, including investigating complaints against developers involving improper turnover or failure to transfer control to the association.[79] After control of the condominium is transferred from the developer to the unit owners, the division only has jurisdiction to investigate complaints related to financial issues, elections, and maintenance of and unit owner access to association records.[80]

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, associations, and association board members.[81]

If the division has reasonable cause to believe that a violation of any provision of ch. 718, F.S., or a related rule has occurred, the division may institute enforcement proceedings in its 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. Also, Florida law authorizes the division to petition a court to appoint a receiver or conservator to implement a court order or to enforce an injunction or temporary restraining order. The division may also impose civil penalties.[82]

[79] *Id.*
[80] Section 718.501(1), F.S.
[81] Sections 718.501(1), F.S.
[82] *Id.*

Effect of Proposed Changes

The bill amends s. 718.501(1), F.S., to delete the limitation on the division's authority to enforce ch. 718, F.S., after turnover. Under the bill, the division may enforce and ensure compliance with ch. 718, F.S., and rules relating to the development, construction, sale, lease, ownership, operation, and management of a residential condominium before and after control of the association is turned over to the nondeveloper members.

In addition, the bill:

- Requires the division refer to local law enforcement authorities any person whom the division believes has engaged in fraud, theft, embezzlement, or other criminal activity or has cause to believe that fraud, theft, embezzlement, or other criminal activity has occurred.
- Provides that the division director or any officer or employee of the division, and the condominium ombudsman or employee of the office of the condominium ombudsman,[83] may attend and observe any meeting of the board of administration or unit owner meeting, including any meeting of a subcommittee or special committee, that is open to members of the association for the purpose of performing the duties of the division or the office of the ombudsman under ch. 718, F.S.
- Requires the division routinely conduct random audits of condominium associations to determine compliance with the website or application requirements for official records.

Report to the Legislature

The bill requires the division submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees and appropriate substantive committees, a review of the website or application requirements for official records under s. 718.111(12)(g), F.S., and make recommendations regarding any additional official records of a condominium association that should be included in the record maintenance requirement in the provision.

Effective Date

Except as otherwise provide, the bill takes effect July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[83] Sections 718.5011-50152, F.S., relate to the Office of the Ombudsman within the division. The ombudsman is an attorney appointed by the Governor to be a neutral resource for unit owners and condominium associations. The ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the division, and the Legislature on any matter or subject within the jurisdiction of the division. In addition, the ombudsman may make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints. The ombudsman also acts as a liaison among the division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The Division of Florida Condominiums, Timeshares, and Mobile Homes has not provided a fiscal analysis for this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 468.4334, 468.4335, 468.436, 718.103, 718.104, 718.111, 718.112, 718.113, 718.115, 718.116, 718.121, 718.1224, 718.301, 718.3026, 718.3027, 718.303, 718.501, 718.618, 719.106, 719.301, and 719.618.

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.

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LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment (with title amendment)

Between lines 2210 and 2211
insert:

Section 14. Section 718.128, Florida Statutes, is amended to read:

718.128 Electronic voting.—The association may conduct elections and other unit owner votes through an Internet-based online voting system if a unit owner consents, electronically or in writing, to online voting and if the following requirements

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are met:

(1) The association provides each unit owner with:

(a) A method to authenticate the unit owner's identity to the online voting system.

(b) For elections of the board, a method to transmit an electronic ballot to the online voting system that ensures the secrecy and integrity of each ballot.

(c) A method to confirm, at least 14 days before the voting deadline, that the unit owner's electronic device can successfully communicate with the online voting system.

(2) The association uses an online voting system that is:

(a) Able to authenticate the unit owner's identity.

(b) Able to authenticate the validity of each electronic vote to ensure that the vote is not altered in transit.

(c) Able to transmit a receipt from the online voting system to each unit owner who casts an electronic vote.

(d) For elections of the board of administration, able to permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific unit owner.

(e) Able to store and keep electronic votes accessible to election officials for recount, inspection, and review purposes.

(3) A unit owner voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum. A substantive vote of the unit owners may not be taken on any issue other than the issues specifically identified in the electronic vote, when a quorum is established based on unit owners voting electronically pursuant to this section.

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(4) This section applies to an association that provides for and authorizes an online voting system pursuant to this section by a board resolution. The board resolution must provide that unit owners receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and deadlines for unit owners to consent, electronically or in writing, to online voting, and must establish reasonable procedures and deadlines for unit owners to opt out of online voting after giving consent. Written notice of a meeting at which the resolution will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property or association property at least 14 days before the meeting. Evidence of compliance with the 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association.

(5) A unit owner’s consent to online voting is valid until the unit owner opts out of online voting according to the procedures established by the board of administration pursuant to subsection (4).

(6) This section may apply to any matter that requires a vote of the unit owners who are not members of a timeshare condominium association.

Between lines 2912 and 2913
insert:

Section 22. Section 719.129, Florida Statutes, is amended to read:

719.129 Electronic voting.—The association may conduct

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elections and other unit owner votes through an Internet-based online voting system if a unit owner consents, electronically or in writing, to online voting and if the following requirements are met:

(1) The association provides each unit owner with:

(a) A method to authenticate the unit owner's identity to the online voting system.

(b) For elections of the board, a method to transmit an electronic ballot to the online voting system that ensures the secrecy and integrity of each ballot.

(c) A method to confirm, at least 14 days before the voting deadline, that the unit owner's electronic device can successfully communicate with the online voting system.

(2) The association uses an online voting system that is:

(a) Able to authenticate the unit owner's identity.

(b) Able to authenticate the validity of each electronic vote to ensure that the vote is not altered in transit.

(c) Able to transmit a receipt from the online voting system to each unit owner who casts an electronic vote.

(d) For elections of the board of administration, able to permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific unit owner.

(e) Able to store and keep electronic votes accessible to election officials for recount, inspection, and review purposes.

(3) A unit owner voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum. A substantive vote of the unit owners may not be taken on any issue other than the issues

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specifically identified in the electronic vote, when a quorum is established based on unit owners voting electronically pursuant to this section.

(4) This section applies to an association that provides for and authorizes an online voting system pursuant to this section by a board resolution. The board resolution must provide that unit owners receive notice of the opportunity to vote through an online voting system, must establish reasonable procedures and deadlines for unit owners to consent, electronically or in writing, to online voting, and must establish reasonable procedures and deadlines for unit owners to opt out of online voting after giving consent. Written notice of a meeting at which the resolution will be considered must be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property or association property at least 14 days before the meeting. Evidence of compliance with the 14-day notice requirement must be made by an affidavit executed by the person providing the notice and filed with the official records of the association.

(5) A unit owner’s consent to online voting is valid until the unit owner opts out of online voting pursuant to the procedures established by the board of administration pursuant to subsection (4).

(6) This section may apply to any matter that requires a vote of the unit owners who are not members of a timeshare cooperative association.

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

And the title is amended as follows:

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Delete line 162
and insert:
changes made by the act; amending s. 718.128, F.S.; authorizing a condominium association to conduct elections and other unit owner votes through an online voting system if a unit owner consents, either electronically or in writing, to online voting; revising applicability; amending s. 718.301, F.S.;

Between lines 199 and 200
insert:
amending s. 719.129, F.S.; authorizing cooperative associations to conduct elections and other unit owner votes through an online voting system if a unit owner consents, either electronically or in writing, to online voting; revising applicability;

By Senator Bradley

6-01522E-24 20241178__

A bill to be entitled

An act relating to condominium and cooperative associations; amending s. 468.4334, F.S.; requiring community association managers and management firms to return official records of an association within a specified period following termination of a contract; providing a rebuttable presumption regarding noncompliance; providing penalties for the failure to timely return official records; creating s. 468.4335, F.S.; requiring community association managers and management firms to disclose certain conflicts of interest to the association's board; providing a rebuttable presumption as to the existence of a conflict; requiring an association to consider multiple bids for goods or services under certain circumstances; providing requirements for an association to approve any contract or transaction deemed a conflict of interest; authorizing that any such contract may be canceled, subject to certain requirements; specifying liability and nonliability of the association upon cancellation of such a contract; authorizing an association to cancel a contract with a community association manager or management firm upon a finding of a violation of certain provisions; specifying liability and nonliability of the association upon cancellation of such a contract; authorizing an association to void a contract if certain conflicts were not disclosed in accordance with the act; defining the term "relative"; amending

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s. 468.436, F.S.; revising the list of grounds for which the Department of Business and Professional Regulation may take disciplinary actions against community association managers or firms to conform to changes made by the act; amending s. 718.103, F.S.; revising the definition of the term "alternative funding method" to conform to changes made by the act; defining the term "hurricane protection"; amending s. 718.104, F.S.; requiring that declarations specify the entity responsible for the installation, maintenance, repair, or replacement of hurricane protection; amending s. 718.111, F.S.; providing criminal penalties for any officer, director, or manager of an association who unlawfully solicits, offers to accept, or accepts any thing or service of value or kickback; revising the list of records that constitute the official records of an association; revising maintenance requirements for official records; revising requirements regarding requests to inspect or copy association records; requiring an association to provide a checklist and affidavit in response to certain records requests; providing a rebuttable presumption regarding compliance; providing criminal penalties for certain violations regarding noncompliance with records requirements; defining the term "repeatedly"; requiring that copies of certain building permits be posted on an association's website or application; modifying the method of delivery of certain letters regarding association financial

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

reports to unit owners; conforming a provision to changes made by the act; revising circumstances under which an association may prepare certain reports; requiring an association to prepare certain financial statements if it invests funds in a certain manner; revising applicable law for criminal penalties for persons who unlawfully use a debit card issued in the name of an association; defining the term "lawful obligation of the association"; providing requirements for associations investing funds in certain investment products; providing duties of the board and any investment adviser selected by the board; revising the threshold for associations that must post certain documents on its website or through an application; amending s. 718.112, F.S.; requiring the boards of administration of associations consisting of more than a specified number of units to meet a minimum number of times each year; revising requirements regarding notice of such meetings; requiring a director of a board of an association to provide a written certification and complete an educational requirement upon election or appointment to the board; providing transitional provisions; requiring that an association's budget include reserve amounts for planned maintenance, in lieu of deferred maintenance; authorizing the structural integrity reserve study to temporarily pause or limit reserve funding if certain conditions exist; requiring an association to distribute or deliver copies of a structural integrity

reserve study to unit owners within a specified timeframe; specifying the manner of distribution or delivery; authorizing certain boards to approve contingent special assessments in order to secure a line of credit under certain circumstances; specifying requirements and limitations for any line of credit secured; revising the circumstances under which a director or an officer must be removed from office after being charged by information or indictment; prohibiting such officers and directors with pending criminal charges from accessing the official records of any association; providing an exception; providing criminal penalties for certain fraudulent voting activities relating to association elections; amending s. 718.113, F.S.; providing applicability; authorizing, rather than requiring, certain hurricane protection specifications; specifying that certain actions are not material alterations or substantial additions; authorizing the boards of residential and mixed-use condominiums to install or require the unit owners to install hurricane protection; requiring a vote of the unit owners for the installation of hurricane protection; requiring that such vote be attested to in a certificate and recorded in certain public records; providing requirements for such certificate; providing that the validity or enforceability of a vote of the unit owners is not affected if the board fails to record a certificate or send a copy of the recorded certificate to the unit

owners; providing that a vote of the unit owners is not required under certain circumstances; prohibiting installation of the same type of hurricane protection previously installed; providing exceptions; prohibiting the boards of residential and mixed-use condominiums from refusing to approve certain hurricane protections; authorizing the board to require owners to adhere to certain guidelines regarding the external appearance of a condominium; revising responsibility for the cost of removal or reinstallation of hurricane protection and certain exterior windows, doors, or apertures in certain circumstances; requiring the board to make a certain determination; providing that costs incurred by the association in connection with such removal or installation completed by the association may not be charged to the unit owner; requiring reimbursement of the unit owner, or application of a credit toward future assessments, in certain circumstances; authorizing the association to collect charges if the association removes or installs hurricane protection and making such charges enforceable as an assessment; amending s. 718.115, F.S.; specifying when the cost of installation of hurricane protection is not a common expense; authorizing certain expenses to be enforceable as assessments; requiring that certain unit owners be excused from certain assessments or to receive a credit for hurricane protection that has been installed; providing credit applicability under

certain circumstances; providing for the amount of credit that a unit owner must receive; specifying that certain expenses are common expenses; amending s. 718.116, F.S.; requiring that the written notice of certain assessments be recorded in the public records; amending s. 718.121, F.S.; conforming a cross-reference; amending s. 718.1224, F.S.; revising legislative findings and intent to conform to changes made by the act; revising the definition of the term "governmental entity"; prohibiting a condominium association from filing strategic lawsuits against public participation; prohibiting an association from taking certain action against a unit owner in response to specified conduct; prohibiting associations from expending association funds in support of certain actions against a unit owner; conforming provisions to changes made by the act; amending s. 718.301, F.S.; revising items that developers are required to deliver to an association upon relinquishing control of the association; amending s. 718.3026, F.S.; exempting contracts for registered investment advisers from certain contract requirements; amending s. 718.3027, F.S.; revising requirements regarding attendance at a board meeting in the event of a conflict of interest; modifying circumstances under which a contract may be voided; amending s. 718.303, F.S.; requiring that a notice of nonpayment be provided to a unit owner by a specified time before an election or a vote of association members; amending s. 718.501, F.S.;

revising circumstances under which the Division of Florida Condominiums, Timeshares, and Mobile Homes has jurisdiction to investigate and enforce certain matters; requiring the division to provide official records, without charge, to a unit owner denied access; requiring the division to provide educational curriculum and issue a certificate, free of charge, to directors of a board of administration; requiring the division to refer suspected criminal acts to the appropriate law enforcement authority; authorizing certain division officials to attend association meetings; requiring the division to conduct random audits of associations for specified purposes; requiring that an association's annual fee be filed concurrently with the annual certification; specifying requirements for the annual certification; amending s. 718.618, F.S.; conforming a provision to changes made by the act; amending s. 719.106, F.S.; requiring that a cooperative association's budget include reserve amounts for planned maintenance, in lieu of deferred maintenance; requiring an association to distribute or deliver copies of a structural integrity reserve study to unit owners within a specified timeframe; specifying the manner of distribution or delivery; conforming provisions to changes made by the act; amending s. 719.301, F.S.; revising items that developers are required to deliver to a cooperative association upon relinquishing control of association property; amending s. 719.618, F.S.; conforming a

provision to changes made by the act; requiring the division to conduct a review of statutory requirements regarding posting of official records on a condominium association's website or application; requiring the division to submit its findings, including any recommendations, to the Governor and the Legislature by a specified date; providing effective dates.

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

Section 1. Subsection (3) is added to section 468.4334, Florida Statutes, to read:

468.4334 Professional practice standards; liability.—

(3) A community association manager or a community association management firm shall return all community association official records within its possession to the community association within 20 business days after termination of a contractual agreement to provide community association management services to the community association or receipt of a written request for return of the official records, whichever occurs first. Failure of a community association manager or a community association management firm to timely return all of the official records within its possession to the community association creates a rebuttable presumption that the association willfully failed to comply with this subsection. A community association manager or a community association management firm that fails to timely return community association records is subject to suspension of its license under s. 468.436, and a civil penalty of $1,000 per day for up

to 10 days, assessed beginning on the 21st day after termination of a contractual agreement to provide community association management services to the community association or receipt of a written request from the association for return of the records, whichever occurs first.

Section 2. Section 468.4335, Florida Statutes, is created to read:

468.4335 Conflicts of interest.—

(1) A community association manager or a community association management firm, including directors, officers, persons with a financial interest in a community association management firm, and the relatives of such 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 any of the following occurs without prior notice, as required in subsection (5):

(a) A community association manager or a community association management firm, including directors, officers, persons with a financial interest in a community association management firm, or the relative of such persons, enters into a contract for goods or services with the association.

(b) A community association manager or a community association management firm, including directors, officers, persons with a financial interest in a community association management firm, or the relative of such persons, holds an interest in a corporation, limited liability corporation, partnership, limited liability partnership, or other business entity that conducts business with the association or proposes to enter into a contract or other transaction with the

association.

(2) If the association receives and considers a bid to provide a good or service, other than community association management services, from a community association manager or a community association management firm, including directors, officers, persons with a financial interest in a community association management firm, or a relative of such persons, the association must also consider at least three bids from other third-party providers of such good or service.

(3) If a community association manager or a community association management firm, including directors, officers, persons with a financial interest in a community association management firm, or the relative of such persons, proposes to engage in an activity that is a conflict of interest as described in subsection (1), the proposed activity must be listed on, and all contracts and transactional documents related to the proposed activity must be attached to, the meeting agenda. The disclosures must be entered into the written minutes of the meeting. Approval of the contract or other transaction requires an affirmative vote of two-thirds of all other directors present. At the next regular or special meeting of the members, the existence of the contract or other transaction must be disclosed to the members. Upon motion of any member, the contract or transaction must be brought up for a vote and may be canceled by a majority vote of the members present. If the contract is canceled, the association is liable only for the reasonable value of the goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such

cancellation.

(4) If the board finds that a community association manager or a community association management firm, including directors, officers, persons with a financial interest in a community association management firm, or the relative of such persons, has violated this section, the association may cancel its community association management contract with the community association manager or the community association management firm. If the contract is canceled, the association is liable only for the reasonable value of the management services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for such cancellation.

(5) If an association enters into a contract with a community association manager or a community association management firm, including directors, officers, persons with a financial interest in a community association management firm, or the relative of such persons, which is a party to or has an interest in an activity that is a possible conflict of interest as described in subsection (1) and that activity has not been properly disclosed as a conflict of interest or potential conflict of interest as required by this section, the contract is voidable and terminates upon the association filing a written notice terminating the contract with its board of directors which contains the consent of at least 20 percent of the voting interests of the association.

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

Section 3. Paragraph (b) of subsection (2) of section 468.436, Florida Statutes, is amended to read:

468.436 Disciplinary proceedings.—

(2) The following acts constitute grounds for which the disciplinary actions in subsection (4) may be taken:

(b)1. Violation of ~~any provision of~~ this part.

2. Violation of any lawful order or rule rendered or adopted by the department or the council.

3. Being convicted of or pleading nolo contendere to a felony in any court in the United States.

4. Obtaining a license or certification or any other order, ruling, or authorization by means of fraud, misrepresentation, or concealment of material facts.

5. Committing acts of gross misconduct or gross negligence in connection with the profession.

6. Contracting, on behalf of an association, with any entity in which the licensee has a financial interest that is not disclosed.

7. Failing to disclose any conflict of interest as required by s. 468.4335.

8. Violating ~~any provision of~~ chapter 718, chapter 719, or chapter 720 during the course of performing community association management services pursuant to a contract with a community association as defined in s. 468.431(1).

Section 4. Present subsections (19) through (32) of section 718.103, Florida Statutes, are redesignated as subsections (20) through (33), respectively, a new subsection (19) is added to that section, and subsection (1) of that section is amended, to read:

718.103 Definitions.—As used in this chapter, the term:

(1) "Alternative funding method" means a method approved by the division for funding the capital expenditures and planned ~~deferred~~ maintenance obligations for a multicondominium association operating at least 25 condominiums which may reasonably be expected to fully satisfy the association's reserve funding obligations by the allocation of funds in the annual operating budget.

(19) "Hurricane protection" means hurricane shutters, impact glass, code-compliant windows or doors, and other code-compliant hurricane protection products used to preserve and protect the condominium property or association property.

Section 5. Paragraph (p) is added to subsection (4) of section 718.104, Florida Statutes, to read:

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

(4) The declaration must contain or provide for the following matters:

(p) For both residential condominiums and mixed-use condominiums, a statement that specifies whether the unit owner or the association is responsible for the installation, maintenance, repair, or replacement of hurricane protection that is for the preservation and protection of the condominium property and association property.

Section 6. Paragraph (a) of subsection (1) and subsections (12), (13), and (15) of section 718.111, Florida Statutes, are amended, and subsection (16) is added to that section, to read:

718.111 The association.—

(1) CORPORATE ENTITY.—

(a) The operation of the condominium shall be by the association, which must be a Florida corporation for profit or a Florida corporation not for profit. However, any association which was in existence on January 1, 1977, need not be incorporated. The owners of units shall be shareholders or members of the association. The officers and directors of the association have a fiduciary relationship to the unit owners. It is the intent of the Legislature that nothing in this paragraph shall be construed as providing for or removing a requirement of a fiduciary relationship between any manager employed by the association and the unit owners. An officer, director, or manager may not solicit, offer to accept, or accept any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association. Any such officer, director, or manager who knowingly so solicits, offers to accept, or accepts any thing or service of value or kickback commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and is subject to a civil penalty pursuant to s. 718.501(1)(d) ~~and, if applicable, a criminal penalty as provided in paragraph (d)~~. However, this paragraph does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs. An association may operate more than one condominium.

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association

shall maintain each of the following items, if applicable, which constitutes the official records of the association:

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

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

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

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

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

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)5.e. ~~(c)3.c.~~ However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.

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

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

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

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

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

b. All invoices, transaction receipts, deposit slips, or other underlying documentation that substantiates any receipt or expenditure of funds by the association.

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

d.~~c.~~ All audits, reviews, accounting statements, structural integrity reserve studies, and financial reports of the association or condominium. Structural integrity reserve studies must be maintained for at least 15 years after the study is completed.

e.~~d.~~ All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association for at least 1 year after receipt of the bid.

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

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

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

15. A copy of the inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property. Such record must be maintained by the association for 15 years after receipt of the report.

16. Bids for materials, equipment, or services.

17. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

18. A copy of the investment policy statement adopted pursuant to paragraph (16)(c).

19. A copy of all building permits.

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

(b) The official records specified in subparagraphs (a)1.-6. must be permanently maintained from the inception of the

association. Bids for work to be performed or for materials, equipment, or services must be maintained for at least 1 year after receipt of the bid. All other official records must be maintained within the state for at least 7 years, unless otherwise provided by general law. The official records must be maintained in an organized manner that facilitates inspection of the records by a unit owner. The obligation to maintain official records includes the obligation to obtain and recreate those records to the fullest extent possible in the event that the records are lost, destroyed, or otherwise unavailable. The records of the association shall be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 working days after receipt of a written request by the board or its designee. However, such distance requirement does not apply to an association governing a timeshare condominium. This paragraph and paragraph (c) may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association may offer the option of making the records available to a unit owner electronically via the Internet as provided under paragraph (g) or by allowing the records to be viewed in electronic format on a computer screen and printed upon request. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative in compliance with this chapter unless the association has an affirmative duty not to disclose such information under this chapter.

(c)1.a. The official records of the association are open to

inspection by any association member and any person authorized by an association member as a representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member and of the person authorized by the association member as a representative of such member. A renter of a unit has a right to inspect and copy only the declaration of condominium, the association's bylaws and rules, and the inspection reports described in ss. 553.899 and 718.301(4)(p). The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying but may not require a member to demonstrate any purpose or state any reason for the inspection. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. If the requested records are posted on an association's website, the association may fulfill its obligations as provided under this paragraph by directing to the website all persons authorized to request access to official records pursuant to this paragraph.

b. In response to a statutorily compliant written request to inspect records, the association must simultaneously provide a checklist to the requestor of all records made available for inspection and copying and a sworn affidavit in which the person facilitating or handling the association's compliance with the request attests to the veracity of the checklist provided to the requestor. The checklist must also identify any of the association's official records that were not made available to the requestor. An association must maintain a checklist provided under this sub-subparagraph for 7 years. An association delivering a checklist and affidavit pursuant to this sub-subparagraph creates a rebuttable presumption that the association has complied with this paragraph.

2. Any director or member of the board or association or a community association manager who knowingly, willfully, and repeatedly violates subparagraph 1. commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083. For purposes of this subparagraph, the term "repeatedly" means two or more violations within a 12-month period.

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

4. Any person who willfully and knowingly refuses to

release or otherwise produce association records with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

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

a. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which

was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

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

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

d. Medical records of unit owners.

e. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph, an association may print and distribute to unit owners a directory containing the name, unit address, and all telephone numbers of each unit owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An

owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

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

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

h. All affirmative acknowledgments made pursuant to s. 718.121(4)(c).

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

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

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

(f) An outgoing board or committee member must relinquish all official records and property of the association in his or her possession or under his or her control to the incoming board within 5 days after the election. The division shall impose a civil penalty as set forth in s. 718.501(1)(d)6. against an outgoing board or committee member who willfully and knowingly fails to relinquish such records and property.

(g)1. By January 1, 2019, an association managing a condominium with 150 or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website or make such documents available through an application that can be downloaded on a mobile device.

a. The association's website or application must be:

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

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

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

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

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

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

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

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

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or

services which exceed $500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

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

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

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

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

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.4335, 468.436(2)(b)6., and 718.3027(3).

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

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

m. The inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property.

n. The association's most recent structural integrity reserve study, if applicable.

o. Copies of all building permits issued for ongoing or planned construction.

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

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

(13) FINANCIAL REPORTING.—Within 90 days after the end of

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

revenues of an association. Financial reports shall be prepared as follows:

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

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

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

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

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

2. A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures, planned ~~deferred~~ maintenance, and any other category for which

the association maintains reserves.

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

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

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

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

(d) Unless an association invests funds pursuant to paragraph (16)(b), and only if approved by a majority of the voting interests present at a properly called meeting of the association, an association may prepare:

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

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

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

Such meeting and approval must occur before the end of the fiscal year and is effective only for the fiscal year in which the vote is taken. An association may not prepare a financial report pursuant to this paragraph for consecutive fiscal years~~, except that the approval may also be effective for the following~~

~~fiscal year~~. If the developer has not turned over control of the association, all unit owners, including the developer, may vote on issues related to the preparation of the association's financial reports, from the date of incorporation of the association through the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. Thereafter, all unit owners except the developer may vote on such issues until control is turned over to the association by the developer. Any audit or review prepared under this section shall be paid for by the developer if done before turnover of control of the association.

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

which the unit owner's request was made and the following fiscal year. A financial report received by the division pursuant to this paragraph shall be maintained, and the division shall provide a copy of such report to an association member upon his or her request.

(f) If an association invests funds pursuant to paragraph (16)(b), the association must prepare financial statements pursuant to paragraphs (a) and (b).

(15) DEBIT CARDS.—

(a) An association and its officers, directors, employees, and agents may not use a debit card issued in the name of the association, or billed directly to the association, for the payment of any association expense.

(b) A person who uses ~~Use of~~ a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the association commits theft under s. 812.014. For the purposes of this paragraph, the term "lawful obligation of the association" means an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget ~~may be prosecuted as credit card fraud pursuant to s. 817.61~~.

(16) INVESTMENT OF ASSOCIATION FUNDS.—

(a) A board, in fulfilling its duty to manage operating and reserve funds of an association, must use best efforts to make prudent investment decisions that carefully consider risk and return in an effort to maximize returns on invested funds.

(b) An association, including a multicondominium association, may invest reserve funds in one or any combination

of depository accounts at a community bank, savings bank, commercial bank, savings and loan association, or credit union if the respective account balance at any institution does not exceed the amount of deposit insurance per account provided by any agency of the Federal Government or as otherwise available. Notwithstanding any declaration, only funds identified as reserve funds may be invested pursuant to this subsection.

(c) The board shall create an investment committee composed of at least two board members and two-unit non-board member unit owners. The board shall also adopt rules for invested funds, including, but not limited to, rules requiring periodic reviews of any investment manager's performance, the development of an investment policy statement, and that all meetings of the investment committee be recorded and made part of the official records of the association. The investment policy statement developed pursuant to this paragraph must, at a minimum, address risk, liquidity, and benchmark measurements; authorized classes of investments; authorized investment mixes; limitations on authority relating to investment transactions; requirements for projected reserve expenditures within, at minimum, the next 24 months to be held in cash or cash equivalents; projected expenditures relating to an inspection performed pursuant to s. 553.899; and protocols for proxy response.

(d) The investment committee shall recommend investment advisers to the board, and the board shall select one of the recommended investment advisers to provide services to the association. Such investment advisers must be registered or have notice filed under s. 517.12. The investment adviser and any representative or association of the investment adviser may not

be related by affinity or consanguinity to, or under common ownership with, any board member, community management company, reserve study provider, or unit owner. The investment adviser shall comply with the prudent investor rule in s. 518.11. The investment adviser shall act as a fiduciary to the association in compliance with the standards set forth in the Employee Retirement Income Security Act of 1974 at 29 U.S.C. s. 1104(a)(1)(A)-(C). In case of conflict with other provisions of law authorizing investments, the investment and fiduciary standards set forth in this paragraph must prevail. If at any time the investment committee determines that an investment adviser does not meet the requirements of this section, the investment committee must recommend a replacement investment adviser to the board.

(e) At least once each calendar year, or sooner if a substantial financial obligation of the association becomes known to the board, the association must provide the investment adviser with the association's investment policy statement, the most recent reserve study report, the association's structural integrity report, and the financial reports prepared pursuant to subsection (13). If there is no recent reserve study report, the association must provide the investment adviser with a good faith estimate disclosing the annual amount of reserve funds necessary for the association to fully fund reserves for the life of each reserve component and each component's redundancies. The investment adviser shall annually review these documents and provide the association with a portfolio allocation model that is suitably structured and prudently designed to match projected annual reserve fund requirements and

liability, assets, and liquidity requirements. The investment adviser shall prepare a funding projection for each reserve component, including any of the component's redundancies. There must be a minimum of 24 months of projected reserves in cash or cash equivalents available to the association at all times.

(f) Portfolios managed by the investment adviser may contain any type of investment necessary to meet the objectives in the investment policy statement; however, portfolios may not contain stocks, securities, or other obligations that the State Board of Administration is prohibited from investing in under s. 215.471, s. 215.4725, or s. 215.473 or that state agencies are prohibited from investing in under s. 215.472, as determined by the investment adviser. Any funds invested by the investment adviser must be held in third party custodial accounts that are subject to insurance coverage by the Securities Investor Protection Corporation in an amount equal to or greater than the invested amount. The investment adviser may withdraw investment fees, expenses, and commissions from invested funds.

(g) The investment adviser shall:

1. Annually provide the association with a written certification of compliance with this section and a list of stocks, securities, and other obligations that are prohibited from being in association portfolios under paragraph (f); and

2. Submit monthly, quarterly, and annual reports to the association which are prepared in accordance with established financial industry standards and in accordance with chapter 517.

(h) Any principal, earnings, or interest managed under this subsection must be available at no cost or charge to the association within 15 business days after delivery of the

association's written or electronic request.

(i) Unallocated income earned on reserve fund investments may be spent only on capital expenditures, planned maintenance, structural repairs, or other items for which the reserve accounts have been established. Any surplus of funds which exceeds the amount required to maintain reasonably funded reserves must be managed pursuant to s. 718.115.

Section 7. Effective January 1, 2026, paragraph (g) of subsection (12) of section 718.111, Florida Statutes, as amended by this act, is amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

(g)1. ~~By January 1, 2019,~~ An association managing a condominium with 25 ~~150~~ or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website or make such documents available through an application that can be downloaded on a mobile device.

a. The association's website or application must be:

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

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

b. The association's website or application must be

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

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

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

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

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

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

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed $500 must be maintained on the website or

application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

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

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

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

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

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.4335, 468.436(2)(b)6., and 718.3027(3).

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

l. Notice of any board meeting, the agenda, and any other

document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice under s. 718.112(2)(c).

m. The inspection reports described in ss. 553.899 and 718.301(4)(p) and any other inspection report relating to a structural or life safety inspection of condominium property.

n. The association's most recent structural integrity reserve study, if applicable.

o. Copies of all building permits issued for ongoing or planned construction.

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

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

Section 8. Paragraphs (c), (d), (f), (g), (i), and (q) of subsection (2) of section 718.112, Florida Statutes, are

amended, and paragraph (r) is added to that section, to read:

718.112 Bylaws.—

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

(c) *Board of administration meetings.*—In a residential condominium association of more than 10 units, the board of administration shall meet at least four times each year for the purpose of responding to inquiries from members and informing members on the state of the condominium, including the status of any construction or repair projects, the status of the association's revenue and expenditures during the fiscal year, or other issues affecting the association. Meetings of the board of administration at which a quorum of the members is present are open to all unit owners. Members of the board of administration may use e-mail as a means of communication but may not cast a vote on an association matter via e-mail. A unit owner may tape record or videotape the meetings. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must specifically identify all agenda items, must be posted conspicuously on the condominium property at least 48 continuous hours before the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of

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

2. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property where all notices of board meetings must be posted. If there is no condominium property where notices can be posted, notices shall be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the meeting. In lieu of or in addition to the physical posting of the notice on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-

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

3. Notice of any meeting in which regular or special assessments against unit owners are to be considered must specifically state that assessments will be considered and provide the estimated cost and description of the purposes for such assessments. If an agenda item relates to the approval of a contract for goods or services, a copy of the contract must be provided with the notice.

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

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

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

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

(d) *Unit owner meetings.*—

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

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an

eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. Only board service that occurs on or after July 1, 2018, may be used when calculating a board member's term limit. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not

enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any assessment due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. For purposes of this paragraph, a person is delinquent if a payment is not made by the due date as specifically identified in the declaration of condominium, bylaws, or articles of incorporation. If a due date is not specifically identified in the declaration of condominium, bylaws, or articles of incorporation, the due date is the first day of the assessment period. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice of an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting; and be posted in a conspicuous place on the condominium property or association property at least 14 continuous days before the annual meeting. Written notice of a meeting other than an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner; and be posted in a conspicuous place on the condominium property or association property within the timeframe specified in the bylaws. If the bylaws do not specify a timeframe for written notice of a meeting other than an annual meeting, notice must be provided at least 14 continuous days before the meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property or association property where all notices of unit owner meetings must be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is

provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide

an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

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

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates not less than 14 days or more than 34 days before the date of the election. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or

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

b. A director of a ~~Within 90 days after being elected or appointed to the~~ board of an association of a residential condominium~~, each newly elected or appointed director~~ shall:

(I) Certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such

documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. ~~In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may~~

(II) Submit to the secretary of the association a certificate of having satisfactorily completed the educational curriculum administered by the division or a division-approved condominium education provider ~~within 1 year before or 90 days after the date of election or appointment~~.

Each newly elected or appointed director must submit the written certification and educational certificate to the secretary of the association within 1 year before being elected or appointed or within 90 days after the date of election or appointment. A director of an association of a residential condominium who was elected or appointed before July 1, 2024, must comply with the written certification and educational certificate requirements in this sub-subparagraph by June 30, 2025. The written certification and ~~or~~ educational certificate is valid for 7 years from the date of issuance and does not have to be resubmitted as long as the director serves on the board without interruption during the 7-year period. A director who is appointed by the developer may satisfy the educational certificate requirement in sub-sub-subparagraph (II) for any subsequent appointment to a board by a developer within 7 years after the date of issuance of the most recent educational certificate, including any interruption of service on a board or

appointment to a board in another association within that 7-year period. One year after submission of the most recent written certification and educational certificate, and annually thereafter, a director of an association of a residential condominium must submit to the secretary of the association a certificate of having satisfactorily completed an educational curriculum administered by the division, or a division-approved condominium education provider, relating to any recent changes to this chapter and the related administrative rules during the past year. A director of an association of a residential condominium who fails to timely file the written certification and ~~or~~ educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification and ~~or~~ educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification and ~~or~~ educational certificate on file does not affect the validity of any board action.

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

5. Any approval by unit owners called for by this chapter or the applicable declaration or bylaws, including, but not limited to, the approval requirement in s. 718.111(8), must be made at a duly noticed meeting of unit owners and is subject to all requirements of this chapter or the applicable condominium documents relating to unit owner decisionmaking, except that

unit owners may take action by written agreement, without meetings, on matters for which action by written agreement without meetings is expressly allowed by the applicable bylaws or declaration or any law that provides for such action.

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

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

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

9. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by the affirmative vote of the majority of the remaining directors, even if the remaining directors constitute less than a quorum, or by the sole remaining director. In the alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to sub-subparagraph 4.a.

unless the association governs 10 units or fewer and has opted out of the statutory election process, in which case the bylaws of the association control. Unless otherwise provided in the bylaws, a board member appointed or elected under this section shall fill the vacancy for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by paragraph (l) and rules adopted by the division.

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

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

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). The board shall adopt the annual budget at least 14 days before the start of the association's fiscal year. In the event that the board

fails to timely adopt the annual budget a second time, it is deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted. A multicondominium association must adopt a separate budget of common expenses for each condominium the association operates and must adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they do not need to be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and planned ~~deferred~~ maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of planned ~~deferred~~ maintenance expense or replacement cost, and any other item that has a planned ~~deferred~~ maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or planned ~~deferred~~ maintenance expense of the reserve item. In a budget adopted by an association that is required to obtain a structural integrity reserve study, reserves must be maintained for the items identified in paragraph (g) for which the association is responsible pursuant to the declaration of condominium, and the

reserve amount for such items must be based on the findings and recommendations of the association's most recent structural integrity reserve study. With respect to items for which an estimate of useful life is not readily ascertainable or with an estimated remaining useful life of greater than 25 years, an association is not required to reserve replacement costs for such items, but an association must reserve the amount of planned ~~deferred~~ maintenance expense, if any, which is recommended by the structural integrity reserve study for such items. The association may adjust replacement reserve assessments annually to take into account an inflation adjustment and any changes in estimates or extension of the useful life of a reserve item caused by planned ~~deferred~~ maintenance. The members of a unit-owner-controlled association may determine, by a majority vote of the total voting interests of the association, to provide no reserves or less reserves than required by this subsection. For a budget adopted on or after December 31, 2024, the members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not determine to provide no reserves or less reserves than required by this subsection for items listed in paragraph (g), except that members of an association operating a multicondominium may determine to provide no reserves or less reserves than required by this subsection if an alternative funding method has been approved by the division. Additionally, members of an association may determine to provide no reserves or less reserves than required by this subsection if the condominium building or units are unsafe and uninhabitable due to substantial damage or loss as determined by the local

enforcement agency, as defined in s. 553.71(5), and it is in the best interests of the association to use revenues and existing reserve funds to perform necessary repairs to make the building or units safe and habitable, but an association may not opt for such a waiver of reserve requirements after the building or units have been declared safe for occupancy by the local enforcement agency.

b. Before turnover of control of an association by a developer to unit owners other than a developer under s. 718.301, the developer-controlled association may not vote to waive the reserves or reduce funding of the reserves. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest or earnings accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote of all the total voting interests of the association. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended. For a budget adopted on or after December 31, 2024, members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not vote to use reserve funds, or

any interest accruing thereon, for any other purpose other than the replacement or planned ~~deferred~~ maintenance costs of the components listed in paragraph (g).

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

(g) *Structural integrity reserve study.*—

1. A residential condominium association must have a structural integrity reserve study completed at least every 10 years after the condominium's creation for each building on the condominium property that is three stories or higher in height, as determined by the Florida Building Code, which includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building:

a. Roof.

b. Structure, including load-bearing walls and other primary structural members and primary structural systems as those terms are defined in s. 627.706.

c. Fireproofing and fire protection systems.

d. Plumbing.

e. Electrical systems.

f. Waterproofing and exterior painting.

g. Windows and exterior doors.

h. Any other item that has a planned ~~deferred~~ maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed in sub-subparagraphs a.-g., as determined by the visual inspection portion of the structural integrity reserve study.

2. A structural integrity reserve study is based on a visual inspection of the condominium property. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed or verified by an engineer licensed under chapter 471, an architect licensed under chapter 481, or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts.

3. At a minimum, a structural integrity reserve study must identify each item of the condominium property being visually inspected, state the estimated remaining useful life and the estimated replacement cost or planned ~~deferred~~ maintenance expense of each item of the condominium property being visually inspected, and provide a reserve funding schedule with a recommended annual reserve amount that achieves the estimated replacement cost or planned ~~deferred~~ maintenance expense of each item of condominium property being visually inspected by the end

of the estimated remaining useful life of the item. The structural integrity reserve study may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost cannot be determined, or the study may recommend a planned ~~deferred~~ maintenance expense amount for such item. The structural integrity reserve study may recommend that reserves for replacement costs do not need to be maintained for any item with an estimated remaining useful life of greater than 25 years, but the study may recommend a planned ~~deferred~~ maintenance expense amount for such item. The structural integrity reserve study may recommend a temporary pause in reserve funding or reduced reserve funding if the condominium building or units are unsafe and uninhabitable due to substantial damage or loss as determined by the local enforcement agency, as defined in s. 533.71(5), and it is in the best interests of the association to use revenues and existing reserve funds to perform necessary repairs to make the building safe and habitable, but the reserve funding schedule may not pause reserve funding after the building has been declared safe for occupancy by the local enforcement agency.

4. This paragraph does not apply to buildings less than three stories in height; single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground; any portion or component of a building that has not been submitted to the condominium form of ownership; or any portion or component of a building that is maintained by a party other than the association.

5. Before a developer turns over control of an association

to unit owners other than the developer, the developer must have a turnover inspection report in compliance with s. 718.301(4)(p) and (q) for each building on the condominium property that is three stories or higher in height.

6. Associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the condominium property that is three stories or higher in height. An association that is required to complete a milestone inspection in accordance with s. 553.899 on or before December 31, 2026, may complete the structural integrity reserve study simultaneously with the milestone inspection. In no event may the structural integrity reserve study be completed after December 31, 2026.

7. If the milestone inspection required by s. 553.899, or an inspection completed for a similar local requirement, was performed within the past 5 years and meets the requirements of this paragraph, such inspection may be used in place of the visual inspection portion of the structural integrity reserve study.

8. If the officers or directors of an association willfully and knowingly fail to complete a structural integrity reserve study pursuant to this paragraph, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners under s. 718.111(1).

9. Within 45 days after receiving the structural integrity reserve study, the association must distribute a copy of the study to each unit owner or deliver to each unit owner a notice that the completed study is available for inspection and copying

upon a written request. Distribution of a copy of the study or notice must be made by United States mail or personal delivery at the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements under this chapter, or by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to unit owners who previously consented to receive notice by electronic transmission.

(i) *Assessments.*—

1. The manner of collecting from the unit owners their shares of the common expenses shall be stated in the bylaws. Assessments shall be made against units not less frequently than quarterly in an amount which is not less than that required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. Nothing in this paragraph shall preclude the right of an association to accelerate assessments of an owner delinquent in payment of common expenses. Accelerated assessments shall be due and payable on the date the claim of lien is filed. Such accelerated assessments shall include the amounts due for the remainder of the budget year in which the claim of lien was filed.

2.a. In lieu of a special assessment to fund needed repair, maintenance, or replacement of a building component recommended by a milestone inspection required under s. 553.899 or a similar local inspection requirement or a structural integrity reserve study, or unanticipated repairs, the board of a unit-owner-controlled association may approve contingent special

assessments against each unit to secure a line of credit for the association to provide available funding to pay for such repair, maintenance, or replacement. The approved line of credit must be made available to the board for the funding of the needed repair, maintenance, or replacement. The association must record a declaration of special assessments evidencing the levy of such special assessments in the public records.

b. Funding from the line of credit must be immediately available for access by the board to fund required repair, maintenance, or replacement expenses without further approval by the members of the association. At the option of a unit owner, the special assessment may be paid in full at the time it becomes due or the payment may be amortized over a term of years as provided for by the line of credit. However, a unit owner may pay the remaining balance of the special assessment at any time during the amortization period.

c. For a budget adopted on or before December 31, 2029, an association may secure a line of credit and assess a contingent special assessment as provided in this subparagraph to meet the reserve funding schedule recommended by the structural integrity reserve study.

d. Except as authorized by sub-subparagraph c., a line of credit and contingent special assessment in this paragraph may not be used as an alternative to the association's reserve funding requirements in paragraph (f).

(q) *Director or officer offenses.*—

1. A director or an officer charged by information or indictment with any of the following crimes must be removed from office:

a. Forgery of a ballot envelope or voting certificate used in a condominium association election as provided in s. 831.01.

b. Theft or embezzlement involving the association's funds or property as provided in s. 812.014.

c. Destruction of, or the refusal to allow inspection or copying of, an official record of a condominium association which is accessible to unit owners within the time periods required by general law, in furtherance of any crime. Such act constitutes tampering with physical evidence as provided in s. 918.13.

d. Obstruction of justice under chapter 843.

2. The board shall fill the vacancy in accordance with paragraph (2)(d) ~~a felony theft or embezzlement offense involving the association's funds or property must be removed from office, creating a vacancy in the office to be filled according to law~~ until the end of the period of the suspension or the end of the director's term of office, whichever occurs first. While such director or officer has such criminal charge pending, he or she may not be appointed or elected to a position as a director or officer of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the director or officer shall be reinstated for the remainder of his or her term of office, if any.

(r) *Fraudulent voting activities relating to association elections; penalties.*—

1. A person who engages in the following acts of fraudulent voting activity relating to association elections commits a

misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083:

a. Willfully and falsely swearing to or affirming an oath or affirmation, or willfully procuring another person to falsely swear to or affirm an oath or affirmation, in connection with or arising out of voting activities.

b. Perpetrating or attempting to perpetrate, or aiding in the perpetration of, fraud in connection with a vote cast, to be cast, or attempted to be cast.

c. Preventing a member from voting or preventing a member from voting as he or she intended by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the member.

d. Menacing, threatening, or using bribery or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter a member when the member is voting.

e. Giving or promising, directly or indirectly, anything of value to another member with the intent to buy the vote of that member or another member or to corruptly influence that member or another member in casting his or her vote. This subsection does not apply to any food served which is to be consumed at an election rally or a meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a member.

f. Using or threatening to use, directly or indirectly, force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel a member to vote or refrain from voting in an election or on a particular ballot measure.

2. Each of the following acts constitutes a misdemeanor of

the first degree, punishable as provided in s. 775.082 or s. 775.083:

a. Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections.

b. Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections.

c. Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment. This paragraph does not apply to a licensed attorney giving legal advice to a client.

Section 9. Subsection (5) of section 718.113, Florida Statutes, is amended to read:

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

(5) To protect the health, safety, and welfare of the people of this state and to ensure uniformity and consistency in the hurricane protections installed by condominium associations and unit owners, this subsection applies to all residential and mixed-use condominiums in this state, regardless of when the condominium is created pursuant to the declaration of condominium. Each board of administration of a residential condominium or mixed-use condominium shall adopt hurricane protection ~~shutter~~ specifications for each building within each condominium operated by the association which may ~~shall~~ include color, style, and other factors deemed relevant by the board.

All specifications adopted by the board must comply with the applicable building code. The installation, maintenance, repair, replacement, and operation of hurricane protection in accordance with this subsection is not considered a material alteration or substantial addition to the common elements or association property within the meaning of this section.

(a) The board may, subject to s. 718.3026 and the approval of a majority of voting interests of the residential condominium or mixed-use condominium, install or require that unit owners install hurricane ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane~~ protection that complies ~~comply~~ with or exceeds ~~exceed~~ the applicable building code. A vote of the unit owners to require the installation of hurricane protection must be set forth in a certificate attesting to such vote and include the date that the hurricane protection must be installed. The board must record the certificate in the public records of the county where the condominium is located. The certificate must include the recording data identifying the declaration of condominium and must be executed in the form required for the execution of a deed. Once the certificate is recorded, the board must mail or hand deliver a copy of the recorded certificate to the unit owners at the owners' addresses, as reflected in the records of the association. The board may provide a copy of the recorded certificate by electronic transmission to unit owners who previously consented to receive notice by electronic transmission. The failure to record the certificate or send a copy of the recorded certificate to the unit owners does not affect the validity or enforceability of the vote of the unit

owners. ~~However,~~ A vote of the unit owners under this paragraph is not required if the installation, maintenance, repair, and replacement of the hurricane ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane~~ protection, or any exterior windows, doors, or other apertures protected by the hurricane protection, is ~~are~~ the responsibility of the association pursuant to the declaration of condominium as originally recorded or as amended, or if the unit owners are required to install hurricane protection pursuant to the declaration of condominium as originally recorded or as amended. If hurricane protection ~~or laminated glass or window film architecturally designed to function as hurricane protection~~ that complies with or exceeds the current applicable building code has been previously installed, the board may not install the same type of ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection or require that unit owners install the same type of hurricane protection unless the installed hurricane protection has reached the end of its useful life or unless it is necessary to prevent damage to the common elements or to a unit ~~except upon approval by a majority vote of the voting interests~~.

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

~~code-compliant hurricane protection are the responsibility of the unit owners pursuant to the declaration of condominium, the maintenance, repair, and replacement of such items are the responsibility of the unit owner.~~

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

(c) ~~(d)~~ Notwithstanding any other provision in the residential condominium or mixed-use condominium documents, if approval is required by the documents, a board may not refuse to approve the installation or replacement of ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection by a unit owner which conforms ~~conforming~~ to the specifications adopted by the board. However, a board may require the unit owner to adhere to an existing unified building scheme regarding the external appearance of the condominium.

(d) A unit owner is not responsible for the cost of any removal or reinstallation of hurricane protection, and any exterior window, door, or other aperture protected by the

hurricane protection if its removal is necessary for the maintenance, repair, or replacement of other condominium property or association property for which the association is responsible. The board shall determine if the removal or reinstallation of hurricane protection must be completed by the unit owner or the association. If such removal or reinstallation is completed by the association, the costs incurred by the association may not be charged to the unit owner. If such removal or installation is completed by the unit owner, the association must reimburse the unit owner for the cost of the removal or installation or the association must apply the unit owner's cost of removal or installation as a credit toward future assessments.

(e) If the removal or installation of hurricane protection or of any exterior windows, doors, or other apertures protected by the hurricane protection are the responsibility of the unit owner, such removal or installation is completed by the association, and the association then charges the unit owner for such removal or installation, such charges are enforceable as an assessment and may be collected in the manner provided under s. 718.116.

Section 10. Paragraph (e) of subsection (1) of section 718.115, Florida Statutes, is amended to read:

718.115 Common expenses and common surplus.—

(1)

(e)1. Except as provided in s. 718.113(5)(d) ~~The expense of installation, replacement, operation, repair, and maintenance of hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection by~~

~~the board pursuant to s. 718.113(5) constitutes a common expense and shall be collected as provided in this section if the association is responsible for the maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant hurricane protection pursuant to the declaration of condominium. However~~, if the installation of ~~maintenance, repair, and replacement of the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection is ~~are~~ the responsibility of the unit owners pursuant to the declaration of condominium or a vote of the unit owners under s. 718.113(5), the cost of the installation of ~~the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection by the association is not a common expense and must ~~shall~~ be charged individually to the unit owners based on the cost of installation of ~~the hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection appurtenant to the unit. The costs of installation of hurricane protection are enforceable as an assessment and may be collected in the manner provided under s. 718.116.

2. Notwithstanding s. 718.116(9), and regardless of whether ~~or not~~ the declaration requires the association or unit owners to install, maintain, repair, or replace ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection, the ~~a unit~~ owner of a unit where ~~who has previously installed hurricane shutters in accordance with s. 718.113(5) that comply with the current~~

~~applicable building code shall receive a credit when the shutters are installed; a unit owner who has previously installed impact glass or code-compliant windows or doors that comply with the current applicable building code shall receive a credit when the impact glass or code-compliant windows or doors are installed; and a unit owner who has installed other types of code-compliant~~ hurricane protection that complies ~~comply~~ with the current applicable building code has been installed is excused from any assessment levied by the association or shall receive a credit if ~~when~~ the same type of ~~other code-compliant~~ hurricane protection is installed by the association~~, and the credit shall be equal to the pro rata portion of the assessed installation cost assigned to each unit~~. A credit is applicable if the installation of hurricane protection is for all other units that do not have hurricane protection and the cost of such installation is funded by the association's budget, including the use of reserve funds. The credit must be equal to the amount that the unit owner would have been assessed to install the hurricane protection. However, such unit owner remains responsible for the pro rata share of expenses for ~~hurricane shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection installed on common elements and association property by the board pursuant to s. 718.113(5) and remains responsible for a pro rata share of the expense of the replacement, operation, repair, and maintenance of such ~~shutters, impact glass, code-compliant windows or doors, or other types of code-compliant~~ hurricane protection. Expenses for the installation, replacement, operation, repair, or maintenance of hurricane protection on

common elements and association property are common expenses.

Section 11. Subsection (10) of section 718.116, Florida Statutes, is amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.—

(10) The specific purpose or purposes of any special assessment, including any contingent special assessment levied in conjunction with the purchase of an insurance policy authorized by s. 718.111(11), approved in accordance with the condominium documents shall be set forth in a written notice of such assessment sent or delivered to each unit owner and recorded in the public records. The funds collected pursuant to a special assessment shall be used only for the specific purpose or purposes set forth in such notice. However, upon completion of such specific purpose or purposes, any excess funds will be considered common surplus, and may, at the discretion of the board, either be returned to the unit owners or applied as a credit toward future assessments.

Section 12. Paragraph (a) of subsection (4) of section 718.121, Florida Statutes, is amended to read:

718.121 Liens.—

(4)(a) If an association sends out an invoice for assessments or a unit's statement of the account described in s. 718.111(12)(a)11.c. ~~s. 718.111(12)(a)11.b.~~, the invoice for assessments or the unit's statement of account must be delivered to the unit owner by first-class United States mail or by electronic transmission to the unit owner's e-mail address maintained in the association's official records.

Section 13. Section 718.1224, Florida Statutes, is amended

to read:

718.1224 Prohibition against SLAPP suits; other prohibited actions.—

(1) It is the intent of the Legislature to protect the right of condominium unit owners to exercise their rights to instruct their representatives and petition for redress of grievances before their condominium association and the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. The Legislature recognizes that strategic lawsuits against public participation, or "SLAPP suits," as they are typically referred to, have occurred when association members are sued by condominium associations, individuals, business entities, or governmental entities arising out of a condominium unit owner's appearance and presentation before the board of the condominium association or a governmental entity on matters related to the condominium association. However, it is the public policy of this state that condominium associations, governmental entities, business organizations, and individuals not engage in SLAPP suits, because such actions are inconsistent with the right of condominium unit owners to participate in their condominium association and in the state's institutions of government. Therefore, the Legislature finds and declares that prohibiting such lawsuits by condominium associations, governmental entities, business entities, and individuals against condominium unit owners who address matters concerning their condominium association will preserve this fundamental state policy, preserve the constitutional rights of condominium unit owners,

~~and~~ ensure the continuation of representative government in this state, and ensure unit owner participation in condominium associations. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts. As used in this subsection, the term "governmental entity" means the state, including the executive, legislative, and judicial branches of government; law enforcement agencies; the independent establishments of the state, counties, municipalities, districts, authorities, boards, or commissions; or any agencies of these branches that are subject to chapter 286.

(2) A condominium association, governmental entity, business organization, or individual in this state may not file or cause to be filed through its employees or agents any lawsuit, cause of action, claim, cross-claim, or counterclaim against a condominium unit owner without merit and solely because such condominium unit owner has exercised the right to instruct his or her representatives or the right to petition for redress of grievances before the condominium association or the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

(3) It is unlawful for a condominium association to fine, discriminatorily increase a unit owner's assessments or discriminatorily decrease services to a unit owner, or bring or threaten to bring an action for possession or other civil action, including a defamation, libel, slander, or tortious interference action, based on conduct described in paragraphs (a) through (f). In order for the unit owner to raise the defense of retaliatory conduct, the unit owner must have acted

in good faith and not for any improper purposes, such as to harass or to cause unnecessary delay or for frivolous purpose or needless increase in the cost of litigation. Examples of conduct for which a condominium association, officer, director, or agent of an association may not retaliate include, but are not limited to, situations where:

(a) The unit owner has in good faith complained to a governmental agency charged with responsibility for enforcement of a building, housing, or health code of a suspected violation applicable to the condominium;

(b) The unit owner has organized, encouraged, or participated in a unit owners' organization;

(c) The unit owner submitted information or filed a complaint alleging criminal violations or violations of this chapter or the rules of the division with the division, the Office of the Condominium Ombudsman, a law enforcement agency, a state attorney, the Attorney General, or any other governmental agency;

(d) The unit owner has exercised his or her rights under this chapter;

(e) The unit owner has complained to the association or any of its representatives for their failure to comply with this chapter or chapter 617; or

(f) The unit owner has made public statements critical of the operation or management of the association.

(4) Evidence of retaliatory conduct may be raised by the unit owner as a defense in any action brought against him or her for possession.

(5) A condominium unit owner sued by a condominium

association, governmental entity, business organization, or individual in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A condominium unit owner may petition the court for an order dismissing the action or granting final judgment in favor of that condominium unit owner. The petitioner may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the condominium association's, governmental entity's, business organization's, or individual's lawsuit has been brought in violation of this section. The condominium association, governmental entity, business organization, or individual shall thereafter file its response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the petitioner's motion, which shall be held at the earliest possible time after the filing of the condominium association's, governmental entity's, business organization's, or individual's response. The court may award the condominium unit owner sued by the condominium association, governmental entity, business organization, or individual actual damages arising from the condominium association's, governmental entity's, individual's, or business organization's violation of this section. A court may treble the damages awarded to a prevailing condominium unit owner and shall state the basis for the treble damages award in its judgment. The court shall award the prevailing party reasonable attorney's fees and costs incurred in connection with a claim that an action was filed in violation of this section.

(6)~~(4)~~ Condominium associations may not expend association funds in prosecuting a SLAPP suit against a condominium unit

owner.

(7) Condominium associations may not expend association funds in support of a defamation, libel, slander, or tortious interference action against a unit owner or any other claim against a unit owner based on conduct described in paragraphs (3)(a)-(f).

Section 14. Paragraph (p) of subsection (4) of section 718.301, Florida Statutes, is amended to read:

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

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

(p) Notwithstanding when the certificate of occupancy was issued or the height of the building, a turnover inspection report included in the official records, under seal of an architect or engineer authorized to practice in this state or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts, and consisting of a structural integrity reserve study attesting to required

maintenance, condition, useful life, and replacement costs of the following applicable condominium property:

1. Roof.

2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.

3. Fireproofing and fire protection systems.

4. Plumbing.

5. Electrical systems.

6. Waterproofing and exterior painting.

7. Windows and exterior doors.

Section 15. Paragraph (a) of subsection (2) of section 718.3026, Florida Statutes, is amended to read:

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

(2)(a) Notwithstanding the foregoing, contracts with employees of the association, and contracts for attorney, accountant, architect, community association manager, timeshare management firm, engineering, registered investment adviser, and landscape architect services are not subject to the provisions of this section.

Section 16. Subsections (4) and (5) of section 718.3027, Florida Statutes, are amended to read:

718.3027 Conflicts of interest.—

(4) A director or an officer, or a relative of a director

or an officer, who is a party to, or has an interest in, an activity that is a possible conflict of interest, as described in subsection (1), may attend the meeting at which the activity is considered by the board and is authorized to make a presentation to the board regarding the activity. After the presentation, the director or officer, and any ~~or the~~ relative of the director or officer, must leave the meeting during the discussion of, and the vote on, the activity. A director or an officer who is a party to, or has an interest in, the activity must recuse himself or herself from the vote. The attendance of a director with a possible conflict of interest at the meeting of the board is sufficient to constitute a quorum for the meeting and the vote in his or her absence on the proposed activity.

(5) A contract entered into between a director or an officer, or a relative of a director or an officer, and the association, which is not a timeshare condominium association, that has not been properly disclosed as a conflict of interest or potential conflict of interest as required by this section or s. 617.0832 ~~s. 718.111(12)(g)~~ is voidable and terminates upon the filing of a written notice terminating the contract with the board of directors which contains the consent of at least 20 percent of the voting interests of the association.

Section 17. Subsection (5) of section 718.303, Florida Statutes, is amended to read:

718.303 Obligations of owners and occupants; remedies.—

(5) An association may suspend the voting rights of a unit owner or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than

$1,000 and more than 90 days delinquent. Proof of such obligation must be provided to the unit owner or member 30 days before such suspension takes effect. Notice of such obligation must also be provided to the unit owner at least 90 days before an election or vote of the members. A voting interest or consent right allocated to a unit owner or member which has been suspended by the association shall be subtracted from the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests shall not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

Section 18. Subsections (1) and (2) of section 718.501, Florida Statutes, are amended to read:

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The division may enforce and ensure compliance with this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management

of residential condominium units and complaints related to the procedural completion of milestone inspections under s. 553.899. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. ~~However, after turnover has occurred, the division has jurisdiction to investigate complaints related only to financial issues, elections, and the maintenance of and unit owner access to association records under s. 718.111(12), and the procedural completion of structural integrity reserve studies under s. 718.112(2)(g).~~

(a)1. The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms.

2. The division may submit any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst to be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to this chapter.

(b) The division may require or permit any person to file a

statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure by a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all affected persons, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter 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, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or

letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, bulk assignee, bulk buyer, association, developer-designated officer, or developer-designated member of the board of administration, developer-designated assignees or agents, bulk assignee-designated assignees or agents, bulk buyer-designated assignees or agents, community association manager, or community association management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division carry out the purposes of this chapter. If the division finds that a developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents, is violating or is about to violate any provision of this chapter, any rule adopted or order issued by the division, or any written agreement entered into with the division, and presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective for 90 days. If the division begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

3. If a developer, bulk assignee, or bulk buyer fails to pay any restitution determined by the division to be owed, plus any accrued interest at the highest rate permitted by law, within 30 days after expiration of any appellate time period of a final order requiring payment of restitution or the conclusion

of any appeal thereof, whichever is later, the division must bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other available remedy. The division may also temporarily revoke its acceptance of the filing for the developer to which the restitution relates until payment of restitution is made.

4. The division may petition the court for appointment of a receiver or conservator. If appointed, the receiver or conservator may take action to implement the court order to ensure the performance of the order and to remedy any breach thereof. In addition to all other means provided by law for the enforcement of an injunction or temporary restraining order, the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and related records, and allow the examination and use of the property by the division and a court-appointed receiver or conservator.

5. The division may apply to the circuit court for an order of restitution whereby the defendant in an action brought under subparagraph 4. is ordered to make restitution of those sums shown by the division to have been obtained by the defendant in violation of this chapter. At the option of the court, such restitution is payable to the conservator or receiver appointed under subparagraph 4. or directly to the persons whose funds or assets were obtained in violation of this chapter.

6. The division may impose a civil penalty against a developer, bulk assignee, or bulk buyer, or association, or its assignee or agent, for any violation of this chapter or related rule. The division may impose a civil penalty individually

against an officer or board member who willfully and knowingly violates this chapter, an adopted rule, or a final order of the division; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with the requirements of this chapter, a rule adopted under this chapter, or a final order of the division. The division, before initiating formal agency action under chapter 120, must afford the officer or board member an opportunity to voluntarily comply, and an officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but the penalty for any offense may not exceed $5,000. The division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, upon the repetition of the violation, and upon such other factors deemed relevant by the division. For example, the division may consider whether the violations were committed by a developer, bulk assignee, or bulk buyer, or owner-controlled association, the size of the association, and other

factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those which endanger the health, safety, or welfare of the condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer, bulk assignee, or bulk buyer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer, bulk assignee, or bulk buyer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order is not effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

7. If a unit owner presents the division with proof that the unit owner has requested access to official records in

writing by certified mail, and that after 10 days the unit owner again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena requiring production of the requested records where the records are kept pursuant to s. 718.112. Upon receipt of the records, the division must provide without charge the produced official records to the unit owner who was denied access to such records.

8. In addition to subparagraph 6., the division may seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause under paragraph (s) ~~(r)~~. The civil penalty shall be at least $500 but no more than $5,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney fees and, if the division prevails, may also award reasonable costs of investigation.

(e) The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(f) The division may adopt rules to administer and enforce this chapter.

(g) The division shall establish procedures for providing notice to an association and the developer, bulk assignee, or bulk buyer during the period in which the developer, bulk assignee, or bulk buyer controls the association if the division is considering the issuance of a declaratory statement with

respect to the declaration of condominium or any related document governing such condominium community.

(h) The division shall furnish each association that pays the fees required by paragraph (2)(a) a copy of this chapter, as amended, and the rules adopted thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.

(j) The division shall provide training and educational programs for condominium association board members and unit owners. The training may, in the division's discretion, include web-based electronic media and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers and shall maintain a current list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner. The division shall provide the educational curriculum required under s. 718.112(2)(d) and issue a certificate of satisfactory completion to directors of the board of administration at no charge, including when the required educational curriculum is provided by a division-approved condominium education provider.

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. The division shall provide, upon request, a list of

such mediators to any association, unit owner, or other participant in alternative dispute resolution proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of volunteer mediators only the names of persons who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which must be related to experience, education, or background. Any person initially certified as a paid mediator by the division must, in order to continue to be certified, comply with the factors or requirements adopted by rule.

(m) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has

occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing under ss. 120.569 and 120.57. The division may adopt rules regarding the submission of a complaint against an association.

(n) Condominium association directors, officers, and employees; condominium developers; bulk assignees, bulk buyers, and community association managers; and community association management firms have an ongoing duty to reasonably cooperate with the division in any investigation under this section. The division shall refer to local law enforcement authorities any person whom the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department's investigation. The division shall refer to local law enforcement authorities any person whom the division believes has engaged in fraud, theft, embezzlement, or other criminal activity or when the division has cause to believe that fraud, theft, embezzlement, or other criminal activity has occurred.

(o) The division director or any officer or employee of the division, and the condominium ombudsman or employee of the Office of the Condominium Ombudsman may attend and observe any meeting of the board of administration or unit owner meeting, including any meeting of a subcommittee or special committee, that is open to members of the association for the purpose of

performing the duties of the division or the Office of the Condominium Ombudsman under this chapter.

(p) The division may:

1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or

2. Accept grants-in-aid from any source.

(q) ~~(p)~~ The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.

(r) ~~(q)~~ The division shall consider notice to a developer, bulk assignee, or bulk buyer to be complete when it is delivered to the address of the developer, bulk assignee, or bulk buyer currently on file with the division.

(s) ~~(r)~~ In addition to its enforcement authority, the division may issue a notice to show cause, which must provide for a hearing, upon written request, in accordance with chapter 120.

(t) The division shall routinely conduct random audits of condominium associations to determine compliance with the website or application requirements for official records under s. 718.111(12)(g).

(u) ~~(s)~~ The division shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report that includes, but need not be limited to, the number of training programs provided for condominium association board members and unit owners, the number of complaints received by type, the number and percent of

complaints acknowledged in writing within 30 days and the number and percent of investigations acted upon within 90 days in accordance with paragraph (m), and the number of investigations exceeding the 90-day requirement. The annual report must also include an evaluation of the division's core business processes and make recommendations for improvements, including statutory changes. The report shall be submitted by September 30 following the end of the fiscal year.

(2)(a) Each condominium association which operates more than two units shall pay to the division an annual fee in the amount of $4 for each residential unit in condominiums operated by the association. The annual fee shall be filed together with the annual certification described in paragraph (c). If the fee is not paid by March 1, the association shall be assessed a penalty of 10 percent of the amount due, and the association will not have standing to maintain or defend any action in the courts of this state until the amount due, plus any penalty, is paid.

(b) All fees shall be deposited in the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund as provided by law.

(c) On the certification form provided by the division, the directors of the association shall certify that all directors of the association have completed the written certification and educational certificate requirements in s. 718.112(2)(d)4.b.

Section 19. Subsection (1) of section 718.618, Florida Statutes, is amended to read:

718.618 Converter reserve accounts; warranties.—

(1) When existing improvements are converted to ownership

as a residential condominium, the developer shall establish converter reserve accounts for capital expenditures and planned ~~deferred~~ maintenance, or give warranties as provided by subsection (6), or post a surety bond as provided by subsection (7). The developer shall fund the converter reserve accounts in amounts calculated as follows:

(a)1. When the existing improvements include an air-conditioning system serving more than one unit or property which the association is responsible to repair, maintain, or replace, the developer shall fund an air-conditioning reserve account. The amount of the reserve account shall be the product of the estimated current replacement cost of the system, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the system in years or 9, and the denominator of which shall be 10. When such air-conditioning system is within 1,000 yards of the seacoast, the numerator shall be the lesser of the age of the system in years or 3, and the denominator shall be 4.

2. The developer shall fund a plumbing reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the plumbing component, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the plumbing in years or 36, and the denominator of which shall be 40.

3. The developer shall fund a roof reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the roofing component, as disclosed and substantiated pursuant to s. 718.616(3)(b), multiplied by a

fraction, the numerator of which shall be the lesser of the age of the roof in years or the numerator listed in the following table. The denominator of the fraction shall be determined based on the roof type, as follows:

	Roof Type	Numerator	Denominator
a.	Built-up roof without insulation	4	5
b.	Built-up roof with insulation	4	5
c.	Cement tile roof	45	50
d.	Asphalt shingle roof	14	15
e.	Copper roof		
f.	Wood shingle roof	9	10
g.	All other types	18	20

(b) The age of any component or structure for which the developer is required to fund a reserve account shall be measured in years, rounded to the nearest whole year. The amount of converter reserves to be funded by the developer for each structure or component shall be based on the age of the

structure or component as disclosed in the inspection report. The architect or engineer shall determine the age of the component from the later of:

1. The date when the component or structure was replaced or substantially renewed, if the replacement or renewal of the component at least met the requirements of the then-applicable building code; or

2. The date when the installation or construction of the existing component or structure was completed.

(c) When the age of a component or structure is to be measured from the date of replacement or renewal, the developer shall provide the division with a certificate, under the seal of an architect or engineer authorized to practice in this state, verifying:

1. The date of the replacement or renewal; and

2. That the replacement or renewal at least met the requirements of the then-applicable building code.

(d) In addition to establishing the reserve accounts specified above, the developer shall establish those other reserve accounts required by s. 718.112(2)(f), and shall fund those accounts in accordance with the formula provided therein. The vote to waive or reduce the funding or reserves required by s. 718.112(2)(f) does not affect or negate the obligations arising under this section.

Section 20. Paragraphs (j) and (k) of subsection (1) of section 719.106, Florida Statutes, are amended to read:

719.106 Bylaws; cooperative ownership.—

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

they shall be deemed to include the following:

(j) *Annual budget.*—

1. The proposed annual budget of common expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, if applicable, but not limited to, those expenses listed in s. 719.504(20). The board of administration shall adopt the annual budget at least 14 days before the start of the association's fiscal year. In the event that the board fails to timely adopt the annual budget a second time, it is deemed a minor violation and the prior year's budget shall continue in effect until a new budget is adopted.

2. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and planned ~~deferred~~ maintenance. These accounts must include, but not be limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of planned ~~deferred~~ maintenance expense or replacement cost, and for any other items for which the planned ~~deferred~~ maintenance expense or replacement cost exceeds $10,000. The amount to be reserved must be computed by means of a formula which is based upon estimated remaining useful life and estimated replacement cost or planned ~~deferred~~ maintenance expense of the reserve item. In a budget adopted by an association that is required to obtain a structural integrity reserve study, reserves must be maintained for the items identified in paragraph (k) for which the association is responsible pursuant to the declaration, and the reserve amount for such items must be based on the findings and recommendations of the association's most recent structural integrity reserve study. With respect to items for which an

estimate of useful life is not readily ascertainable or with an estimated remaining useful life of greater than 25 years, an association is not required to reserve replacement costs for such items, but an association must reserve the amount of planned ~~deferred~~ maintenance expense, if any, which is recommended by the structural integrity reserve study for such items. The association may adjust replacement reserve assessments annually to take into account an inflation adjustment and any changes in estimates or extension of the useful life of a reserve item caused by planned ~~deferred~~ maintenance. The members of a unit-owner-controlled association may determine, by a majority vote of the total voting interests of the association, for a fiscal year to provide no reserves or reserves less adequate than required by this subsection. Before turnover of control of an association by a developer to unit owners other than a developer under s. 719.301, the developer-controlled association may not vote to waive the reserves or reduce funding of the reserves. For a budget adopted on or after December 31, 2024, a unit-owner-controlled association that must obtain a structural integrity reserve study may not determine to provide no reserves or reserves less adequate than required by this paragraph for items listed in paragraph (k). If a meeting of the unit owners has been called to determine to provide no reserves, or reserves less adequate than required, and such result is not attained or a quorum is not attained, the reserves as included in the budget shall go into effect.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and shall be used only for authorized reserve expenditures unless their use for

other purposes is approved in advance by a vote of the majority of the total voting interests of the association. Before turnover of control of an association by a developer to unit owners other than the developer under s. 719.301, the developer may not vote to use reserves for purposes other than that for which they were intended. For a budget adopted on or after December 31, 2024, members of a unit-owner-controlled association that must obtain a structural integrity reserve study may not vote to use reserve funds, or any interest accruing thereon, for purposes other than the replacement or planned ~~deferred~~ maintenance costs of the components listed in paragraph (k).

(k) *Structural integrity reserve study.*—

1. A residential cooperative association must have a structural integrity reserve study completed at least every 10 years for each building on the cooperative property that is three stories or higher in height, as determined by the Florida Building Code, that includes, at a minimum, a study of the following items as related to the structural integrity and safety of the building:

a. Roof.

b. Structure, including load-bearing walls and other primary structural members and primary structural systems as those terms are defined in s. 627.706.

c. Fireproofing and fire protection systems.

d. Plumbing.

e. Electrical systems.

f. Waterproofing and exterior painting.

g. Windows and exterior doors.

h. Any other item that has a planned ~~deferred~~ maintenance expense or replacement cost that exceeds $10,000 and the failure to replace or maintain such item negatively affects the items listed in sub-subparagraphs a.-g., as determined by the visual inspection portion of the structural integrity reserve study.

2. A structural integrity reserve study is based on a visual inspection of the cooperative property. A structural integrity reserve study may be performed by any person qualified to perform such study. However, the visual inspection portion of the structural integrity reserve study must be performed or verified by an engineer licensed under chapter 471, an architect licensed under chapter 481, or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts.

3. At a minimum, a structural integrity reserve study must identify each item of the cooperative property being visually inspected, state the estimated remaining useful life and the estimated replacement cost or planned ~~deferred~~ maintenance expense of each item of the cooperative property being visually inspected, and provide a reserve funding schedule with a recommended annual reserve amount that achieves the estimated replacement cost or planned ~~deferred~~ maintenance expense of each item of cooperative property being visually inspected by the end of the estimated remaining useful life of the item. The structural integrity reserve study may recommend that reserves do not need to be maintained for any item for which an estimate of useful life and an estimate of replacement cost cannot be determined, or the study may recommend a planned ~~deferred~~

maintenance expense amount for such item. The structural integrity reserve study may recommend that reserves for replacement costs do not need to be maintained for any item with an estimated remaining useful life of greater than 25 years, but the study may recommend a planned ~~deferred~~ maintenance expense amount for such item.

4. This paragraph does not apply to buildings less than three stories in height; single-family, two-family, or three-family dwellings with three or fewer habitable stories above ground; any portion or component of a building that has not been submitted to the cooperative form of ownership; or any portion or component of a building that is maintained by a party other than the association.

5. Before a developer turns over control of an association to unit owners other than the developer, the developer must have a turnover inspection report in compliance with s. 719.301(4)(p) and (q) for each building on the cooperative property that is three stories or higher in height.

6. Associations existing on or before July 1, 2022, which are controlled by unit owners other than the developer, must have a structural integrity reserve study completed by December 31, 2024, for each building on the cooperative property that is three stories or higher in height. An association that is required to complete a milestone inspection on or before December 31, 2026, in accordance with s. 553.899 may complete the structural integrity reserve study simultaneously with the milestone inspection. In no event may the structural integrity reserve study be completed after December 31, 2026.

7. If the milestone inspection required by s. 553.899, or

an inspection completed for a similar local requirement, was performed within the past 5 years and meets the requirements of this paragraph, such inspection may be used in place of the visual inspection portion of the structural integrity reserve study.

8. If the officers or directors of an association willfully and knowingly fail to complete a structural integrity reserve study pursuant to this paragraph, such failure is a breach of an officer's and director's fiduciary relationship to the unit owners under s. 719.104(9).

9. Within 45 days after receiving the structural integrity reserve study, the association must distribute a copy of the study to each unit owner or deliver to each unit owner a notice that the completed study is available for inspection and copying upon a written request. Distribution of a copy of the study or notice must be made by United States mail or personal delivery at the mailing address, property address, or any other address of the owner provided to fulfill the association's notice requirements under this chapter, or by electronic transmission to the e-mail address or facsimile number provided to fulfill the association's notice requirements to unit owners who previously consented to receive notice by electronic transmission.

Section 21. Paragraph (p) of subsection (4) of section 719.301, Florida Statutes, is amended to read:

719.301 Transfer of association control.—

(4) When unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer shall relinquish control of the

association, and the unit owners shall accept control. Simultaneously, or for the purpose of paragraph (c) not more than 90 days thereafter, the developer shall deliver to the association, at the developer's expense, all property of the unit owners and of the association held or controlled by the developer, including, but not limited to, the following items, if applicable, as to each cooperative operated by the association:

(p) Notwithstanding when the certificate of occupancy was issued or the height of the building, a turnover inspection report included in the official records, under seal of an architect or engineer authorized to practice in this state or a person certified as a reserve specialist or professional reserve analyst by the Community Associations Institute or the Association of Professional Reserve Analysts, consisting of a structural integrity reserve study attesting to required maintenance, condition, useful life, and replacement costs of the following applicable cooperative property:

1. Roof.

2. Structure, including load-bearing walls and primary structural members and primary structural systems as those terms are defined in s. 627.706.

3. Fireproofing and fire protection systems.

4. Plumbing.

5. Electrical systems.

6. Waterproofing and exterior painting.

7. Windows and exterior doors.

Section 22. Subsection (1) of section 719.618, Florida Statutes, is amended to read:

719.618 Converter reserve accounts; warranties.—

(1) When existing improvements are converted to ownership as a residential cooperative, the developer shall establish reserve accounts for capital expenditures and planned ~~deferred~~ maintenance, or give warranties as provided by subsection (6), or post a surety bond as provided by subsection (7). The developer shall fund the reserve accounts in amounts calculated as follows:

(a)1. When the existing improvements include an air-conditioning system serving more than one unit or property which the association is responsible to repair, maintain, or replace, the developer shall fund an air-conditioning reserve account. The amount of the reserve account shall be the product of the estimated current replacement cost of the system, as disclosed and substantiated pursuant to s. 719.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the system in years or 9, and the denominator of which shall be 10. When such air-conditioning system is within 1,000 yards of the seacoast, the numerator shall be the lesser of the age of the system in years or 3, and the denominator shall be 4.

2. The developer shall fund a plumbing reserve account. The amount of the funding shall be the product of the estimated current replacement cost of the plumbing component, as disclosed and substantiated pursuant to s. 719.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the plumbing in years or 36, and the denominator of which shall be 40.

3. The developer shall fund a roof reserve account. The amount of the funding shall be the product of the estimated

current replacement cost of the roofing component, as disclosed and substantiated pursuant to s. 719.616(3)(b), multiplied by a fraction, the numerator of which shall be the lesser of the age of the roof in years or the numerator listed in the following table. The denominator of the fraction shall be determined based on the roof type, as follows:

	Roof Type	Numerator	Denominator
a.	Built-up roof without insulation	4	5
b.	Built-up roof with insulation	4	5
c.	Cement tile roof	45	50
d.	Asphalt shingle roof	14	15
e.	Copper roof		
f.	Wood shingle roof	9	10
g.	All other types	18	20

(b) The age of any component or structure for which the developer is required to fund a reserve account shall be measured in years from the later of:

1. The date when the component or structure was replaced or substantially renewed, if the replacement or renewal of the component at least met the requirements of the then-applicable building code; or

2. The date when the installation or construction of the existing component or structure was completed.

(c) When the age of a component or structure is to be measured from the date of replacement or renewal, the developer shall provide the division with a certificate, under the seal of an architect or engineer authorized to practice in this state, verifying:

1. The date of the replacement or renewal; and

2. That the replacement or renewal at least met the requirements of the then-applicable building code.

Section 23. The Division of Florida Condominiums, Timeshares, and Mobile Homes of the Department of Business and Professional Regulation shall complete a review of the website or application requirements for official records under s. 718.111(12)(g), Florida Statutes, and make recommendations regarding any additional official records of a condominium association that should be included in the record maintenance requirement in the statute. The division shall submit the findings of its review to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees and appropriate substantive committees with jurisdiction over chapter 718, Florida Statutes, by February 1, 2025.

Section 24. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2024.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Committee on Criminal and Civil Justice, *Chair*
Criminal Justice, *Vice Chair*
Appropriations
Children, Families, and Elder Affairs
Community Affairs
Regulated Industries

SELECT COMMITTEE:
Select Committee on Resiliency

SENATOR JENNIFER BRADLEY
6th District

January 9, 2024

Senator Joe Gruters, Chairman
Senate Committee on Regulated Industries
413 Senate Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Gruters:

I respectfully request that Senate Bill 1178 be placed on the committee's agenda at your earliest convenience. This bill relates to condominium and cooperative associations.

Thank you for your consideration.

Sincerely,

Jennifer Bradley

Jennifer Bradley

cc: Booter Imhof, Staff Director
Susan Datres, Administrative Assistant

REPLY TO:
- 1845 East West Parkway, Suite 5, Fleming Island, Florida 32003 (904) 278-2085
- 124 Northwest Madison Street, Lake City, Florida 32055 (386) 719-2708
- 408 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5006

Senate's Website: *www.flsenate.gov*

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore

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 1588
INTRODUCER:	Senator Gruters
SUBJECT:	Heated Tobacco Products
DATE:	January 19, 2024
REVISED:	1/21/2024

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			FT	
3.			AP	

I. Summary:

SB 1588 exempts heated tobacco products from the taxes on cigarettes and other tobacco products in ch. 210, F.S.

The bill defines the term "heated tobacco product" to mean "a product containing tobacco which produces an inhalable aerosol by heating the tobacco without combustion of the tobacco or by the heat generated from a combustion source that only heats rather than burns the tobacco."

The bill excludes heated tobacco products from the definition for the term "cigarette," in the context of the taxation of tobacco products under part I of ch. 210, F.S., and from the definition for the term "tobacco products" in the context of the taxation of tobacco products other than cigarettes and cigars. By excluding heated tobacco products from the meaning of cigarettes and and other tobacco products, the bill does not tax heated tobacco products as cigarettes or other tobacco products under ch. 210, F.S.

A tax and a surcharge are imposed each cigarette at different rates depending on the weight of the tobacco or the number of cigarettes in a carton. Under current law tobacco products other than cigarettes, e.g., products such as snuff or chewing tobacco, are taxed at the rate of 25 percent of the wholesale sales price. A surcharge tax is also imposed on those products at the rate of 60 percent of the wholesale sales price.

The bill renames part II of ch. 210, F.S., from "Tax on Tobacco Products other than Cigarettes or Cigars," to "Tax on Tobacco Products other than Cigarettes, Heated Tobacco Products, or Cigars."

The bill subjects heated tobacco products to the same delivery requirements that are applicable under current law to other tobacco products sold by mail order, the internet, or other remote sales, including age verification requirements.

The bill amends the definition for the term "tobacco product" in s. 569.002(8), F.S., relating to the regulation of retail tobacco permit dealers, to include heated tobacco products. Under the bill, persons who engage in the retail sale of heated tobacco products must have a retail tobacco products dealer permit issued by the Division of Alcoholic Beverages and Tobacco (division). Under current law, dealers of nicotine dispensing devices, including nicotine products, are required to have a retail nicotine products dealer permit issued by the division. Also under current law, nicotine dispensing devises, including nicotine products, are not subject to taxation as tobacco products under ch. 210, F.S.

The bill takes effect on July 1, 2024.

II. Present Situation:

Regulation of Tobacco Products and Nicotine Dispensing Devises

The Division of Alcoholic Beverages and Tobacco (division) within the Department of Business and Professional Regulation (DBPR) is the state agency responsible for the regulation and enforcement of tobacco products under part I of ch. 569, F.S., and nicotine products under part II of ch. 569, F.S.

Tobacco Products Definitions

Section 210.01(1), F.S., defines the term "cigarette" to mean:

> any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

Section 569.002(6), F.S., defines the term "tobacco products" to include loose tobacco leaves and products made from tobacco leaves, in whole or in part, and cigarette wrappers, which can be used for smoking, sniffing, or chewing, in the context of the taxation of cigarettes under part I of ch. 210, F.S.

Section 210.25(12), F.S., provides a separate definition for the term "tobacco products" in the context of the taxation of tobacco products other than cigarettes or cigars. It provides for the licensing of tobacco product manufacturers, importers, exporters, distributing agents, or wholesale dealers under part II of ch. 210, F.S. In this context, the term "tobacco products" means:

> loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but "tobacco products" does not include cigarettes, as defined by s. 210.01(1), or cigars.

The definition of "tobacco products" in s. 569.002(6), F.S., is limited to the regulation of tobacco products by the division under ch. 569, F.S., and does not affect the taxation of such products under ch. 210, F.S.

Taxation of Tobacco Products Other than Cigarettes or Cigars

Part II of ch. 210, F.S., imposes a tax and a surcharge tax on tobacco products other than cigarettes or cigars. Cigarettes are taxed under part I of ch. 210, F.S. Cigars are not subject to a tax.

Section 210.30(1), F.S., imposes a tax on tobacco products other than cigarettes or cigars and upon any person engaged in business as a distributor of such tobacco products at the rate of 25 percent of the wholesale sales price. The tax is levied at the time the distributor:

- Brings or causes to be brought into Florida from without the state tobacco products for sale;
- Makes, manufactures, or fabricates tobacco products in Florida for sale in Florida; or
- Ships or transports tobacco products to retailers in Florida, to be sold by those retailers.

If the tax is not paid by the distributor, the tax is imposed upon the use or storage by consumers of such tobacco products in Florida and upon consumers at the rate of 25 percent of the cost of such tobacco products.

Section 210.276(1), F.S., imposes a surcharge tax on tobacco products other than cigarettes or cigars and upon any person engaged in business as a distributor of such tobacco products at the rate of 60 percent of the wholesale sales price. The surcharge is levied at the same time the tax in s. 210.30, is levied on the distributor.

The surcharge is not levied on tobacco products shipped or transported outside Florida for sale or use outside Florida.

Section 210.25(5), F.S., defines the term "distributor" to mean:

- Any person engaged in the business of selling tobacco products in this state who brings, or causes to be brought, into this state from outside the state any tobacco products for sale;
- Any person who makes, manufactures, or fabricates tobacco products in this state for sale in Florida; or
- Any person engaged in the business of selling tobacco outside this state who ships or transports tobacco products to retailers in this state to be sold by those retailers.

Section 210.25(14), F.S., defines the term "wholesale sales price" to mean the sum of:

- The full price paid by the distributor to acquire the tobacco products, including charges by the seller for the cost of materials, the cost of labor and service, charges for transportation and delivery, the federal excise tax, and any other charge, even if the charge is listed as a separate item on the invoice paid by the distributor, exclusive of any diminution by volume or other discounts, including a discount provided to a distributor by an affiliate; and
- The federal excise tax paid by the distributor on the tobacco products if the tax is not included in the full price.

Retail Tobacco Products Dealer Permits

A person must obtain a retail tobacco products dealer permit from the division for each place of business where tobacco products are sold, including sales made through a vending machine.[1] The fee for an annual permit is established by the division in rule at an amount to cover the regulatory costs of the program, not to exceed $50. The fees are deposited into the Alcoholic Beverage and Tobacco Trust Fund within the DBPR.[2]

Mail Order, Internet, Other Remote Sales of Tobacco Products, and Tobacco Products Permits

Section 210.095(5), F.S., provides requirements for the delivery of mail order, Internet, and other remote sales of tobacco products, including age verification requirements. All such deliveries are defined as "delivery sales."[3]
Specific notice and shipping requirements are provided for all delivery sales, whether in-state or out-of-state. Each person who mails, ships, or otherwise delivers tobacco products in connection with an order for a delivery sale is required to:

- Include, as part of the shipping documents, in a clear and conspicuous manner, the following statement: "Tobacco Products: Florida law prohibits shipping to individuals who are not 21 years of age or older and requires the payment of all applicable taxes."
- Use a method of mailing, shipping, or delivery which obligates the delivery service to:
  - Require the signature of an adult who resides at the delivery address and obtain proof of the legal minimum purchase age of the individual accepting delivery, if the individual appears to be under 30 years of age.
  - Require proof that the individual accepting delivery is either the addressee or the adult designated by the addressee, in the form of a valid, government-issued identification card bearing a photograph of the individual who signs to accept delivery of the shipping container.
- Provide to the delivery service, if such service is used, evidence of full compliance with requirements for the collection and remittance of all taxes imposed on tobacco products by this state with respect to the delivery sale.[4]

If a person accepts a purchase order for a delivery sale and delivers the tobacco products without using a delivery service, the person must comply with all of the requirements that apply to a delivery service.[5] Before making sales or shipping orders, entities must provide specific notice to the division as to shipper and receiver, with monthly reporting.[6] There are requirements specific to purchase orders.[7]

[1] Section 569.003, F.S.
[2] Section 569.003(1)(c), F.S.
[3] Section 210.095(1)(b), F.S.
[4] Section 210.095(5), F.S.
[5] *Id.*
[6] Section 210.095(6), F.S.
[7] Section 210.095(7), F.S.

Section 210.095(8), F.S., provides that the penalty for the following violations of the delivery sale requirements is a misdemeanor of the second degree: [8]

- A delivery sale delivers tobacco products, on behalf of a delivery service, to an individual who is under 21 years of age.
- A violation of any provision in s. 210.095, F.S., by an individual who is under 21 years of age.

Section 210.15, F.S., requires a permit to every person, firm, or corporation desiring to engage in business as a manufacturer, importer, exporter, distributing agent, or wholesale dealer of cigarettes within Florida. To qualify for a permit, a person must be of good moral character and not less than 21 years of age to qualify. In addition, permits to corporations may be issued only to corporations whose officers are of good moral character and not less than 21 years of age.[9]

Nicotine Products

Section 569.31(3), F.S., defines the term "nicotine dispensing device" to mean:

> any product that employs an electronic, chemical, or mechanical means to produce vapor or aerosol from a nicotine product, including, but not limited to, an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product, any replacement cartridge for such device, and any other container of nicotine in a solution or other form intended to be used with or within an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or other similar device or product.

Section 569.31(4), F.S., defines the term "nicotine product" to mean:

> any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means. <u>The term also includes any nicotine dispensing device.</u> The term does not include a:
> (a) Tobacco product, as defined in s. 569.002;
> (b) Product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or
> (c) Product that contains incidental nicotine.
>
> (Emphasis added.)

Nicotine products, including nicotine dispensing devises such as electronic cigarettes (also commonly known as "vapes"), may contain nicotine, which comes from tobacco, but they do not contain tobacco. It is a non-tobacco "e-liquid" that is heated and aerosolized for inhalation by the user of the device.[10]

[8] Section 775.082, F.S., provides that the penalty for 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 the penalty for a misdemeanor of the second degree is punishable by a fine not to exceed $500.
[9] Section 210.15(2)(b), F.S.
[10] American Cancer Society, What Do We Know About E-cigarettes? at: https://www.cancer.org/cancer/risk-prevention/tobacco/e-cigarettes-vaping/what-do-we-know-about-e-cigarettes.html (last visited Jan. 17, 2024).

Retail Nicotine Products Dealer Permit

A retail nicotine products dealer permit from the division is required for each place of business where nicotine products are sold, including sales made through a vending machine.[11] There is no fee for the permit. A person must be 21 years of age to qualify for a retail nicotine products dealer permit.[12]

Heated Tobacco Products

Heated tobacco products heat a compressed stick or pod of tobacco and produce an inhalable vapor or aerosol. These products do not produce smoke because the tobacco is not burned or ignited.[13] It is not clear that heated tobacco products are subject to taxation under ch. 210, F.S., as cigarettes or other tobacco products because the definitions for the terms cigarettes and tobacco products under ch. 210, F.S., do not appear to describe heated tobacco products, e.g., heated tobacco products are not smoked or chewed.

III. Effect of Proposed Changes:

The bill exempts heated tobacco products from the taxes on tobacco products in ch. 210, F.S.

The definition of the term "cigarette" in s. 210.01(1), F.S., is revised by the bill to provide that the term does not include heated tobacco products. By excluding heated tobacco products from the meaning of cigarettes, the bill does not tax heated tobacco products as cigarettes under part I of ch. 210, F.S.

The bill amends s. 210.25, F.S., to define the term "heated tobacco product" to mean "a product containing tobacco which produces an inhalable aerosol by heating the tobacco without combustion of the tobacco or by the heat generated from a combustion source that only heats rather than burns the tobacco."

The bill revises the definition of the term "tobacco product" in s. 210.25, F.S., to exclude heated tobacco products. By excluding heated tobacco products from the meaning of tobacco products, the bill does not tax heated tobacco products as tobacco products under part II of ch. 210, F.S.

The bill also revises the definition of the term "tobacco product" in s. 210.095, F.S., to include heated tobacco products. By including heated tobacco products within the meaning of tobacco products in this provision, the bill applies the delivery sale requirements in this section to heated tobacco products.

The bill renames part II of ch. 210, F.S., from "Tax on Tobacco Products other than Cigarettes or Cigars," to "Tax on Tobacco Products other than Cigarettes, Heated Tobacco Products, or Cigars."

[11] Section 569.32, F.S.
[12] Section 569.32(2)(a), F.S.
[13] Campaign for Tobacco Free Kids, *Heated Tobacco Products, Definition and Global Market*, available at: https://assets.tobaccofreekids.org/global/pdfs/en/HTP_definition_en.pdf (last visited Jan. 20, 2024).

The bill amends the definition for the term "cigarette" in s. 210.01(1), F.S., to provide that the term does not include heated tobacco products.

The bill amends the definition for the term "tobacco product" in s. 569.002(8), F.S., to include heated tobacco products as defined in s. 210.25, F.S. The bill also reenacts the definition for the term "nicotine product" in s. 569.31(4), F.S., to incorporate the revision in the bill to the definition of the term "tobacco product" in s. 569.002(8), F.S.

Under the bill, a person who engages in the retail sale of heated tobacco products must have a retail tobacco products dealer permit.

The bill takes effect on July 1, 2024.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill exempts heated tobacco products from the taxes and surcharge taxes in in parts I and II of ch. 210, F.S.

The bill requires retail dealers of heated tobacco products to obtain a retail tobacco dealer permit, which may cost not more than $50 for the annual permit.

C. Government Sector Impact:

The Revenue Estimating Conference has not performed a fiscal impact assessment for this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 210.01, 210.095, 210.25, 569.002, 951.22, and 569.31.

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 Gruters

22-00918-24 20241588__

A bill to be entitled

An act relating to heated tobacco products; amending s. 210.01, F.S.; revising the definition of the term "cigarette"; amending s. 210.095, F.S.; revising the definition of the term "tobacco products"; renaming part II of ch. 210, F.S.; prohibiting its application to heated tobacco products; amending s. 210.25, F.S.; defining the term "heated tobacco product"; conforming a provision to changes made by the act; amending s. 569.002, F.S.; revising the definition of the term "tobacco products"; amending s. 951.22, F.S.; conforming a cross-reference; reenacting s. 569.31(4), F.S., relating to definitions, to incorporate the amendment made to s. 569.002, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (1) of section 210.01, Florida Statutes, is amended to read:

210.01 Definitions.—When used in this part the following words shall have the meaning herein indicated:

(1) "Cigarette" means any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient. The

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term does not include a heated tobacco product as defined by s. 210.25.

Section 2. Paragraph (i) of subsection (1) of section 210.095, Florida Statutes, is amended to read:

210.095 Mail order, Internet, and remote sales of tobacco products; age verification.—

(1) For purposes of this section, the term:

(i) "Tobacco products" means all cigarettes, smoking tobacco, snuff, fine-cut chewing tobacco, cut and granulated tobacco, cavendish, ~~and~~ plug or twist tobacco, and heated tobacco products as defined in s. 210.25.

Section 3. Part II of chapter 210, Florida Statutes, entitled "Tax on Tobacco Products other than Cigarettes or Cigars," is renamed "Tax on Tobacco Products other than Cigarettes, Heated Tobacco Products, or Cigars."

Section 4. Present subsections (6) through (14) of section 210.25, Florida Statutes, are redesignated as subsections (7) through (15), respectively, a new subsection (6) is added to that section, and present subsection (12) of that section is amended, to read:

210.25 Definitions.—As used in this part:

(6) "Heated tobacco product" means a product containing tobacco which produces an inhalable aerosol by heating the tobacco without combustion of the tobacco or by the heat generated from a combustion source that only heats rather than burns the tobacco.

(13) ~~(12)~~ "Tobacco products" means loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse

scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing; but "tobacco products" does not include cigarettes~~,~~ as defined by s. 210.01(1), heated tobacco products, or cigars.

Section 5. Subsection (8) of section 569.002, Florida Statutes, is amended to read:

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

(8) "Tobacco products" includes loose tobacco leaves, and products made from tobacco leaves, in whole or in part, ~~and~~ cigarette wrappers, which can be used for smoking, sniffing, or chewing, and heated tobacco products as defined in s. 210.25.

Section 6. Paragraph (d) of subsection (1) of section 951.22, Florida Statutes, is amended to read:

951.22 County detention facilities; contraband articles.—

(1) It is unlawful, except through regular channels as duly authorized by the sheriff or officer in charge, to introduce into or possess upon the grounds of any county detention facility as defined in s. 951.23 or to give to or receive from any inmate of any such facility wherever said inmate is located at the time or to take or to attempt to take or send therefrom any of the following articles, which are contraband:

(d) Any tobacco products as defined in s. 210.25 ~~s. 210.25(12)~~.

Section 7. For the purpose of incorporating the amendment made by this act to section 569.002, Florida Statutes, in a reference thereto, subsection (4) of section 569.31, Florida Statutes, is reenacted to read:

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

(4) "Nicotine product" means any product that contains nicotine, including liquid nicotine, which is intended for human consumption, whether inhaled, chewed, absorbed, dissolved, or ingested by any means. The term also includes any nicotine dispensing device. The term does not include a:

(a) Tobacco product, as defined in s. 569.002;

(b) Product regulated as a drug or device by the United States Food and Drug Administration under Chapter V of the Federal Food, Drug, and Cosmetic Act; or

(c) Product that contains incidental nicotine.

Section 8. This act shall take effect July 1, 2024.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Regulated Industries, *Chair*
Appropriations
Appropriations Committee on Health and Human Services
Commerce and Tourism
Transportation

SELECT COMMITTEE:
Select Committee on Resiliency

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight, *Alternating Chair*

SENATOR JOE GRUTERS
22nd District

January 19, 2024

Good Afternoon,

Senator Gruters is asking for an excused absence from the Regulated Industries Committee, meeting on 1/22/2024 at 1:30PM. Senator Gruters has a prior personal engagement and will not be able to attend. In his absence he has requested for Vice Chair Hooper to fill the role of Chair.

If there are any questions, please reach out to our Staff.

Thank you,

Joe Gruters

REPLY TO:
❒ 381 Interstate Boulevard, Sarasota, Florida 34240 (941) 378-6309
❒ 413 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5022

Senate's Website: *www.flsenate.gov*

KATHLEEN PASSIDOMO
President of the Senate

DENNIS BAXLEY
President Pro Tempore