

Tab 1	SB 284 by Perry (CO-INTRODUCERS) Hutson; (Similar to CS/CS/H 00055) Building Design					
353158	D	S	RCS	CA, Perry	Delete everything after	03/16 04:06 PM
538092	AA	S	L WD	CA, Powell	Delete L.9 - 38:	03/16 04:06 PM
166978	AA	S	L WD	CA, Powell	Delete L.45:	03/16 04:06 PM
Tab 2	SB 628 by Rouson; (Identical to H 01013) Urban Agriculture					
Tab 3	SB 758 by Diaz; (Similar to H 00573) Fiduciary Duty of Care for Appointed Public Officials and Executive Officers					
635124	A	S	RCS	CA, Diaz	Delete L.46 - 48:	03/17 10:34 AM
Tab 4	SB 1924 by Diaz; (Compare to CS/H 00945) Limitations on Emergency Powers of Political Subdivisions					
741906	D	S	WD	CA, Diaz	Delete everything after	03/17 12:54 PM
870038	D	S	L RCS	CA, Diaz	Delete everything after	03/17 12:54 PM
Tab 5	SB 1068 by Taddeo; (Identical to H 00567) Local Housing Assistance Plans					
Tab 6	SB 1606 by Rodriguez (CO-INTRODUCERS) Garcia, Hutson, Rodrigues; (Similar to H 01553) Victims of Communism					
Tab 7	SB 1624 by Albritton; (Similar to CS/H 01103) Special District Accountability					
665086	D	S	WD	CA, Hooper	Delete everything after	03/17 09:41 AM
Tab 8	SB 1884 by Rodrigues; (Identical to H 01409) Preemption of Firearms and Ammunition Regulation					
Tab 9	CS/SB 630 by RI, Baxley (CO-INTRODUCERS) Hutson, Rodriguez; (Similar to CS/H 00867) Community Associations					
Tab 10	CS/SB 856 by RI, Hutson; (Similar to CS/H 00839) State Preemption of Transportation Energy Infrastructure Regulations					
563192	D	S	RCS	CA, Hutson	Delete everything after	03/17 02:42 PM
423736	AA	S	L RCS	CA, Hutson	Delete L.47:	03/17 02:42 PM
Tab 11	CS/SB 1128 by RI, Hutson; (Similar to CS/H 00919) Preemption on Restriction of Utility Services					
786448	D	S	RCS	CA, Hutson	Delete everything after	03/17 12:09 PM
Tab 12	SB 916 by Brodeur; Residential Home Protection					
Tab 13	SB 1256 by Polsky; (Identical to H 00597) Homestead Exemption for Seniors 65 and Older					
953670	A	S	WD	CA, Baxley	Delete L.43 - 49:	03/17 12:09 PM
630516	A	S	L RCS	CA, Polsky	Delete L.35 - 49:	03/17 12:09 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Bradley, Chair
Senator Garcia, Vice Chair

MEETING DATE: Tuesday, March 16, 2021
TIME: 9:00 a.m.—12:00 noon
PLACE: *Mallory Horne Committee Room, 37 Senate Building*

MEMBERS: Senator Bradley, Chair; Senator Garcia, Vice Chair; Senators Baxley, Brodeur, Cruz, Hooper, Hutson, Polsky, and Powell

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A2 AT THE DONALD TUCKER CIVIC CENTER, 505 W. PENSACOLA STREET, TALLAHASSEE, 32301			
1	SB 284 Perry (Similar CS/CS/H 55)	Building Design; Prohibiting certain regulations relating to building design elements from being applied to certain structures; providing exceptions; defining the term "building design elements", etc. CA 03/16/2021 Fav/CS RI RC	Fav/CS Yeas 6 Nays 3
2	SB 628 Rouson (Identical H 1013)	Urban Agriculture; Exempting farm equipment used in urban agriculture from certain provisions requiring farm equipment to be located a specified distance from a public road; providing that nonresidential farm buildings, fences, or signs located on lands used for urban agriculture are not exempt from the Florida Building Code or local governmental regulations; creating the "Florida Urban Agriculture Act"; expressly preserving local governmental authority to regulate urban agriculture under certain circumstances, etc. AG 03/03/2021 Favorable CA 03/16/2021 Favorable RC	Favorable Yeas 9 Nays 0
3	SB 758 Diaz (Similar H 573)	Fiduciary Duty of Care for Appointed Public Officials and Executive Officers; Providing a directive to the Division of Law Revision to create part IX of ch. 112, F.S.; establishing standards for the fiduciary duty of care for appointed public officials and executive officers of specified governmental entities; requiring training on board governance beginning on a specified date; requiring the Department of Business and Professional Regulation to contract for or approve a training program or publish a list of approved training providers; requiring appointed public officials and executive officers to certify their completion of the annual training, etc. GO 03/03/2021 Favorable CA 03/16/2021 Fav/CS AP	Fav/CS Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Tuesday, March 16, 2021, 9:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	SB 1924 Diaz (Compare CS/H 945)	Limitations on Emergency Powers of Political Subdivisions; Requiring that certain emergency measures issued by a political subdivision be narrowly tailored to a compelling public health or safety purpose; specifying additional requirements for local emergency measures, etc. CA 03/16/2021 Fav/CS MS RC	Fav/CS Yeas 6 Nays 3
5	SB 1068 Taddeo (Identical H 567)	Local Housing Assistance Plans; Revising the percentages of local housing funds which must be reserved for eligible housing, etc. CA 03/16/2021 Temporarily Postponed ATD AP	Temporarily Postponed
6	SB 1606 Rodriguez (Similar H 1553)	Victims of Communism; Establishing November 7 as the Victims of Communism legal holiday; requiring the Legislature to annually observe a moment of silence in observance of the victims of communism, etc. CA 03/16/2021 Favorable GO RC	Favorable Yeas 9 Nays 0
7	SB 1624 Albritton (Similar CS/H 1103)	Special District Accountability; Requiring certain independent special districts to contract with an independent entity to conduct performance audits; requiring the Office of Program Policy Analysis and Government Accountability to conduct performance audits of certain classifications of independent special districts; requiring the performance audits to be reported by a time certain; requiring that certain data be included in financial audits of special districts, etc. CA 03/16/2021 Favorable GO AP	Favorable Yeas 7 Nays 2
8	SB 1884 Rodrigues (Identical H 1409)	Preemption of Firearms and Ammunition Regulation; Providing that written or unwritten policies are subject to provisions allowing for recovery of damages if such policies violate specified provisions; providing that a plaintiff challenging a local government regulation concerning firearms is considered a prevailing plaintiff for certain purposes in specified circumstances, etc. CA 03/16/2021 Favorable JU RC	Favorable Yeas 6 Nays 3

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Tuesday, March 16, 2021, 9:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
9	CS/SB 630 Regulated Industries / Baxley (Similar CS/H 867, Compare CS/H 615, H 665, H 1005, H 1259, H 1517, CS/CS/S 56, S 872, S 1490, S 1688, S 1966, S 1998)	Community Associations; Prohibiting insurance policies from providing specified rights of subrogation under certain circumstances; authorizing a condominium association to extinguish discriminatory restrictions; providing requirements for natural gas fuel stations on property governed by condominium associations; authorizing parties to initiate presuit mediation under certain circumstances; revising the allowable uses of certain escrow funds withdrawn by developers, etc. RI 02/16/2021 Fav/CS CA 03/16/2021 Favorable RC	Favorable Yeas 9 Nays 0
10	CS/SB 856 Regulated Industries / Hutson (Similar CS/H 839)	State Preemption of Transportation Energy Infrastructure Regulations; Preempting the regulation of transportation energy infrastructure to the state; prohibiting a local government from taking specified actions relating to the regulation of transportation energy infrastructure, etc. RI 03/09/2021 Fav/CS CA 03/16/2021 Fav/CS RC	Fav/CS Yeas 6 Nays 3
11	CS/SB 1128 Regulated Industries / Hutson (Similar CS/H 919)	Preemption on Restriction of Utility Services; Prohibiting municipalities, counties, special districts, or other political subdivisions from enacting or enforcing provisions or taking actions that restrict or prohibit the types or fuel sources of energy production which may be used, delivered, converted, or supplied to customers by specified entities; providing for preemption; providing for retroactive application, etc. RI 03/09/2021 Fav/CS CA 03/16/2021 Fav/CS RC	Fav/CS Yeas 9 Nays 0
12	SB 916 Brodeur	Residential Home Protection; Prohibiting local governments from requiring a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on a residential property if the property owner possesses certain documentation; providing that a tree poses an unacceptable risk if removal is the only means of practically mitigating its risk below moderate as defined by specified standards, etc. CA 03/16/2021 Favorable JU RC	Favorable Yeas 9 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Community Affairs

Tuesday, March 16, 2021, 9:00 a.m.—12:00 noon

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
13	SB 1256 Polsky (Identical H 597)	Homestead Exemption for Seniors 65 and Older; Revising provisions to require certain taxpayers to submit a claim for homestead exemption only one time if certain conditions are met; requiring the property appraiser to provide specified information related to income limitations on an annual basis; providing sanctions for taxpayers who received homestead exemptions but were not entitled to such exemptions, etc.	Fav/CS Yeas 9 Nays 0
		CA 03/16/2021 Fav/CS FT AP	

Other Related Meeting Documents

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/16/21

Meeting Date

284

Bill Number (if applicable)

Topic BUILDING DESIGN

Amendment Barcode (if applicable)

Name META CALDER

Job Title

Address 3740 RAVINE DR. Street

Phone 850-228-5900

TALL. FL 32312 City State Zip

Email metaorlean@gmail.com

Speaking: For Against Information

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

Representing LEAGUE OF WOMEN VOTERS FLORIDA

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

03/16/21

Meeting Date

SB 284

Bill Number (if applicable)

Topic SB 284 Building Design

Amendment Barcode (if applicable)

Name Haley Busch

Job Title

Address 308 N Monroe Street

Phone 8502644949

Street

Tallahassee

FL

32301

Email hbusch@1000fof.org

City

State

Zip

Speaking: For Against Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/16/21

Meeting Date

284

Bill Number (if applicable)

Topic Building Designs

Amendment Barcode (if applicable)

Name Edward Briggs

Job Title Director fo Government and Community Affairs

Address 235. W. Brandon Blvd. Ste. 640

Phone 850-933-5994

Street

Brandon

FL

33511

Email edward@rsaconsultingllc.com

City

State

Zip

Speaking: For Against Information

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

Representing Highland Homes

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

8/16/21
Meeting Date

SB 284
Bill Number (if applicable)
166978
Amendment Barcode (if applicable)

Topic BUILDING DESIGN

Name JEFFREY STARKY

Job Title PRESIDENT CAPITOL ALLIANCE GROUP

Address 100 E. COLLEGE AVE # 110
Street

Phone 850 224 1660

TPH FL 32301
City State Zip

Email JEFFREYSTARK@GMAIL.COM

Speaking: For Against Information

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

Representing CITY OF ST PETERSBURG

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

3/16/21

Meeting Date

SB 284

Bill Number (if applicable)

538042

Amendment Barcode (if applicable)

Topic Building Design

Name Jeffrey Shartkey

Job Title President of Capitol Alliance Group

Address 110 E College Ave S. 110

Street

Phone 850-224-1600

Tallahassee FL 32301

City

State

Zip

Email Jeffreyshartkey@gmail.com

Speaking: For Against Information

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

Representing City of St. Petersburg

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16/21
Meeting Date

SB 284
Bill Number (if applicable)

5 38092 AA
Amendment Barcode (if applicable)

Topic Building Design

Name Angela Drzewiecki (Dre z-wick-ee)

Job Title Lobbyist

Address 301 S Bronough St
Street

Phone 850-681-7383

Tallahassee FL 32308
City State Zip

Email angela@psmf1.net

Speaking: For Against Information

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

Representing City of Orlando

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

03/16/21
Meeting Date

SB 284
Bill Number (if applicable)

538092
Amendment Barcode (if applicable)

Topic SB 284 Building Design

Name Haley Busch

Job Title

Address 308 N Monroe Street
Street

Phone 8502644949

Tallahassee FL 32301
City State Zip

Email hbusch@1000fof.org

Speaking: For Against Information

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

Representing 1000 Friends of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

3/16/21

Meeting Date

284

Bill Number (if applicab

353158

Topic Building Design

Amendment Barcode (if applica

Name Tara Taggart

Job Title Legislative Policy Analyst

Address 301 S. Bronough Street #300

Phone 850-701-3603

Street

Tallahassee

FL

32301

Email ttaggart@flcities.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S 001 (10/11)

By Senator Perry

8-00243B-21

2021284__

A bill to be entitled

An act relating to building design; amending s. 163.3202, F.S.; prohibiting certain regulations relating to building design elements from being applied to certain structures; providing exceptions; defining the term "building design elements"; providing construction; providing an effective date.

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

Section 1. Present subsection (5) of section 163.3202, Florida Statutes, is redesignated as subsection (6), and a new subsection (5) is added to that section, to read:

163.3202 Land development regulations.—

(5) (a) Zoning and development regulations relating to building design elements may not be applied to any residential dwelling unless:

1. The structure is listed in the National Register of Historic Places, as defined in s. 267.021(5); is a contributing property to a National Register Historic District; or is designated as a historic property or a contributing property to a historic district, under the terms of a local preservation ordinance; or

2. The regulations are adopted in order to implement the National Flood Insurance Program.

(b) For purposes of this subsection, the term "building design elements" means the external building color; the type or style of exterior cladding material; the style or material of roof structures or porches; the exterior nonstructural

Page 1 of 2

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

8-00243B-21

2021284__

architectural ornamentation; the location or architectural styling of windows or doors, including garage doors; the number and type of rooms; and the interior layout of rooms. The term does not include the height, bulk, orientation, or location of a structure on a zoning lot; or the use of buffering or screening to minimize potential adverse physical or visual impacts or protect the privacy of neighbors.

(c) This subsection does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements between property owners.

Section 2. This act shall take effect July 1, 2021.

Page 2 of 2

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

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 Community Affairs

BILL: CS/SB 284

INTRODUCER: Community Affairs Committee and Senators Perry and Hutson

SUBJECT: Building Design

DATE: March 16, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	Fav/CS
2.			RI	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 284 amends the Community Planning Act to prohibit local governments from regulating specific building design elements for residential dwellings, with certain exceptions. Property development in Florida is governed in part by both the Community Planning Act and the Florida Building Code. The Community Planning Act governs how local governments create and adopt local comprehensive plans, implement land development regulations, and issue development orders and permits.

The bill:

- Prohibits local governments from adopting zoning and development regulations that require specific building design elements for residential dwellings, unless certain conditions are met.
- Provides that local governments may adopt zoning and development regulations requiring certain building design elements for residential dwellings when:
 - The dwelling is a historic property or a contributing property to a historic district; or
 - The regulations are adopted in order to implement the National Flood Insurance Program;
 - The regulations are adopted pursuant to chapter 553;
 - The dwelling is located in a community redevelopment area; or
 - The dwelling is located in a pre-existing planned unit development or master planned community.
- Defines the term “building design elements” to mean exterior color, type or style of exterior cladding, style or material of roof structures or porches, exterior nonstructural architectural

ornamentation, location or architectural styling of windows or doors, the location or orientation of the garage, and number, type, and layout of rooms.

- Provides that the term “building design elements” does not include the height, bulk, orientation, or location of a dwelling on a zoning lot, or the use of buffering or screening to minimize potential adverse physical or visual impacts or protect the privacy of neighbors.

The bill takes effect July 1, 2021.

II. Present Situation:

The Community Planning Act

Adopted in 1985, the Local Government Comprehensive Planning and Land Development Regulation Act, also known as Florida’s Growth Management Act, was significantly revised in 2011, becoming the Community Planning Act.¹ The Community Planning Act (the Act) governs how local governments create and adopt their local comprehensive plans.

It is the intent of the Act that local governments manage growth through comprehensive land use plans that preserve, promote, protect, and improve the public health, safety, comfort, good order, appearance, convenience, law enforcement and fire prevention, and general welfare.²

Local comprehensive plans must include principles, guidelines, standards, and strategies for the orderly and balanced future economic, social, physical, environmental, and fiscal development of the area that reflects community commitments to implement the plan and its elements.³ Plans also are required to identify procedures for monitoring, evaluating, and appraising implementation of the plan.⁴ Plans may include optional elements,⁵ but must include the following nine elements:

- Capital improvements;⁶
- Future land use plan;⁷
- Intergovernmental coordination;⁸
- Conservation;⁹
- Transportation;¹⁰
- Sanitary sewer, solid waste, drainage, potable water and aquifer recharge;¹¹
- Recreation and open space;¹²

¹ Chapter 11-139, Laws of Fla.

² Section 163.3161(4), F.S.

³ Section 163.3177(1), F.S.

⁴ Section 163.3177(1)(d), F.S.

⁵ Section 163.3177(1)(a), F.S.

⁶ Section 163.3177(3)(a), F.S. The capital improvements element must be reviewed by the local government on an annual basis.

⁷ Section 163.3177(6)(a), F.S.

⁸ Section 163.3177(6)(h), F.S.

⁹ Section 163.3177(6)(d), F.S.

¹⁰ Section 163.3177(6)(b), F.S.

¹¹ Section 163.3177(6)(c), F.S.

¹² Section 163.3177(6)(e), F.S.

- Housing;¹³ and
- Coastal management (for coastal local governments).¹⁴

All local government land development regulations must be consistent with the local comprehensive plan.¹⁵ Additionally, all public and private development, including special district projects, must be consistent with the local comprehensive plan.¹⁶ However, plans cannot require any special district to undertake a public facility project which would impair the district's bond covenants or agreements.¹⁷

Land Development Regulations

The comprehensive plan is implemented via land development regulations. Land development regulations are ordinances that regulate any aspect of development including any local government zoning, rezoning, subdivision, building construction, sign regulations, or any regulation that controls the development of land.¹⁸

Counties and municipalities are required to adopt or amend land development regulations within 1 year after submitting its comprehensive or revised comprehensive plan for review.¹⁹ Section 163.3202(2), F.S., outlines the minimum provisions that counties and municipalities should include in their local government land development regulations. These provisions include:

- Regulating the subdivision of land;
- Regulating the use of land and water;
- Providing for protection of potable water wellfields;
- Regulating areas subject to seasonal and periodic flooding and provide for drainage and stormwater management;
- Ensuring the protection of environmentally sensitive lands designated in the comprehensive plan;
- Regulating signage;
- Addressing concurrency;
- Ensuring safe and convenient onsite traffic flow; and
- Maintaining the existing density of residential properties or recreational vehicle parks.

Under certain circumstances, the Department of Economic Opportunity (DEO) may require a local government to submit one or more land development regulations for the agency's review.²⁰ The DEO is required to adopt rules for review and schedules for adoption of land development regulations.²¹

¹³ Section 163.3177(6)(f), F.S.

¹⁴ Section 163.3177(6)(g), F.S.

¹⁵ Section 163.3194(1)(b), F.S.

¹⁶ See ss. 163.3161(6) and 163.3194(1)(a), F.S.

¹⁷ Section 189.081(1)(b), F.S.

¹⁸ Sections 163.3164(26) & 163.3202(1), F.S.

¹⁹ Section 163.3202(1), F.S.

²⁰ Section 163.3202(4), F.S.

²¹ Section 163.3202(5), F.S.

Some local governments in Florida have adopted land development regulations that place restrictions on the design of new single- and two- family buildings such as the:

- External paint color;²²
- Architectural style of:²³
 - Windows;
 - Doors, including garage doors;
 - Front porches; and
 - Roofs.
- Exterior building material;²⁴ and
- Location of windows and garage doors.²⁵

States that Prohibit Local Government Regulations for Building Design Elements

North Carolina and Arkansas are two states that prohibit local governments from adopting regulations that require specific building design elements for single- and two- family dwellings unless certain conditions exist.²⁶ Tennessee and Georgia considered bills to enact laws similar to North Carolina and Arkansas; however, the bills did not pass.²⁷

Passed in 2015, North Carolina’s law prohibits cities and counties from adopting regulations that require “building design elements” for single- and two- family dwellings. The North Carolina law also prohibits such regulations from being applied to any zoning district or conditional district unless voluntarily consented to by the owners of all the properties subject to the proposed regulation.²⁸ The North Carolina law defines “building design elements”²⁹ and allows cities and counties to adopt and enforce regulations that require “building design elements” for single- and two- family dwellings in certain situations.³⁰

²² Osceola County Land Development Code, s. Ch. 3, Article 3.2.2.; Code of the City of Orlando, s. Ch. 58, Part 3, Section 58.517; Orange County Code, s. Chapter 38, Article VIII, Division 8.

²³ Osceola County Land Development Code, s. Ch. 3, Article 3.2.2.; Code of the City of Orlando, s. Ch. 58, Part 3, Section 58.517; City of Winter Park Code of Ordinances, s. Ch. 58, Art. 3, Section 58-67; Orange County Code, s. Chapter 38, Article VIII, Division 8.

²⁴ Orange County Code, s. Chapter 38, Article VIII, Division 8; City of Winter Park Code of Ordinances, s. Ch. 58, Art. 3, Section 58-67

²⁵ Code of the City of Orlando, s. Ch. 58, Part 3, Section 58.517.

²⁶ N.C. Gen. Stat. s. 160D-702; Ark. Code Ann. s. 14-17-212 & 14-56-204.

²⁷ Georgia General Assembly, 2019-2020 Regular Session - HB 302, <http://www.legis.ga.gov/Legislation/en-US/display/20192020/HB/302> (last visited Feb. 1, 2021); Tennessee General Assembly, 2017-2018 Session – HB 476 <http://wapp.capitol.tn.gov/apps/Billinfo/default.aspx?BillNumber=HB0476&ga=110> (last visited Feb. 1, 2021).

²⁸ N.C. Gen. Stat. s. 160D-702; R. Erika Churchill, Staff Attorney for the North Carolina General Assembly, Analysis of S.L. 2015-86, [https://dashboard.ncleg.net/api/Services/BillSummary/2015/S25-SMST-147\(sl\)](https://dashboard.ncleg.net/api/Services/BillSummary/2015/S25-SMST-147(sl)) (last visited Feb. 1, 2021); General Assembly of North Carolina, Session Law 2015-86 Senate Bill 25, June 9, 2015 <https://www.ncleg.gov/Sessions/2015/Bills/Senate/PDF/S25v3.pdf> (last visited Feb. 1, 2021).

²⁹ “Building design element” means exterior building color, type or style of exterior cladding material; style or materials of roof structures or porches; exterior nonstructural architectural ornamentation; location or architectural styling of windows and doors, including garage doors; number and types of rooms; and interior layout of rooms. The phrase does not include a single and two-family dwelling’s height, bulk, orientation, and location of a structure on a zoning lot. *See* N.C. Gen. Stat. s. 160D-702.

³⁰ *Id.*

In 2019, Arkansas passed a similar law that also prohibited cities and counties from adopting regulations that require “building design elements” for single-family dwellings.³¹ In addition to the exceptions provided in the North Carolina law, Arkansas also allows cities and counties to adopt and enforce building design elements regulations under certain circumstances, including within central business districts and by pre-existing local regulations.

III. Effect of Proposed Changes:

The bill amends s. 163.3202, F.S., to prohibit local governments from adopting zoning and development regulations that relate to building design elements for residential dwellings.

The bill defines the term “building design elements” to mean:

- Exterior building color;
- Type or style of exterior cladding material;
- Style or material of roof structures or porches;
- Exterior nonstructural architectural ornamentation;
- Location or architectural styling of windows or doors, including garage doors;
- Location and orientation of the garage;
- Number and type of rooms; and
- Interior layout of rooms.

The term does not include a residential dwelling’s height, bulk, orientation, location on a zoning lot, or the use of buffering or screening to minimize potential adverse physical or visual impacts or protect the privacy of neighbors.

The bill allows local governments to adopt and enforce regulations that require “building design elements” for residential dwellings if:

- The dwelling is listed in the National Register of Historic Places;
- The dwelling is a contributing property to a historic district in the National Register of Historic Places;
- The dwelling is listed as a historic property or a contributing property to a historic district by a local preservation ordinance;
- The regulations are adopted in order to implement the National Flood Insurance Program;
- The regulations are adopted pursuant to chapter 553;
- The dwelling is located in a community redevelopment area; or
- The dwelling is located in a pre-existing planned unit development or master planned community.

The bill also provides that the prohibition of zoning and development regulations that relate to building design elements does not affect the validity or enforceability of private covenants or other contractual agreements relating to building design elements between property owners.

The bill takes effect July 1, 2021.

³¹ Ark. Code Ann. s. 14-17-212 & 14-56-204; SB 170, 92nd Leg. Reg. Sess. (AR 2019).

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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate. However, prohibiting certain building design elements ordinances and other regulations may lead to a decrease in the cost of construction.

C. Government Sector Impact:

Indeterminate. Local governments may experience costs associated with repealing, amending, and defending existing ordinances, zoning codes, and regulations prohibited by this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill provides that zoning and development regulations may not relate to “building design elements.” However, zoning and development regulations are not defined in the Community Planning Act. Land development regulations is, however, defined in the Community Planning Act to mean ordinances enacted by governing bodies for the regulation of any aspect of

development, and includes any local government zoning, rezoning, subdivision, building construction, or sign regulations.

VIII. Statutes Affected:

This bill substantially amends section 163.3202 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 16, 2021:

The committee substitute adds exceptions to the bill's preemption to include regulations adopted pursuant to ch. 553, F.S. (regarding local amendments to the Florida Building Code), dwellings in community redevelopment areas, and dwellings located in a planned unit development or master planned community created by ordinance before July 1, 2021. It also adds the location or orientation of the garage to the definition of "building design elements."

- B. **Amendments:**

None.



353158

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/16/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Perry) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Present subsection (5) of section 163.3202,
Florida Statutes, is redesignated as subsection (6), and a new
subsection (5) is added to that section, to read:

163.3202 Land development regulations.—

(5) (a) Land development regulations relating to building
design elements may not be applied to a single-family or two-



353158

11 family dwelling unless:

12 1. The dwelling is listed in the National Register of
13 Historic Places, as defined in s. 267.021(5); is located in a
14 National Register Historic District; or is designated as a
15 historic property or located in a historic district, under the
16 terms of a local preservation ordinance;

17 2. The regulations are adopted in order to implement the
18 National Flood Insurance Program;

19 3. The regulations are adopted pursuant to and in
20 compliance with chapter 553;

21 4. The dwelling is located in a community redevelopment
22 area, as defined in s. 163.340(10); or

23 5. The dwelling is located in a planned unit development or
24 master planned community created pursuant to a local ordinance
25 enacted on or before July 1, 2021.

26 (b) For purposes of this subsection, the term:

27 1. "Building design elements" means the external building
28 color; the type or style of exterior cladding material; the
29 style or material of roof structures or porches; the exterior
30 nonstructural architectural ornamentation; the location or
31 architectural styling of windows or doors; the location or
32 orientation of the garage; the number and type of rooms; and the
33 interior layout of rooms. The term does not include the height,
34 bulk, orientation, or location of a dwelling on a zoning lot; or
35 the use of buffering or screening to minimize potential adverse
36 physical or visual impacts or to protect the privacy of
37 neighbors.

38 2. "Planned unit development" or "master planned community"
39 means an area of land that is planned and developed as a single



353158

40 entity or in approved stages with uses and structures
41 substantially related to the character of the entire
42 development, or a self-contained development in which the
43 subdivision and zoning controls are applied to the project as a
44 whole rather than to individual lots.

45 (c) This subsection does not affect the validity or
46 enforceability of private covenants or other contractual
47 agreements relating to building design elements.

48 Section 2. This act shall take effect July 1, 2021.

49

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

51 And the title is amended as follows:

52 Delete everything before the enacting clause
53 and insert:

54 A bill to be entitled
55 An act relating to building design; amending s.
56 163.3202, F.S.; prohibiting certain regulations
57 relating to building design elements from being
58 applied to certain dwellings; providing exceptions;
59 defining terms; providing construction; providing an
60 effective date.



538092

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/16/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Powell) recommended the following:

Senate Amendment to Amendment (353158)

Delete lines 9 - 38
and insert:

(5) (a) Land development regulations relating to building design elements may not be applied to a single-family or two-family dwelling on an open lot unless:

1. The dwelling is listed in the National Register of Historic Places as defined in s. 267.021(5); is located in a National Register Historic District; or is designated as a



538092

11 historic property or located in a historic district, under the
12 terms of a local preservation ordinance;

13 2. The regulations are adopted in order to implement the
14 National Flood Insurance Program;

15 3. The regulations are adopted pursuant to and in
16 compliance with chapter 553;

17 4. The dwelling is located in a community redevelopment
18 area as defined in s. 163.340(10); or

19 5. The dwelling is located in a planned unit development or
20 master planned community created pursuant to a local ordinance
21 enacted on or before July 1, 2021.

22 (b) For purposes of this subsection, the term:

23 1. "Building design elements" means the external building
24 color; the type or style of exterior cladding material; the
25 style or material of roof structures or porches; the exterior
26 nonstructural architectural ornamentation; the location or
27 architectural styling of windows or doors; the location or
28 orientation of the garage; the number and type of rooms; and the
29 interior layout of rooms. The term does not include the height,
30 bulk, orientation, or location of a dwelling on a zoning lot; or
31 the use of buffering or screening to minimize potential adverse
32 physical or visual impacts or to protect the privacy of
33 neighbors.

34 2. "Open lot" means a lot that has not previously been
35 developed with a building or a structure or any lot that has not
36 previously been subject to development as defined in s. 380.04.

37 3. "Planned unit development" or "master planned community"



166978

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/16/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Powell) recommended the following:

1 **Senate Amendment to Amendment (353158) (with title**
2 **amendment)**

3
4 Delete line 45
5 and insert:

6 (c) A county or municipality may not adopt regulations
7 relating to building design elements of affordable housing
8 units, as the term "affordable" is defined in s. 420.0004, which
9 are constructed on open lots.

10 (d) This subsection does not affect the validity or



166978

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19

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

And the title is amended as follows:

Delete line 59

and insert:

defining terms; prohibiting counties and
municipalities from adopting regulations relating to
building design elements of affordable housing units;
providing construction; providing an

THE FLORIDA SENATE
APPEARANCE RECORD

3-16-21

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

SB 628

Meeting Date

Bill Number (if applicable)

Topic URBAN AGRICULTURE

Amendment Barcode (if applicable)

Name TAYLOR PATRICK BIENL

Job Title DIR. GOV'T RELATIONS

Address 106 E. COLLEGE AVE SUITE 1110

Phone TAYLOR@CAPITOLMILLING
(GROUP)

Street

City

TDH

FL

State

32301

Zip

Email 850-224-1660
COM

Speaking: For Against Information

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

Representing CITY OF ST. PETERSBURG

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

Duplicate

THE FLORIDA SENATE

APPEARANCE RECORD

3/16/21

Meeting Date

SB 628

Bill Number (if applicable)

Topic Urban Agriculture

Amendment Barcode (if applicable)

Name Jeffrey Sharkey

Job Title President of Capitol Alliance Group

Address 106 E College Ave Suite 110

Phone (888)224-1660

Street

Tallahassee FL 32301

City

State

Zip

Email jeffreysharkey@gmail.com

Speaking: For Against Information

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

Representing City of St. Petersburg

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

By Senator Rouson

19-00815-21

2021628__

1 A bill to be entitled
 2 An act relating to urban agriculture; amending s.
 3 604.40, F.S.; exempting farm equipment used in urban
 4 agriculture from certain provisions requiring farm
 5 equipment to be located a specified distance from a
 6 public road; amending s. 604.50, F.S.; providing that
 7 nonresidential farm buildings, fences, or signs
 8 located on lands used for urban agriculture are not
 9 exempt from the Florida Building Code or local
 10 governmental regulations; defining the term "urban
 11 agriculture"; creating s. 604.73, F.S.; providing a
 12 short title; providing legislative findings and
 13 intent; defining the term "urban agriculture";
 14 expressly preserving local governmental authority to
 15 regulate urban agriculture under certain
 16 circumstances; providing an effective date.
 17
 18 Be It Enacted by the Legislature of the State of Florida:
 19
 20 Section 1. Section 604.40, Florida Statutes, is amended to
 21 read:
 22 604.40 Farm equipment.—
 23 (1) Notwithstanding any other law, ordinance, rule, or
 24 policy to the contrary, all power-drawn, power-driven, or self-
 25 propelled equipment used on a farm may be stored, maintained, or
 26 repaired by the owner within the boundaries of the owner's farm
 27 and at least 50 feet away from any public road without
 28 limitation.
 29 (2) This section does not apply to farm equipment that is

Page 1 of 4

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

19-00815-21

2021628__

30 used in urban agriculture, as defined in s. 604.73.
 31 Section 2. Subsection (1) of section 604.50, Florida
 32 Statutes, is amended, and paragraph (e) is added to subsection
 33 (2) of that section, to read:
 34 604.50 Nonresidential farm buildings; farm fences; farm
 35 signs.—
 36 (1) Notwithstanding any provision of law to the contrary,
 37 any nonresidential farm building, farm fence, or farm sign that
 38 is located on lands used for bona fide agricultural purposes,
 39 not including those lands used for urban agriculture, is exempt
 40 from the Florida Building Code and any county or municipal code
 41 or fee, except for code provisions implementing local, state, or
 42 federal floodplain management regulations. A farm sign located
 43 on a public road may not be erected, used, operated, or
 44 maintained in a manner that violates any of the standards
 45 provided in s. 479.11(4), (5) (a), and (6)-(8).
 46 (2) As used in this section, the term:
 47 (e) "Urban agriculture" has the same meaning as in s.
 48 604.73.
 49 Section 3. Section 604.73, Florida Statutes, is created to
 50 read:
 51 604.73 Local regulation of urban agriculture.—
 52 (1) SHORT TITLE.—This section shall be known and may be
 53 cited as the "Florida Urban Agriculture Act."
 54 (2) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds
 55 that, due to the application of laws relating to agricultural
 56 activities, it is necessary to distinguish between farms on
 57 traditional rural farm land and the emerging trends towards
 58 urban agriculture. The Legislature acknowledges that the "coming

Page 2 of 4

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

19-00815-21 2021628__
 59 to the nuisance” defense is reversed when residents bring
 60 agricultural uses to already-established, dense urbanized areas,
 61 and that municipalities should retain the right to reasonably
 62 regulate urban agriculture to protect existing urban land uses.
 63 The Legislature recognizes the ability of urban agriculture to
 64 spur economic development by providing for fresh foods in city
 65 centers, community revitalization, and the adaptive reuse of
 66 vacant lands. It is the intent of the Legislature that local
 67 governments retain authority to regulate urban agriculture under
 68 certain conditions, which will further the growth of farmland
 69 and promote the establishment of new farms and agricultural uses
 70 within dense urbanized land areas of this state.

71 (3) DEFINITION.—As used in this section, the term “urban
 72 agriculture” means any new or existing food cultivation on a
 73 piece of land within a dense urban land area, as described in s.
 74 380.0651(3)(a), for recreational, residential, community,
 75 commercial, or not-for-profit gardening or farming purposes. The
 76 term applies to urban land that is not designated or zoned for
 77 agriculture as a principal use. The term does not include
 78 vegetable gardens, as defined in s. 604.71(4), for personal
 79 consumption on residential properties.

80 (4) LOCAL REGULATION.—Notwithstanding s. 823.14 or any
 81 other law to the contrary, urban agriculture is subject to the
 82 land use, building, and other regulations of a county,
 83 municipality, or other political subdivision of the state,
 84 regardless of the property’s agricultural classification
 85 pursuant to s. 193.461, where:

86 (a) There is a land use or zoning regulation duly enacted
 87 to allow for urban agriculture; and

19-00815-21 2021628__
 88 (b) The regulation designates existing farm operations, as
 89 defined in s. 823.14(3)(b), as legally nonconforming before the
 90 regulation’s adoption.

91 Section 4. This act shall take effect July 1, 2021.

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 Community Affairs

BILL: SB 628

INTRODUCER: Senator Rouson

SUBJECT: Urban Agriculture

DATE: March 15, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Argote</u>	<u>Becker</u>	<u>AG</u>	Favorable
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	Favorable
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 628 exempts farm equipment used in urban agriculture from certain provisions requiring farm equipment to be located at least 50 feet away from a public road. The bill does not exempt nonresidential farm buildings, fences, or signs located on lands used for urban agriculture from the Florida Building Code or local governmental regulations.

The bill defines “urban agriculture” and provides applicability.

The bill expressly preserves local governmental authority to regulate urban agriculture under certain circumstances.

The bill takes effect July 1, 2021.

II. Present Situation:

Urban Agriculture

Over the past decade, food policy in the United States has responded to ongoing shifts in consumer preferences and producer trends that favor local and regional food systems while also supporting traditional farm enterprises.¹ This support for local and regional farming has helped to increase agricultural production in urban areas within and surrounding major U.S. cities.

Urban farming operations represent a diverse range of systems and practices. They encompass large-scale innovative systems and capital-intensive operations, vertical and rooftop farms, hydroponic greenhouses (e.g., soilless systems), and aquaponic facilities (e.g., growing fish and

¹ Congressional Research Service, The Library of Congress, *2018 Farm Bill Primer: Support for Urban Agriculture* (2019), available at <https://fas.org/sgp/crs/misc/IF11210.pdf> (last visited March 2, 2021).

plants together in an integrated system).² Urban farming also includes a variety of operations such as vacant city lots, city parks, churchyards, schoolyards, backyards, and community gardens. Urban farming and gardening is often presented as a potential solution for improving health outcomes, increasing self-reliance, strengthening community, and achieving social goals.

Types of Urban Agriculture

The many forms of urban agriculture can be categorized as either commercial or community-based.³ Commercial urban farms typically frame their business model on creating economically viable businesses that provide employment, food, and education opportunities to serve local needs.⁴

The primary objective of community-based urban gardens is to create spaces for local residents to engage in individual and neighborhood development and empowerment while growing, sharing, or selling fresh fruits and vegetables with each other.⁵ Profitability is not necessarily the goal of community-based urban agriculture;⁶ instead, these efforts seek dedicated outside funding to realize urban agriculture's promises of increased healthy food access, food justice, education, job training, ecological literacy, and community empowerment and development.⁷

“Right to Farm” Laws; Generally

In the 1970s, states began to identify the potential conflicts between farmers and developers as urban sprawl crept into rural, agricultural areas. One of the initial concerns was that the relocation of city dwellers into agricultural areas would result in a rash of very expensive nuisance lawsuits once the new neighbors were confronted with the sensory nature of farm life, complete with an inescapable array of odors, loud noises, dust, and other side-effects.⁸

In an effort to protect farms and agricultural operations from the encroaching sprawl, states passed anti-nuisance laws that are referred to as “Right to Farm” laws. These laws, enacted in all 50 states, protect agricultural production against some nuisance lawsuits. The laws do not grant absolute immunity but generally provide protections for defendants based upon a “coming to the nuisance” defense theory. These laws provide a liability shield for pre-existing agricultural operations when changes are made to the use of nearby parcels, such that the plaintiffs are described as “coming to the nuisance.”⁹ The Florida Right to Farm Act was enacted in 1979.¹⁰

² *Id.*

³ Hodgson, K., Caton Campbell, M., & Bailkey, M, *Urban agriculture: Growing healthy, sustainable places*, (2011) Chicago, IL: American Planning Association Planning Advisory Service.

⁴ Rangarajan, A., & Riordan, M., *The Promise of Urban Agriculture: National Study of Commercial Farming in Urban Areas* (2019), United States Department of Agriculture/Agricultural Marketing Service and Cornell University Small Farms Program.

⁵ *Id.*

⁶ Hodgson, K., Caton Campbell, M., & Bailkey, M, *Urban agriculture: Growing healthy, sustainable places*, (2011) Chicago, IL: American Planning Association Planning Advisory Service.

⁷ Vitiello, D. and Wolf-Powers, L, *Growing food to grow cities: The potential of agriculture for economic and community development in the urban United States*, *Community Development Journal*, (2014), p. 508-523.

⁸ Alexia B. Borden and Thomas R. Head, III, *The “Right To Farm” In The Southeast – Does it Go Too Far?* (2007).

⁹ *Id.*

¹⁰ Chapter 79-61, ss. 1-2, Laws of Fla.

Nuisance

A nuisance is described as an activity, condition, or situation created by someone that significantly interferes with another person's use or enjoyment of their property. A private nuisance affects a person's private right that is not common to the public while a public nuisance is an interference that affects the general public, for example, a condition that is dangerous to health or community standards.¹¹

The Florida Right to Farm Act

The Florida Right to Farm Act protects farm operations from nuisance lawsuits if the operations comply with generally accepted agricultural and management practices.¹²

The Florida Right to Farm Act states that a farm operation cannot be classified as a public or private nuisance if the farm:

- Has been in operation for 1 year or more since its established date of operation;
- Was not a nuisance when it was established; and
- Conforms to generally accepted agricultural and management practices.¹³

However, the following four unsanitary conditions constitute evidence of a nuisance:

- The presence of untreated or improperly treated human waste, garbage, offal, dead animals, dangerous waste materials, or gases which are harmful to human or animal life.
- The presence of improperly built or improperly maintained septic tanks, water closets, or privies.
- The keeping of diseased animals which are dangerous to human health, unless the animals are kept in accordance with a current state or federal disease control program.
- The presence of unsanitary places where animals are slaughtered, which may give rise to diseases which are harmful to human or animal life.¹⁴

Additionally, a farm operation cannot be classified as a public or private nuisance due to a change:

- In ownership,
- In the type of farm product that is produced,
- In conditions in or around the locality of the farm, or
- Made in compliance with Best Management Practices adopted by local, state, or federal agencies.¹⁵

¹¹ BLACK'S LAW DICTIONARY (11th ed. 2019).

¹² Section 823.14, F.S.

¹³ Section 823.14(4)(a), F.S.

¹⁴ *Id.*

¹⁵ Section 823.14(4)(b), F.S.

The Florida Right to Farm Act, however, may not be construed to permit an existing farm operation to increase to a more excessive farm operation with regard to noise, odor, dust, or fumes where the existing operation is adjacent to an established homestead or business.^{16,17}

The Florida Building Code

Part IV of ch. 553, F.S., is known as the “Florida Building Codes Act” (Act). The purpose and intent of the Act is to provide a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code. The Building Code must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.¹⁸

The Florida Building Commission (Commission), housed within the Department of Business and Professional Regulation, implements the Building Code. The Commission reviews several International Codes published by the International Code Council, the National Electric Code, and other nationally adopted model codes to determine if the Building Code needs to be updated and adopts an updated Building Code every three years.

III. Effect of Proposed Changes:

Section 1 amends s. 604.40, F.S., to exempt farm equipment used in urban agriculture from the requirement that farm equipment be stored, maintained, or repaired within the boundaries of the owner’s farm and kept at least 50 feet away from any public road without limitation.

Section 2 amends s. 604.50, F.S., to provide that nonresidential farm buildings, fences, or signs located on lands used for urban agriculture are not exempt from the Florida Building Code or local governmental regulations.

Section 3 creates s. 604.73, F.S., to be known as the “Florida Urban Agriculture Act.”

The bill specifies the following legislative findings and intent related to urban agriculture:

- It is necessary to distinguish between farms on traditional rural farm land and those of urban agriculture due to the application of laws related to agricultural activities.
- It is acknowledged that the “coming to the nuisance” defense is reversed when residents bring agricultural uses to already-established, dense urbanized areas, and that municipalities should retain the right to reasonably regulate urban agriculture to protect existing urban land uses.
- It is recognized that urban agriculture has the ability to spur economic development by providing for fresh foods in city centers, community revitalization, and the adaptive reuse of vacant lands.

¹⁶ Section 823.14(5), F.S.

¹⁷ In an effort to eliminate duplication of regulatory authority over farm operations, local governments may not adopt an ordinance or similar policy to prohibit or limit an activity of a bona fide farm operation on land that is classified as agricultural land in accordance with statute, where the activity is regulated through implemented best management practices or certain interim measures. The full text of this prohibition is contained in s. 823.14(6), F.S.

¹⁸ See s. 553.72(1), F.S.

- It is intended that local governments retain authority to regulate urban agriculture under certain conditions in order to further the growth of farmland and promote the establishment of new farms and agricultural uses within dense urbanized land areas.

The bill defines “urban agriculture.” The term applies to urban land that is not designated or zoned for agriculture as a principal use. The term does not apply to vegetable gardens for personal consumption on residential properties.

The bill provides that urban agriculture is subject to the land use, building, and other regulations of a county, municipality, or other political subdivision of the state, regardless of the property’s agricultural classification where:

- There is a land use or zoning regulation duly enacted to allow for urban agriculture; and
- The regulation designates existing farm operations as legally nonconforming before the regulation’s adoption.

Section 4 provides that this bill shall take effect July 1, 2021.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 604.40 and 604.50 of the Florida Statutes.
This bill creates section 604.73 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.

THE FLORIDA SENATE
APPEARANCE RECORD

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

16 March 21
Meeting Date

758
Bill Number (if applicable)

Topic Education Cane

Amendment Barcode (if applicable)

Name DIEGO ECHEVERRI "Dee-yay-Gon Etch-uh-very"

Job Title legislative liaison

Address 200 West College Phone _____
Street

TLH City State Zip Email _____

Speaking: For Against Information

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

Representing Americans For Prosperity

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

By Senator Diaz

36-00774-21

2021758__

A bill to be entitled

An act relating to the fiduciary duty of care for appointed public officials and executive officers; providing a directive to the Division of Law Revision to create part IX of ch. 112, F.S.; creating s. 112.89, F.S.; providing legislative findings and purpose; defining terms; establishing standards for the fiduciary duty of care for appointed public officials and executive officers of specified governmental entities; requiring training on board governance beginning on a specified date; requiring the Department of Business and Professional Regulation to contract for or approve a training program or publish a list of approved training providers; specifying requirements for such training; authorizing training to be provided by in-house counsel for certain governmental entities; requiring appointed public officials and executive officers to certify their completion of the annual training; requiring the department to adopt rules; providing exceptions to the training requirement; specifying requirements for the appointment of executive officers and general counsels of governmental entities; specifying standards for legal counsel; providing an effective date.

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

Section 1. The Division of Law Revision is directed to create part IX of chapter 112, Florida Statutes, consisting of

Page 1 of 6

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

36-00774-21

2021758__

s. 112.89, Florida Statutes, to be entitled "Fiduciary Duty of Care for Appointed Public Officials and Executive Officers."

Section 2. Section 112.89, Florida Statutes, is created to read:

112.89 Fiduciary duty of care.—

(1) LEGISLATIVE FINDINGS AND PURPOSE.—The Legislature finds that appointed public officials and executive officers acting on behalf of governmental entities owe a fiduciary duty to the entities they serve. The Legislature finds that codifying a fiduciary duty of care will require that appointed public officials and executive officers stay adequately informed of affairs, perform due diligence, perform reasonable oversight, and practice fiscal responsibility regarding decisions involving corporate and proprietary commitments on behalf of the entity they serve.

(2) DEFINITIONS.—

(a) "Appointed public official" means either a "local officer" as defined in s. 112.3145(1)(a)2. or a "state officer" as defined in s. 112.3145(1)(c)2. and 3.

(b) "Department" means the Department of Business and Professional Regulation.

(c) "Executive officer" means the chief executive officer of a governmental entity to which an appointed public official is appointed.

(d) "General counsel" means the chief legal counsel of a governmental entity to which an appointed public official or an executive officer is appointed or hired.

(e) "Governmental entity" means the entity, or a board, a council, a commission, an authority, or other body thereof, to

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

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59 which an appointed public official or an executive officer is
60 appointed or hired.

61 (3) FIDUCIARY DUTY OF CARE.—Each appointed public official
62 and executive officer owes a fiduciary duty of care to the
63 applicable entity he or she serves in accordance with law and
64 has a duty to:

65 (a) Act in accordance with the laws, ordinances, rules,
66 policies, and terms governing his or her office or employment.

67 (b) Act with the care, competence, and diligence normally
68 exercised by a reasonably prudent person in similar corporate
69 and proprietary circumstances.

70 (c) Act only within the scope of his or her authority.

71 (d) Refrain from conduct that is likely to damage the
72 financial or economic interests of the governmental entity.

73 (e) Use reasonable efforts to maintain documentation in
74 accordance with applicable laws.

75 (f) Maintain reasonable oversight of any delegated
76 authority and discharge his or her duties with the care that a
77 reasonably prudent person in a like business position would
78 believe appropriate under the circumstances, and must:

79 1. Become reasonably informed in connection with any
80 decisionmaking function;

81 2. Become reasonably informed when devoting attention to
82 any oversight function;

83 3. Keep reasonably informed concerning the affairs of the
84 governmental entity; and

85 4. Keep reasonably informed concerning the performance of
86 the governmental entity's executive officers or other officers,
87 agents, or employees.

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88 (4) TRAINING REQUIREMENT.—

89 (a) Beginning January 1, 2022, each appointed public
90 official and executive officer shall complete a minimum of 5
91 hours of board governance training for each term served.

92 1. An appointed public official or executive officer
93 holding office or employed by a governmental entity on January
94 1, 2022, shall complete the 5 hours of board governance training
95 before the expiration of his or her term of service. If an
96 appointed public official or executive officer is employed under
97 a contract that does not specify a termination date for
98 employment, the public official or executive officer shall
99 complete the 5 hours of training by January 1, 2023, and once
100 every 4 years thereafter for the duration of their employment.

101 2. An appointed public official or executive officer who is
102 appointed, reappointed, or hired after January 1, 2022, shall
103 complete the 5 hours of board governance training within 180
104 days after the date of his or her appointment, reappointment, or
105 hire.

106 (b) By January 1, 2022, the department shall:

107 1. Contract for or approve a board governance training
108 program that includes an affordable web-based electronic media
109 option; or

110 2. Publish a list of approved board governance training
111 providers on its website. A provider may include a Florida
112 College System institution, a state university, a nationally
113 recognized entity specializing in board governance education, or
114 any other entity deemed qualified by the department as capable
115 of providing the minimum training requirements specified in this
116 subsection.

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117 (c) The board governance training programs must provide, at
 118 a minimum, educational materials and instruction on the
 119 following:

120 1. Generally accepted corporate board governance principles
 121 and best practices; corporate board fiduciary duty of care legal
 122 analyses; corporate board oversight and evaluation procedures;
 123 governmental entity responsibilities; executive officer
 124 responsibilities; executive officer performance evaluations;
 125 selecting, monitoring, and evaluating an executive management
 126 team; reviewing and approving proposed investments,
 127 expenditures, and budget plans; financial accounting and capital
 128 allocation principles and practices; and new governmental entity
 129 member orientation.

130 2. The fiduciary duty of care and obligations imposed upon
 131 appointed public officials and executive officers pursuant to
 132 this section.

133 (d) A governmental entity complies with the training
 134 requirement under this subsection by providing a department-
 135 approved program or contracting with a provider listed by the
 136 department under subparagraph (b)2. However, for governmental
 137 entities with annual revenues of less than \$300,000, board
 138 governance training may be provided by in-house counsel of the
 139 governmental entity or the unit of government that created the
 140 governmental entity, if applicable, so long as the training
 141 complies with the minimum course content established by
 142 department rule.

143 (e) Within 30 days after completion of the board governance
 144 training, each appointed public official and executive officer
 145 shall certify, in writing or electronic form and under oath, to

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146 the department that he or she:

147 1. Has completed the training required by this subsection;
 148 2. Has read the laws and relevant policies applicable to
 149 his or her position;

150 3. Will work to uphold such laws and policies to the best
 151 of his or her ability; and

152 4. Will faithfully discharge his or her fiduciary
 153 responsibility, as imposed by this section.

154 (f) The department shall adopt rules to implement this
 155 subsection.

156 (g) This subsection does not apply to appointed public
 157 officials and executive officers who:

158 1. Serve governmental entities whose annual revenues are
 159 less than \$100,000;

160 2. Hold elected office in another capacity; or

161 3. Complete board governance training involving fiduciary
 162 duties or responsibilities which is required under any other
 163 state law.

164 (5) APPOINTMENT OF EXECUTIVE OFFICERS AND GENERAL
 165 COUNSELS.—The appointment of any executive officer or general
 166 counsel is subject to approval by a majority vote of the
 167 governmental entity.

168 (6) STANDARDS FOR LEGAL COUNSEL.—All legal counsel employed
 169 by a governmental entity must represent the legal interests and
 170 positions of the governmental entity and not the interest of any
 171 individual or employee of the governmental entity, unless such
 172 representation is directed by the governmental entity.

173 Section 3. This act shall take effect July 1, 2021.

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 Community Affairs

BILL: CS/SB 758

INTRODUCER: Community Affairs Committee and Senator Diaz

SUBJECT: Fiduciary Duty of Care for Appointed Public Officials and Executive Officers

DATE: March 16, 2021 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Ponder</u>	<u>McVaney</u>	<u>GO</u>	Favorable
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	Fav/CS
3.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 758 creates part IX of chapter 112, F.S., to establish an express fiduciary duty of care for appointed public officials and executive officers acting on behalf of governmental entities.

The bill makes a statement of legislative findings providing that:

- Appointed public officials and executive officers acting on behalf of governmental entities owe a fiduciary duty to the entities they serve; and
- Codifying a fiduciary duty of care will require that appointed public officials and executive officers stay adequately informed of affairs, perform due diligence, perform reasonable oversight, and practice fiscal responsibility regarding decisions involving corporate and proprietary commitments on behalf of a governmental entity.

The bill provides definitions for relevant terms including, but not limited to, “appointed public official,” “executive officer,” “general counsel” and “governmental entity.”

The bill establishes training requirements for each appointed public official and executive officer to begin on January 1, 2022. The bill specifies that a minimum of five hours of board governance training must be completed for each term served. The bill requires the Department of Business and Professional Regulation (DBPR), by January 1, 2022, to either (1) contract for or approve a board governance training program that includes an affordable web-based electronic media option; or (2) publish a list of approved training providers. The bill grants rulemaking authority to the DBPR.

The bill allows governmental entities with annual revenues of less than \$300,000 to use in-house counsel or the in-house counsel for the unit of government that created the entity, to provide the training as long as it comports with the minimum course content established by DBPR rule. The bill provides three exceptions to the training requirement for (1) appointed public officials and executive officers of governmental entities whose annual revenues are less than \$100,000; (2) appointed officials who hold elected office in another capacity; or (3) appointed public officials or executive officers who complete board governance training involving fiduciary duties or responsibilities which is required under any other state law. The bill requires appointed public officials and executive officers to provide written certification of compliance with the board governance training.

The bill requires the appointment of an executive officer or general counsel to be subject to approval by a majority vote of the governing body of the governmental entity. The bill specifies that all legal counsel employed by a governmental entity must represent the legal interests and positions of the governmental entity and not the interest of any individual or employee of the governmental entity, unless such representation is directed by the governmental entity.

The bill will have an indeterminate fiscal impact on the private sector to the extent entities are selected by DBPR to provide training. The bill will have an indeterminate fiscal impact on the local and state government. The DBPR may experience a slightly negative impact in complying with the bill's board governance training program requirements. Additionally, local governments will experience an indeterminate negative impact to the extent its appointed public officials and executive officers are subject to the training requirement.

The bill takes effect on July 1, 2021.

II. Present Situation:

Chapter 112, F.S.

Chapter 112, F.S., contains general provisions governing public officers and employees. Part III of ch. 112, F.S., establishes a Code of Ethics for Public Officers and Employees that sets forth standards of conduct required for public officers and employees in the performance of their official duties.¹ To enforce the Code of Ethics, the legislature created the Commission on Ethics (Commission).²

Section 112.3145, F.S., requires state and local officers and specified state employees to file a statement of financial interest with the Commission. This section defines a "local officer" to include persons elected to office in any political subdivision of the state and every person who is appointed to fill a vacancy for an unexpired term in such an elective office.³

Additionally, the term includes *appointed* members of specified boards. Specifically, s. 112.3145(1)(a)2., F.S., provides that "public officer" means:

¹ Sections 112.311-112.3261, F.S.

² Section 112.320, F.S.

³ Section 112.3145(1)(a)1., F.S.

Any appointed member of any of the following boards, councils, commissions, authorities, or other bodies of any county, municipality, school district, independent special district, or other political subdivision of the state:

- a. The governing body of the political subdivision, if appointed;
- b. A community college or junior college district board of trustees;
- c. A board having the power to enforce local code provisions;
- d. A planning or zoning board, board of adjustment, board of appeals, community redevelopment agency board, or other board having the power to recommend, create, or modify land planning or zoning within the political subdivision, except for citizen advisory committees, technical coordinating committees, and such other groups who only have the power to make recommendations to planning or zoning boards;
- e. A pension board or retirement board having the power to invest pension or retirement funds or the power to make a binding determination of one's entitlement to or amount of a pension or other retirement benefit; or
- f. Any other appointed member of a local government board who is required to file a statement of financial interests by the appointing authority or the enabling legislation, ordinance, or resolution creating the board.

A “state officer” is defined to mean:

- Any elected public officer, excluding those elected to the U.S. Senate and House of Representatives, not covered elsewhere in this part and any person who is appointed to fill a vacancy for an unexpired term in such an elective office;
- An *appointed* member of each board, commission, authority, or council having statewide jurisdiction, excluding a member of an advisory body;
- A member of the Board of Governors of the State University System or a state university board of trustees, in Chancellor and Vice Chancellors of the State University System, and the president of a state university; or
- A member of the judicial nominating commission for any district court of appeal or any judicial circuit.⁴

Fiduciary Duty of Care

A Fiduciary Relationship and Breach of Fiduciary Duty

Black’s Law Dictionary defines “fiduciary relationship” as:

A relationship in which one person is under a duty to act for the benefit of another on matters within the scope of the relationship. Fiduciary relationships—*such as...principal-agent...*—require an unusually high degree of care. Fiduciary relationships usu[ally] arise in one of four situations: (1) when one person places trust in the faithful integrity of another, who as a result gains superiority or influence over the first, (2) when one person assumes control and responsibility over another, (3) *when one person has a duty to act for or give advice to another on matters falling within the scope of the*

⁴ Section 112.3145(1)(c), F.S.

*relationship, or (4) when there is a specific relationship that has traditionally been recognized as involving fiduciary duties, as with a lawyer and a client or a stockbroker and a customer.*⁵

As explained by the Florida Supreme Court, a fiduciary relationship exists “where confidence is reposed by one party and trust is accepted by the other, or where confidence has been acquired or abused.”⁶ In Florida, a breach of fiduciary duty is considered a tort.⁷ To state a claim for breach of fiduciary duty, a plaintiff must show three elements: (1) the existence of a fiduciary duty, (2) the breach of that duty, and (3) damages resulting from the breach.⁸

A fiduciary relationship may be either express or implied.⁹ “Express fiduciary relationships are created by contract, such as principal/agent or can be created by legal proceedings, as in the case of a guardian/ward.”¹⁰ On the other hand, an implied in law fiduciary relationship may be found based on the “specific factual situation surrounding the transaction and the relationship of the parties.”¹¹ Under Florida law, for an implied fiduciary relationship to exist, “there must be substantial evidence showing some dependency by one party and some undertaking by the other party to advise, counsel, and protect the weaker party.”¹²

The most basic duty of a fiduciary is the duty of loyalty, which obligates the fiduciary to put the interests of the beneficiary first, ahead of the fiduciary’s self-interest, and to refrain from exploiting the relationship for the fiduciary’s personal benefit.¹³ In addition to a duty of loyalty, a fiduciary also owes a duty of care to carry out responsibilities in an informed and considered manner and to act as an ordinary prudent person would act in the management of his own affairs. For example, under s. 518.11(1)(a), F.S., a trustee has the duty to invest or manage assets of an estate prudently – “as a prudent investor would considering the purposes, terms, distribution requirements, and other circumstances of the trust.”¹⁴

⁵ BLACK’S LAW DICTIONARY, 744 (10th ed. 2014).

⁶ *Doe v. Evans*, 814 So. 2d 370 (Fla. 2002).

⁷ *Doe v. Evans*, 814 So.2d 370, 374 (Fla. 2002)(“ [a] fiduciary who commits a breach of his duty as a fiduciary is guilty of tortious conduct to the person for whom he should act. . . [t]he liability is not dependent solely upon an agreement or contractual relation between the fiduciary and the beneficiary but results from the relation.’ ”) (quoting Restatement (Second) of Torts § 874 cmt. B(1979)).

⁸ *Gracey v. Eaker*, 837 So.2d 348, 353 (Fla.2002).

⁹ *Capital Bank v. MVB, Inc.*, 644 So.2d 515, 518 (Fla. 3d DCA 1994).

¹⁰ *MediaXposure Ltd. v. Harrington*, [No. 8:11-CV-410-T-TGW, 2012 WL 1805493, at *6 \(M.D.Fla.2012\)](#)

¹¹ *Id.* See e.g., *Fla. Software Svs., Inc. v. Columbia/HCA Healthcare Corp.*, [46 F.Supp.2d 1276, 1286 \(M.D.Fla.1999\)](#) (stating that “Florida law recognizes fiduciary relationships arising out of joint ventures.”); *Askew v. Allstate Title & Abstract Co., Inc.*, [603 So.2d 29, 31 \(Fla. 2d DCA 1992\)](#) (stating that “the title agent has a fiduciary duty to both the buyer and the seller . . .”); *Cohen v. Hattaway*, [595 So.2d 105, 107 \(Fla. 5th DCA 1992\)](#) (stating that “[c]orporate directors and officers owe a fiduciary obligation to the corporation and its shareholders and must act in good faith and in the best interest of the corporation.”).

¹² *Lanz v. Resolution Trust Corp.*, 764 F.Supp. 176, 179 (S.D.Fla.1991); See *Maszal v. City of Miami*, 971 So.2d 803, 809 (Fla. 3d DCA 2007).

¹³ See Restatement (Third) of Agency [§8.01 \(2006\)](#); see also *Capital Bank*, [644 So. 2d at 520](#).

¹⁴ See *United States v. White Mountain Apache Tribe*, [537 U.S. 465, 475 \(2003\)](#) (a fiduciary administering trust property owes a fundamental common law duty as trustee to preserve and maintain trust assets; “the standard of responsibility is ‘such care and skill as a man of ordinary prudence would exercise in dealing with his own property’”) (citations omitted).

Fiduciary Obligations owed by Public Officials

The origins of fiduciary duty for public or political officials dates back to English common law. At first, common law did not distinguish among associations; English common law did not treat the City of London different from the East India Company.¹⁵ Both were considered creatures of associational or corporate law, and were referred to as bodies politic, bodies corporate, or corporations.¹⁶ This English common law viewpoint was brought to the New World, and cities, like the Virginia Company of London, were established with this concept in mind.¹⁷ Since these English common law origins, U.S. association law has increasingly divided private and public associations and the concept of fiduciary duty, where the corporation is now deemed private (having more fiduciary duties) and the governmental entity public (having less fiduciary duty).¹⁸

Today, “[p]ublic officials inherently owe a fiduciary duty to the public to make governmental decisions in the public’s best interest.”¹⁹ Accordingly, a public official’s fiduciary duty is a general one rather than a specific one.²⁰ Stated differently, a public official owes a fiduciary duty to the constituents he or she serves generally, but not to each individual constituents he or she serves.²¹ Additionally, Florida recognizes that public officials occupy a fiduciary relationship with respect to public property in that such property is held in trust.²²

Proprietary/Corporate Functions vs. Governmental/Policy Functions

Public officials acting on behalf of governmental entities have two distinct categories of functions when serving residents in their official capacity. Propriety functions encompass actions when a governmental entity is behaving as a property owner or conducting commercial transactions. For example, Florida courts hold that the construction, maintenance, and repair of streets in a municipality is a corporate or proprietary function because the governmental entity is operating as a property owner.²³

Alternatively, when a governmental entity exercises powers regarding the location and installation of traffic control devices such as stop signs, automatic traffic lights, etc., courts hold that public officials are performing a governmental function by making a particular decision on traffic policy.²⁴ The difference between proprietary and governmental functions is important because the common law fiduciary duty of care does not arise from governmental functions. Policy decisions by public officials are largely shielded from judicial review through sovereign

¹⁵ William Blackstone famously grouped together as “lay corporations” towns, the “trading companies of London,” and colleges and universities. See 1 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND *470-71.

¹⁶ *Id.* at 467.

¹⁷ See Judith M. Diamondstone, Philadelphia’s Municipal Corporation, 1701-1776, 90 PA. MAG. HIST. & BIOGRAPHY 183, 183 (1966).

¹⁸ See *People v. Morris*, 13 Wend. 325, 337 (N.Y. Sup. Ct. 1835) (“The distinction between public and private corporations is strongly marked, and, as to all essential purposes, they correspond only in name.”).

¹⁹ *U.S. v. deVegeter*, 198 F.3d 1324, 1328 (11th Cir. 1999).

²⁰ *Id.*

²¹ See *Maryelin Albertov v. Housing Authority of the City of Fort Lauderdale et al.*, 2018 WL 7108227 (Fla.Cir.Ct.) See also *Nussbaum v. Weeks*, 214 Cal. App. 3d 1580, 1598-99 (1990) (holding that the general manager of a water district, as a public official, owed a fiduciary duty to the residents of the water district generally, but not to each resident specifically).

²² See, e.g., *City of Coral Gables v. Hepkins*, 144 So. 385(Fla. 1932).

²³ See *Gordon v. City of West Palm Beach*, 321 So.2d 78 (Fla. 4th DCA 1975).

²⁴ *Id.*

immunity.²⁵ Whereas, proprietary decisions in governmental entity management have historically been subject to due care considerations²⁶ and requirements that officials act “as prudent persons ought to allow themselves in the management of their own affairs.”²⁷

Taxpayer Standing to Bring a Claim against a Governmental Entity

It is well settled in Florida that – absent a constitutional challenge – a taxpayer may bring suit against a governmental entity only upon a showing of special injury,²⁸ which is distinct from that suffered by other taxpayers.²⁹ Thus, a private citizen is precluded from filing a taxpayer complaint to challenge government action unless the private citizen alleges and proves a “special injury,” which is an injury that is different from that of the general public.³⁰ Thus, Florida law permits a very limited – if nonexistent – remedy for a breach of a duty of care in the public official context as opposed to private law. Even if a plaintiff could establish that a public official owed them a special fiduciary duty, they would still have to prove that the official caused them to suffer a special injury – that is the essence of the current breach of fiduciary duty claims for public officials.

Fiduciary Obligations owed by Private Trustees and Corporate Officials

The Uniform Trust Code stipulates that trustees must “administer the trust as a prudent person would.”³¹ Trust law defines prudence as “reasonable care, skill, and caution.”³² This requirement has been interpreted as a traditional negligence standard in tort law.³³ While reviewing the actions of a trustee, the prudence analysis prioritizes whether the decision-making processes used by a trustee are reasonable and whether the overall substance of the decision is reasonable as a whole.³⁴

Corporations and other business entities utilize a lower fiduciary duty of care than trust law. In the corporate context, as prescribed by the Model Business Corporation Act (MBCA)³⁵ (which Florida’s Business Corporation Act³⁶ mirrors), a breach of the fiduciary duty of care occurs when a corporate official acts with bad-faith, gross negligence, or recklessness.³⁷ This relaxed standard

²⁵ See OSBORNE M. REYNOLDS, JR., LOCAL GOVERNMENT LAW 815-16 (3d ed. 2009); *id.* at 816 n.11 (collecting cases).

²⁶ See 2 RESTATEMENT (THIRD) OF AGENCY § 8.08 (AM. LAW INST. 2006).

²⁷ *Tuggle v. Mayor of Atlanta*, 57 Ga. 114, 117 (1876).

²⁸ This has been termed the “Special injury rule” or “Rickman rule.”

²⁹ *Dep’t of Rev. v. Markham*, 396 So. 2d 1120, 1121 (Fla. 1981); see also *Rickman v. Whitehurst*, 74 So. 205, 207 (Fla. 1917) (Generally, for a taxpayer to have standing to challenge a government’s compliance with the law, the taxpayer must establish a “special damage to his individual interests, distinct from that of every other inhabitant”); *School Bd. of Volusia Co. v. Clayton*, 691 So. 2d 1066, 1068 (Fla. 1997) (requirement of special injury for taxpayer standing is “consistent with long established precedent”).

³⁰ *N. Broward Hosp. Dist. v. Fornes*, 476 So.2d 154 (Fla.1985); *Rickman v. Whitehurst*, 73 Fla. 152, 74 So. 205 (1917).

³¹ UNIF.TR.CODE § 804 (UNIF. LAW COMM’N 2000).

³² *Id.*

³³ See John H. Langbein, *The Contractarian Basis of the Law of Trusts*, 105 YALE L.J. 625, 656 (1995)

³⁴ 3 RESTATEMENT (THIRD) OF TRS. § 87 cmt. c (AM. LAW INST. 2007).

³⁵ MODEL BUS. CORP. ACT (AM. BAR ASS’N 2016); see also *Corp. Laws Comm., Am. Bar Ass’n Bus. Law Section, Model Business Corporation Act* (2016 Revision), 72 BUS. LAW. 421, 421 (2017) (reporting that the model act has been “substantially adopted by a majority of the states”).

³⁶ Chapter 607, F.S.

³⁷ See, e.g., *AmeriFirst Bank v. Bomar*, 757 F. Supp. 1365, 1376 (S.D. Fla. 1991) (requiring a

of care is largely due to the application of the business judgment rule. Under this doctrine, courts will not review decisions of corporate officials as being right or wrong, good or bad, because business operations and market transactions are inherently risky, and corporate officials are obligated to engage in this risk on behalf of a corporation to provide benefits to stakeholders.³⁸ Instead, the fiduciary duty of care in the corporate decision-making context is reviewed for the processes utilized, and the degree of diligence exercised by officials in coming to and effectuating a decision.³⁹

The Department of Business and Professional Regulation

The DBPR, through various divisions, regulates and licenses businesses and professionals in Florida. The divisions established under DBPR include:

- The Division of Administration;
- The Division of Alcoholic Beverages and Tobacco;
- The Division of Certified Public Accounting;
- The Division of Drugs, Devices, and Cosmetics;
- The Division of Florida Condominiums, Timeshares, and Mobile Homes;
- The Division of Hotels and Restaurants;
- The Division of Pari-mutuel Wagering;
- The Division of Professions;
- The Division of Real Estate;
- The Division of Regulation;
- The Division of Technology; and
- The Division of Service Operations.⁴⁰

The Department, through its various divisions, oversees and administers certain training programs related to the professions it regulates. Additionally, under the Condominium Act, Chapter 718, and the Cooperative Act, Chapter 719, F.S., require the Division of Florida Condominiums, Timeshares and Mobile Homes (Division) to provide training and educational programs for condominium and cooperative association board members and unit owners.⁴¹ The training may include web-based electronic media and live training seminars in various locations throughout the state. The Division is permitted to review and approve education and training programs for board members and unit owners offered by providers and must maintain and make available a current list of approved programs and providers.⁴²

showing of “abuse of discretion, fraud, bad faith or illegality” to rebut the presumption of good faith).

³⁸ WILLIAM T. ALLEN ET AL., COMMENTARIES AND CASES ON THE LAW OF BUSINESS ORGANIZATION 263 (2d ed. 2007).

³⁹ See *Smith v. Van Gorkom*, 488 A.2d 858 (Del. Supr. 2009); “[i]n the famous case *Smith v. Van Gorkom*, a corporate board approved a sale of the corporation after a two-hour meeting, relying “solely upon” the oral presentations of three board members, an internal study of the merger, a legal opinion, and the board’s own experience. The Supreme Court of Delaware held that by not considering all material information reasonably available, the board had violated its fiduciary duty of care in that “specific context of a proposed merger.” Max Schanzbach and Nadav Shoked, *Reclaiming Fiduciary Law for the City*, 70 Stan. L. Rev. 565, 615, 616 (February 2018).

⁴⁰ Section 20.165, F.S.

⁴¹ See Sections 718.501 and 719.501, F.S.

⁴² Section 718.501(1)(j), F.S.

Elected and appointed members and directors of the board of a residential condominium association must certify in writing, within 90 days after being elected or appointed, 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;
- Will work to uphold such documents and policies to the best of his or ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association’s members.⁴³

To meet the requirements of an educational curriculum for a condominium education program under s. 718.112(2)(d)4.b., F.S., the program must cover at least four of the following topics:

- Budgets and reserves.
- Elections.
- Financial reporting.
- Condominium operations.
- Records maintenance, including unit owner access to records.
- Dispute resolution.
- Bids and contracts.⁴⁴

Each condominium association which operates more than two units must pay the Division an annual fee of \$4 for each residential unit in the condominiums operated by the association.⁴⁵ The association is assessed a penalty of 10 percent of the amount due, if the fee is not paid by March 1.⁴⁶ Additionally, until the amount due, plus any penalty, is paid, the association will not have legal standing to maintain or defend any action in the courts.⁴⁷

III. Effect of Proposed Changes:

Section 1 creates part IX of chapter 112, F.S., consisting of s. 112.89, F.S., to be entitled “Fiduciary Duty of Care for Appointed Public Officials and Executive Officers.”

Section 2 creates s. 112.89, F.S., to establish a fiduciary duty of care for appointed public officials and executive officers acting to the applicable entity in accordance with law he or she serves. The bill makes a statement of legislative findings providing that:

- Appointed public officials and executive officers acting on behalf of governmental entities owe a fiduciary duty to the entities they serve; and
- Codifying a fiduciary duty of care will require that appointed public officials and executive officers stay adequately informed of affairs, perform due diligence, perform reasonable oversight, and practice fiscal responsibility regarding decisions involving corporate and proprietary commitments on behalf of a governmental entity.

The bill includes the following definitions:

⁴³ Section 718.112(2)(d)4.b., F.S.

⁴⁴ Rule 61B-19.001, F.A.C.

⁴⁵ Section 718.501(2)(a), F.S.

⁴⁶ *Id.*

⁴⁷ *Id.*

- “Appointed public official” means either a “local officer” as defined in s. 112.3145(1)(a)2.a., b., c., d., or f., F.S., or a “state officer” as defined in ss. 112.3145(1)(c)2. and 3., F.S.;⁴⁸
- “Department” means the DBPR;
- “Executive officer” means the chief executive officer of a governmental entity to which an appointed public official is appointed;
- “General counsel” means the chief legal counsel of a governmental entity to which an appointed public official or an executive officer is appointed or hired.
- “Governmental entity” means the entity, or a board, a council, a commission, an authority, or other body thereof, to which an appointed public official or an executive officer is appointed or hired.

The bill establishes an express fiduciary duty of care for each appointed public official and executive officer to the applicable entity he or she serves in accordance with law. The bill specifies that each appointed public official and executive officer has the duty to:

- Act in accordance with the laws, ordinances, rules, policies, and terms governing his or her office or employment;
- Act with the care, competence, and diligence normally exercised by reasonably prudent persons in similar corporate and proprietary circumstances;
- Act only within the scope of his or her authority;
- Refrain from conduct that is likely to damage the financial or economic interests of the governmental entity;
- Use reasonable efforts to maintain documentation in accordance with applicable laws; and
- Maintain reasonable oversight of any delegated authority and discharge his or her duties with the care that a reasonably prudent person in a like business position would believe appropriate under the circumstances.

The bill provides that the duty to maintain reasonable oversight includes (1) becoming reasonably informed in connection with any decision-making function; (2) becoming reasonably informed when devoting attention to any oversight function; (3) keeping reasonably informed concerning the affairs of the governmental entity; and (4) keeping reasonably informed concerning the performance of the governmental entity’s executive officers or other officers, agents, or employees. While this provision creates express fiduciary duties for appointed public officials and state officers, it does not create a private cause of action or enforcement mechanism.

This section also establishes training requirements. Each appointed public official and executive officer, beginning January 1, 2022, must complete a minimum of 5 hours of board governance training (Governance Training) for each term served. For those holding office or employed by a governmental entity on January 1, 2022, he or she is required to complete 5 hours of Governance Training before the expiration of his or her term of service. If the appointed public official or appointed executive officer is employed under a contract that does not specify a termination date for employment, the he or she must complete the 5 hours of Governance Training by January 1,

⁴⁸ Approximately 16,602 individuals report under these provisions (approximately 15,250 reporting under subsection (1)(a)2.; approximately 1,139 reporting under subsection (1)(c)2., and approximately 213 under subsection (1)(c)3.) Email from Kerrie Stillman, Deputy Executive Director, Florida Commission on Ethics (February 26, 2021)(on file with the Senate Governmental Oversight and Accountability Committee).

2023, and once every 4 years thereafter for the duration of their employment. An appointed public official or executive officer who is appointed, reappointed, or hired after January 1, 2022, must complete the 5 hours of Governance Training within 180 days after date of his or her appointment, reappointment or hire.

The bill requires the DBPR, by January 1, 2022, to either (1) contract for or approve a Governance Training program that includes an affordable web-based electronic media option; or (2) publish a list of approved training providers. A provider may include (1) a Florida College System institution; (2) a state university; (3) a nationally recognized entity deemed qualified by the department as capable of providing the specified minimum Governance Training requirements.

The bill provides that the Governance Training programs, at a minimum, must include education materials and instruction related to:

- Generally accepted corporate board governance principles and best practices;
- Corporate board fiduciary duty of care legal analyses;
- Corporate board oversight and evaluation procedures;
- Governmental entity responsibilities;
- Executive officer responsibilities;
- Executive officer performance evaluations;
- Selecting, monitoring, and evaluating an executive management team;
- Reviewing and approving proposed investments, expenditures, and budget plans;
- Financial accounting and capital allocation principles and practices;
- New governmental entity member orientation; and
- The fiduciary duty of care and obligations imposed upon appointed public officials and executive officers pursuant to this section.

A governmental entity complies with the Governance Training by providing a DBPR-approved program or contracting with a provider listed by DBPR. The bill allows governmental entities with annual revenues of less than \$300,000 to use in-house counsel or the in-house counsel for the unit of government that created the entity, to provide Governance Training as long as it comports with the minimum course content established by DBPR rule.

The bill sets forth Governance Training compliance requirements. Each appointed public official and the executive officer must certify, in writing or electronic form and under oath to DBPR that she or he:

- Has completed the Governance Training;
- Has read the laws and relevant policies applicable to his or her position;
- Will work to uphold such laws and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility.

This certification must be submitted within 30 days of completing the Governance Training.

The bill provides three exceptions to the Governance Training requirement for (1) appointed public officials and executive officers of governmental entities whose annual revenues are less than \$100,000; (2) appointed officials who hold elected office in another capacity; or (3)

appointed public officials or executive officers who complete board governance training involving fiduciary duties or responsibilities which is required under any other state law.

The bill grants rulemaking authority to the DBPR.

The bill requires approval by a majority vote of the governing body of the governmental entity for the appointment of any executive officer or general counsel.

The bill provides standards for legal counsel requiring all legal counsel employed by a governmental entity must represent the legal interests and positions of the governmental entity and not the interest of any individual or employee of the governmental entity, unless such representation is directed by the governmental entity.

Section 3 provides that the bill will take effect on July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Article VII, subsection (a) of section 18 of the State Constitution provides that cities and counties are not bound by general laws requiring them to spend funds or take action that requires the expenditure of funds unless certain specified exemptions or exceptions are met.

Under this bill, there is a possibility cities and counties may incur costs relating to the board governance training. However, to the extent the bill applies to counties and municipalities, the mandate requirements do not apply to laws having an insignificant impact which, for Fiscal Year 2020-2021, is forecast at \$2.2 million.^{49,50,51} The fiscal impact of this bill on cities and counties is indeterminate. The bill's impact is largely dependent on the affordability of the DBPR training programs⁵² and the number of individuals within county and municipal governments that fit within the scope of the bill.

If costs imposed by the bill are determined to exceed \$2.2 million in the aggregate, the bill may be binding on cities and counties if the bill contains a finding of important state interest and meets one of the exceptions specified in State Constitution (e.g., applies to all persons similarly situated (i.e., cities, counties, and all other state and local governing

⁴⁹ FLA. CONST. art. VII, s. 18(d).

⁵⁰ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, Interim Report 2012-115: Insignificant Impact, (Sept. 2011), available at: <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited February 25, 2021).

⁵¹ Based on the Florida Demographic Estimating Conference's November 3, 2020, population forecast for 2021 of 21,830,364. The conference packet is available at: <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited February 25, 2021).

⁵² The majority of the approved providers for the DBPR condominium board member training courses are provided at no fee. See DBPR website, *Approved Providers*, available at: <http://www.myfloridalicense.com/dbpr/lsc/documents/CondoCOOPListofApprovedProviders2015.pdf> (last visited February 25, 2021).

entities with appointed officials) or enactment by vote of two-thirds of the membership of each house).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The private sector will experience an indeterminate positive fiscal impact to the extent of DBPR contracts with private entities for the required Governance Training.

C. Government Sector Impact:

The DBPR will experience a negative fiscal impact as it uses resources to implement the provisions of the bill related to training and processes the certification of completed training. Also, governmental entities meeting the bill's criteria may be required to expend funds in providing the training to its appointed public officials or executive officers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 112.89 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 16, 2021:

The amendment removes officials serving on pension and retirement boards from the definition of “appointed public official.”

- B. **Amendments:**

None.



635124

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Diaz) recommended the following:

Senate Amendment

Delete lines 46 - 48

and insert:

(a) "Appointed public official" means either a "local officer" as defined in s. 112.3145(1) (a)2.a., b., c., d., or f., or a "state officer" as defined in s. 112.3145(1) (c)2. and 3.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16/21
Meeting Date

SB 1924
Bill Number (if applicable)

Topic Limitations on Emergency Powers... Amendment Barcode (if applicable)

Name Tonnette (Tone-Net) Graham

Job Title Associate Director of Public Policy

Address 100 S. Monroe Street Phone 850.509.5333
Street

Tallahassee, FL 32301 Email tgraham@flcounties.com
City State Zip

Speaking: For Against Information

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

Representing Florida Association of Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/16/21

Meeting Date

1924

Bill Number (if applicable)

Topic Limitations of Emergency Powers

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title

Address Phone

Street

City

State

Zip

Email

Speaking: For Against Information

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

Representing Florida Rising

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-16-21

Meeting Date

1924

Bill Number (if applicable)

Topic SB 1924 Emergency Powers

Amendment Barcode (if applicable)

Name Scott Dudley

Job Title Director, Federal Affairs, Florida League of Cities

Address 39 S. Bronough Suite 300 Phone 850-701-3652

Street

City Tallahassee FL

State

Zip

Email

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

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

Representing Florida League of Cities

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

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

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

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

By Senator Diaz

36-00507B-21

20211924__

1 A bill to be entitled

2 An act relating to limitations on emergency powers of
3 political subdivisions; amending s. 252.38, F.S.;
4 requiring that certain emergency measures issued by a
5 political subdivision be narrowly tailored to a
6 compelling public health or safety purpose; specifying
7 additional requirements for local emergency measures;
8 providing an effective date.

9
10 Be It Enacted by the Legislature of the State of Florida:

11
12 Section 1. Paragraph (c) is added to subsection (3) of
13 section 252.38, Florida Statutes, to read:

14 252.38 Emergency management powers of political
15 subdivisions.—Safeguarding the life and property of its citizens
16 is an innate responsibility of the governing body of each
17 political subdivision of the state.

18 (3) EMERGENCY MANAGEMENT POWERS; POLITICAL SUBDIVISIONS.—

19 (c) Notwithstanding any other law, any emergency order,
20 decree, regulation, or other requirement issued by a political
21 subdivision which curtails or infringes the rights of private
22 individuals must be narrowly tailored to serve a compelling
23 public health or safety purpose. Any such emergency measure must
24 be limited in duration, applicability, and scope in order to
25 reduce any infringement on individual liberty to the greatest
26 extent possible.

27 Section 2. This act shall take effect July 1, 2021.

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 Community Affairs

BILL: CS/SB 1924

INTRODUCER: Community Affairs Committee and Senator Diaz

SUBJECT: Limitations on Emergency Powers of Political Subdivisions

DATE: March 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	Fav/CS
2.	_____	_____	MS	_____
3.	_____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1924 establishes that if a political subdivision deprives any person of a constitutional right, fundamental liberty, statutory right, or property to address a purported emergency, the political subdivision bears the burden of proving that the exercise of police power is narrowly tailored, serves a compelling governmental interest, and accomplishes the intended goal through the use of the least intrusive means.

The bill also provides that the Governor, or Legislature by concurrent resolution, may invalidate a political subdivision's emergency action if the Governor or Legislature determines that the action unnecessarily restricts a constitutional right, fundamental liberty, or statutory right.

Lastly, the bill provides that an emergency order issued by a political subdivision will automatically expire 10 days after its issuance unless extended by a majority vote of the political subdivision's governing body.

The bill takes effect July 1, 2021.

II. Present Situation:

The State Emergency Management Act

The State Emergency Management Act in ch. 252, F.S., describes how Florida prepares, responds, recovers, and mitigates emergencies. Chiefly, this Act endows the Governor with authority to declare a state of emergency.¹ In a state of emergency, the Governor and local governments have broad power to perform necessary actions to ensure the health, safety, and welfare of Floridians.² A state of emergency grants the Governor with additional statutory authority to perform actions not otherwise allowed by law, such as the ability to impose curfews, order evacuations, determine means of ingress and egress to and from affected areas, and commandeer or utilize private property subject to compensation. To facilitate emergency measures, the Governor has the power to issue executive orders, proclamations, and rules, which have the force and effect of law.³ The Governor may delegate this and other emergency powers to executive agencies and local governments.⁴ Florida law does not condition the Governor's ability to declare a state of emergency on any specific prerequisite other than the existence of an actual or impending "emergency."⁵

Emergency Management Powers of Political Subdivisions

The specific emergency management powers afforded to local governments are described in s. 252.38, F.S. These powers may be supplemented by any powers delegated by the Governor to a local government during a state of emergency, or conversely, may be preempted by the authority of the Governor. Section 252.38, F.S., begins by stating, "[s]afeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state."

More specifically, s. 252.38(3), F.S., enumerates the following powers and authorities granted to political subdivisions to carry out the provisions of the State Emergency Management Act:

- To appropriate and expend funds; make contracts; obtain and distribute equipment, materials, and supplies for emergency management purposes; provide for the health and safety of persons and property, including emergency assistance to the victims of an emergency, and direct and coordinate the development of emergency management plans and programs.
- To appoint and manage emergency management workers, such as coordinators, rescue teams, fire and police personnel, and others.
- To establish emergency operating centers to provide continuity of government and direction and control of emergency operations.
- To assign and make available for duty the offices and agencies of the political subdivision.

¹ Section 252.36(2), F.S.

² *Id.* at (5)(g). See also *Miami-Dade County v. Miami Gardens Square One, Inc.*, --- So.3d ---, 2020 WL 6472542 (Fla. 3rd DCA Nov. 4, 2020).

³ *Id.* at (1)(b).

⁴ Section 252.35(2)(v), F.S.

⁵ Section 252.36(2), F.S. An "emergency" is defined as "any occurrence, or threat thereof, . . . which results or may result in substantial injury or harm to the population or substantial damage to or loss of property."

- To request state assistance or invoke emergency-related mutual-aid assistance by declaring a state of local emergency, the duration of which is limited to 7 days and may be extended, as necessary, in 7-day increments.
- To waive procedures and formalities otherwise required of the political subdivision by law pertaining to:
 - Performance of public works and taking whatever prudent action is necessary to ensure the health, safety, and welfare of the community.
 - Entering contracts, incurring obligations, employing of permanent or temporary workers, utilization of volunteer workers, rental of equipment, acquisition and distribution of supplies, materials, and facilities, and appropriation and expenditure of public funds.

Orders and Rules

Section 252.46(1), F.S., authorizes and empowers political subdivisions (and state agencies) to make, amend, and rescind such orders and rules as necessary for emergency management purposes to carry out the provisions of ss. 252.31-252.90, F.S. However, these orders and rules may not be inconsistent with any orders or rules adopted by the Division of Emergency Management or any state agency exercising a power delegated to it by the Governor or the Division. All such orders and rules promulgated by a political subdivision have the full force and effect of law when filed with the office of the clerk or recorder of the political subdivision promulgating the order or rule.⁶

Penalties

Under s. 252.50, F.S., any person who violates any provision of ss. 252.31-252.90, F.S., or any rule or order made by a political subdivision pursuant thereto is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.⁷

Local Emergency Ordinances

Statutory emergency ordinance procedures allow a county or municipality's governing body at any regular or special meeting to enact or amend any ordinance with a waiver of the notice requirements.⁸ For a typical non-emergency ordinance, a notice of intent to consider a proposed ordinance must be provided at least 10 days prior to the meeting by publication in a newspaper. Counties may enact an emergency ordinance by a four-fifths vote, declaring that an emergency exists and that the immediate enactment of said ordinance is necessary.⁹ An emergency ordinance enacted under this procedure shall be transmitted by e-mail to the Department of State and shall take effect when a copy has been accepted and confirmed by the department by e-mail. A two-thirds vote may enact municipal emergency ordinances. These procedures essentially

⁶ Any person violating any rule or order made pursuant to ss. 252.31-252.90, F.S., is guilty of a misdemeanor of the second degree.

⁷ Section 775.082(4)(b), F.S.: "For a misdemeanor of the second degree, by a definite term of imprisonment not exceeding 60 days." s. 775.083(1)(e), F.S.: "Fines for designated crimes and for noncriminal violations shall not exceed: \$500, when the conviction is of a misdemeanor of the second degree or a noncriminal violation."

⁸ See s. 125.66(3), F.S., for county emergency ordinance procedures and s. 166.041(3)(b), F.S., for municipal emergency ordinance procedures.

⁹ However, no emergency ordinance or resolution may be enacted which establishes or amends zoning map designations of any parcel or that changes the list of permitted uses within a zoning category.

allow a county or municipality to enact or amend an ordinance with no notice and taking effect immediately.

Police Powers

In addition to the emergency powers provided to local governments in the State Emergency Management Act, local governments also have State police powers under home rule authority.¹⁰ Police Powers are the government's sovereign power to enact and enforce laws and manage civil life.

Under the Tenth Amendment to the U.S. Constitution, states are granted the rights and powers "not delegated to the United States." Courts have interpreted this phrase to mean that state governments have the power to establish and enforce laws protecting the welfare, safety, and health of the public.¹¹

Individual Rights and Liberties

As a constraint to State police powers, the founders of our country and states provided individuals civil rights and liberties enumerated in the Federal and state constitutions. The principal purpose of the U.S. and state governments is to preserve and protect these rights and liberties.¹² The overwhelming majority of court decisions that define American civil rights and liberties are based on the Bill of Rights, the first ten amendments added to the Constitution in 1791.¹³ Civil rights are also protected by the Fourteenth Amendment, which protects the state governments' violation of rights and liberties.

The Fifth and Fourteenth Amendments to the U.S. Constitution provide that "[n]o state... shall deprive any person of life, liberty, or property without due process of law."¹⁴ This constitutional protection is known as the due process clause. The due process clause requires that every person shall have the protection of his day in court, the benefit of the general law, a law which hears before it condemns, which proceeds not arbitrarily or capriciously, but upon inquiry, and renders judgment only after trial so that every citizen shall hold life, liberty, property, and immunities under the protection of the U.S. Constitution and general laws which govern society.¹⁵ The U.S. Supreme Court has described due process protections as those rights that are "the very essence of a scheme of ordered liberty" and essential to "a fair and enlightened system of justice."¹⁶

¹⁰ Under Article VIII, Section 1 and 2 of the Florida Constitution, counties and municipalities are granted such powers of self-government as provided by general or special law. This enumerated power of self-government is known as "home rule power." *See also* s. 125.01 and s. 166.021, F.S.

¹¹ *See Bond v. U.S.*, 572 U.S. 844 (2014).

¹² "Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses." – James Madison, *Essay on Property*, 1792.

¹³ The Bill of Rights includes: the freedom of religion, speech, press, assembly, and petition; the right to keep and bear arms in order to maintain a well-regulated militia; freedom from unreasonable searches and seizures; right to privacy; right to due process of law, freedom from self-incrimination, double jeopardy; rights of accused persons, e.g., right to a speedy and public trial; right of trial by jury in civil cases; freedom from excessive bail, cruel and unusual punishments.

¹⁴ U.S. Const. amend. V. & XIV.

¹⁵ *Hurtado v. California*, 110 U. S. 516, 535 (1884).

¹⁶ *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934).

While courts have not established an exact definition of "liberty" in this constitutional protection, the U.S. Supreme court has stated that "[w]ithout doubt, it denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."¹⁷ When discussing our right to liberty, courts have put enfaces on whether a right is deeply rooted in our nation's history and tradition.¹⁸

The Strict Scrutiny Standard of Judicial Review

The strict scrutiny standard of judicial review is a paradigm courts use to determine the constitutionality of government action. When a statute or ordinance infringes on a civil right or impairs the exercise of fundamental liberty, then the law must pass strict scrutiny standards of judicial review. To withstand strict scrutiny, a law must be necessary to promote a compelling governmental interest and must be narrowly tailored to advance that interest (accomplishes its goal through the use of the least intrusive means).¹⁹

Government action may fail the narrow tailoring inquiry by lacking proof of the necessity of the infringement, being underinclusive, or being overinclusive.²⁰

Proof of Necessity of Infringement

Under this inquiry, the government's chosen means must be "the least restrictive alternative" that would achieve its goals.²¹ A law would not be necessary to achieve its ends if the government could accomplish the same result while inflicting lesser burdens on protected rights.²²

Underinclusive

In identifying the requirements of narrow tailoring, the Supreme Court often says that governmental infringements on fundamental rights must not be underinclusive: A statute will not survive strict scrutiny if it fails to regulate activities that pose substantially the same threats to the government's purportedly compelling interest as the conduct that the government prohibits. Underinclusive regulations "diminish the credibility of the government's rationale" for infringing on constitutional rights and generate suspicion that the selective targeting betrays an impermissible motive. Even absent concern about governmental motives, the demand that restrictions on constitutional rights are not underinclusive reflects an insistence that the

¹⁷ *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923).

¹⁸ *McDonald v. City of Chicago, III.*, 561 U.S. 742 (2010).

¹⁹ *State v. J.P.*, 907 So.2d 1101 (Fla. 2004); *Winfield v. Div. of Pari-Mutuel Wagering*, 477 So.2d 544 (Fla.1985) (explaining that where law intrudes on fundamental right to privacy guaranteed in Florida's Constitution, the State must demonstrate that the challenged regulation serves a compelling state interest and accomplishes its goal through the use of the least intrusive means).

²⁰ See generally Richard H. Fallon, Jr., *Strict Judicial Scrutiny*, 54 *UCLA Law Review* 1267 (2007).

²¹ *Ashcroft v. ACLU*, 542 U.S. at 666; see *Fla. Star v. B.J.F.*, 491 U.S. 524, 538 (1989) (striking down a governmental action in part because less speech-restrictive alternatives were available).

²² Fallon, *Strict Judicial Scrutiny*, 54 *UCLA Law Review* at p.1326.

government does not infringe on rights when doing so will predictably fail to achieve purportedly justifying goals.²³

Overinclusive

Just as the Supreme Court says that the narrow tailoring requirement forbids or at least strongly disfavors underinclusive statutes, it insists that "overinclusive" statutes also fail strict judicial scrutiny. The prohibition against overinclusiveness suggests that a statute might be condemned for lack of narrow tailoring if it circumscribes an overly broad swath of constitutionally protected actions.²⁴

An Alternative Standard of Judicial Review for Emergencies

As a practical matter, a substantial number of federal and state courts have utilized a different standard of judicial review for infringements to constitutional rights and fundamental liberties during the COVID-19 pandemic.²⁵ The COVID-19 standard of review appears to downgrade the level of scrutiny judges give to state infringements on fundamental rights from strict scrutiny to something akin to a rational basis test.²⁶ The COVID-19 standard of review appears to vindicate government infringement on fundamental rights and liberties during a 'crisis' or 'emergency.' The first court to iterate the COVID-19 standard of judicial review was the Fifth Circuit U.S. Court of Appeals in the case of *In re Abbott*.²⁷

Since the COVID-19 standard was first used in *In re Abbott*, the U.S. Supreme Court has supported this type of analysis in *South Bay United Pentecostal Church v. Newsom* (May 29, 2020) and criticized it in *Roman Catholic Diocese of Brooklyn v. Cuomo* (November 25, 2020).²⁸ In the latter case, Justice Gorsuch begins his concurring opinion by stating:

²³ *Id.* at p. 1327; *See Church of the Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 547 (1993) ("It is established in our strict scrutiny jurisprudence that 'a law cannot be regarded as protecting an interest "of the highest order" ... when it leaves appreciable damage to that supposedly vital interest unprohibited.'" (quoting Fla. Star, 491 U.S. at 541-42) (Scalia, J., concurring in part)).

²⁴ *Id.* at p.1328; *Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 255 (2002) ("[t]he overbreadth doctrine prohibits the Government from banning unprotected speech if a substantial amount of protected speech is prohibited or chilled in the process.").

²⁵ *See Hartman v. Acton*, 2020 WL 1932896 (S.D. Ohio 2020); *Cassell v. Snyders*, 2020 WL 2112374 (N.D. Illinois 2020); *SH3 Health Consulting, LLC v. Page*, 2020 WL 2308444 (E.D. Missouri 2020); *Givens v. Newsom*, 2020 WL 2307224 (E.D. California 2020).

²⁶ Under the rational basis standard of review, legislation is presumed to be valid and will be sustained if the classification drawn by the statute is rationally related to a legitimate state interest. *Lawrence v. Texas*, 539 U.S. 558, 579 (2003).

²⁷ *In re Abbott*, 954 F.3d 772 (April 7, 2020). On January 25, 2021, The Supreme Court granted a writ of certiorari in this case and vacated the judgement. The Court remanded the case to the United States Court of Appeals for the Fifth Circuit with instructions to dismiss the case as moot. *See Planned Parenthood v. Abbott*, 2021 WL 231539, No. 20-305 (Jan. 25, 2021).

²⁸ *Compare South Bay United Pentecostal Church v. Newsom*, 140 S.Ct. 1613 (May 29, 2020) ("Our Constitution principally entrusts the safety and the health of the people to the politically accountable officials of the States to guard and protect.") *with Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63 (Nov. 25, 2020) ("Nothing in *Jacobson* purported to address, let alone approve, such serious and long-lasting intrusions into settled constitutional rights... Why have some mistaken this Court's modest decision in *Jacobson* for a towering authority that overshadows the Constitution during a pandemic? In the end, I can only surmise that much of the answer lies in a particular judicial impulse to stay out of the way in times of crisis. But if that impulse may be understandable or even admirable in other circumstances, we may not shelter in place when the Constitution is under attack. Things never go well when we do.").

"Government is not free to disregard the First Amendment in times of crisis. At a minimum, that Amendment prohibits government officials from treating religious exercises worse than comparable secular activities, unless they are pursuing a compelling interest and using the least restrictive means available. Yet recently, during the COVID pandemic, certain States seem to have ignored these long-settled principles."

In re Abbott

On April 7, 2020, the Fifth Circuit decided the case of *In re Abbott*. In this case, abortion services providers in Texas challenged Governor Abbott's executive order requiring health care professionals and facilities to postpone non-essential surgeries and procedures to preserve critical medical resources to fight the COVID-19 pandemic. The United States District Court initially entered a temporary restraining order (TRO) barring the executive order's enforcement as applied to non-emergency medication abortions and surgical abortions. Governor Abbott and state officials petitioned for a writ of mandamus from the Fifth Circuit. The Fifth Circuit held that the district court abused its discretion by failing to apply the legal framework governing state authority during a public health crisis. The Fifth Circuit concluded that the executive order was related to the COVID-19 public health crisis and was not in palpable conflict with the U.S. Constitution.²⁹ This standard of review was fully articulated by the Fifth Circuit as follows:

"The bottom line is this: when faced with a society-threatening epidemic, a state may implement emergency measures that curtail constitutional rights so long as the measures have at least some real or substantial relation to the public health crisis and are not beyond all question, a plain, palpable invasion of rights secured by the fundamental law. Courts may ask whether the state's emergency measures lack basic exceptions for extreme cases, and whether the measures are pretextual—that is, arbitrary or oppressive. At the same time, however, courts may not second-guess the wisdom or efficacy of the measures."³⁰

This standard of review is based on the Supreme Court case *Jacobson v. Commonwealth of Massachusetts*.³¹ *Jacobson* was decided in 1905 before the judiciary's formulation and adoption of the strict scrutiny standard of review.

Court Rulings on Emergency Actions by Florida Political Subdivisions during COVID-19

Walton County Beach Closure

On March 19, 2020, the Walton County Board of County Commissioners adopted Ordinance 2020-08, which states, "[a]ll beaches within Walton County, Florida, are temporarily CLOSED to the public...It shall be unlawful for members of the public to access the beaches within Walton County." The ordinance recitals cite Governor DeSantis' Executive Order 20-68³² as the authority for the emergency measure and ss. 252.38 and 125.66(3), F.S.

²⁹ *In re Abbott*, 954 F.3d 772 (5th Cir. 2020).

³⁰ *Id.* at 784-785.

³¹ *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11 (1905).

³² EO 20-68 (March 17, 2020) Section 2 states "[p]ursuant to section 252.36(5)(k), Florida Statutes, I direct parties accessing public beaches in the State of Florida to follow the CDC guidance by limiting their gatherings to no more than ten persons, distance themselves from other parties by 6 feet, and support beach closures at the discretion of local authorities."

A group of property owners who own oceanfront (beach) property in Walton County affected by Ordinance 2020-08 filed suit challenging the ordinance's legality.³³ These parties claimed that Walton County's ordinance constituted a Fifth Amendment Takings,³⁴ was preempted by the Governor, violated Florida's constitutional Right to Privacy, violated constitutional due process rights, and lacked statutory authority.

After the plaintiffs filed a motion for an injunction against Walton County and a preliminary hearing, the Federal Judge issued an order denying plaintiffs' requests for relief. The judge did not find the county's action to violate the Fourth Amendment or Florida's privacy rights and found the ordinance to be consistent with, and authorized by, the Governor's Executive Order No. 20-68.

Alachua County Restrictions on Businesses and Mask Mandate

On May 2, 2020, the Alachua County Board of County Commissioners issued Emergency Order 2020-21, which among other measures, imposed mandatory face coverings in certain situations and locations where social distancing was not possible and imposed additional business occupancy restrictions.³⁵

A local business owner challenged the county's order claiming that the order lacked authority under the county code and the State Emergency Management Act, constituted a Fifth Amendment Takings, violated Florida's constitutional Right to Privacy, and violated the Equal Protection Clause.³⁶ In denying the plaintiff's motion for an injunction against the county, the judge claims several rationales. First, the judge states, "[t]he protection of the safety and welfare of the public is inherent in the role of local government." The judge continues this line of reasoning by explaining:

"Alachua County is responsible for reducing the spread of COVID-19 among its citizens and also for ensuring its citizens have access to medical care if they become infected. An individual Alachua County citizen's right to be let alone is no more precious than the corresponding right of his fellow citizens not to become infected by that person and potentially hospitalized."³⁷

Leon County Mask Mandate

On June 23, 2020, Leon County's board of commissioners held a special meeting and unanimously adopted face-covering requirements through Emergency Ordinance 20-15. The Emergency Ordinance requires individuals in an indoor business establishment to wear a face

³³ *Dodero v. Walton County*, N.D. Fla. 2020, Case No.: 3:20cv5358-RV/HTC.

³⁴ The Fifth Amendment of the United States Constitution includes a provision known as the Takings clause, which states that "private property [shall not] be taken for public use, without just compensation."

³⁵ EO 20-112 (April 29, 2020) states "[i]n-store retail sales establishments may open storefronts if they operate at no more than 25 percent of their building occupancy and abide by the safety guidelines issued by the CDC and OSHA." Section 7 of Alachua County's order states, "[e]ssential services and activities, and retail establishments shall limit occupancy, to one per five hundred square feet of covered space. In no case does this allow more than Executive Order 20-112."

³⁶ *Green v. Alachua County*, Case No. 2020-CA-001249, Fla. 8th Cir. Ct.

³⁷ *Id.*

covering. The Emergency Ordinance was challenged as being unconstitutional.³⁸ On July 27, 2020, Circuit Court Judge John C. Cooper upheld the ordinance as constitutional. In his ruling, Judge Cooper states that:

"It has long been recognized that when, as here, there is an emergency, the police power gives governmental authorities power to act for the public welfare that they might not otherwise have. This line of cases extends back to the 1905 United States Supreme Court case of *Jacobson v. Commonwealth of Massachusetts*, 197 U.S. 11(1905)[.]"

Judge Cooper relies explicitly on the standard of judicial review iterated in *In re Abbott* when making his ruling:

"Importantly, it is 'no part of the function of a court to decide which measures are likely to be the most effective for the protection of the public against disease.' *In re Abbott*, 954 F. 3d 772, 778 (5th Cir. 2020)(quoting *Jacobson*, 197 U.S. at 29). When as here, a court is faced with a society threatening epidemic, 'a state may implement emergency measures that curtail constitutional rights so long as the measures have at least real or substantial relation to the public health crisis and are not beyond all question, a plain, palpable invasion of rights secured by the fundamental law.' *Id.* at 784 (quoting *Jacobson*, 197 U.S. at 31)."³⁹

Miami-Dade County Curfew

Miami-Dade County's third amendment to Emergency Order 27-20 included a late-night curfew provision commencing on October 12, 2020. The curfew provided that "no person shall make use of any street or sidewalk for any purpose, except police, fire rescue, first responder, medical, health care, media, and utility repair service personnel." The curfew also made additional exceptions for individuals traveling to and from "essential establishments" for work, persons walking dogs within 250 feet of a residence, and individuals "[t]raveling to and from any sporting event sponsored by the NCAA, Major League Baseball, or the National Football League, or any other national professional sports league or organization." In the order's recitals, Miami-Dade cited subsections (e) and (o) of section 8B-7(2) of the Code of Miami-Dade County as authority to issue the order.⁴⁰

On November 4, 2020, Florida's Third District Court of Appeal reversed a trial court injunction that enjoined Miami-Dade County from enforcing a late-night curfew meant to address the transmission of COVID-19.⁴¹ In this case, the court found that Governor DeSantis' executive

³⁸ *Power v. Leon County*, Case No. 2020-CA-001200, Fla. 2nd Cir. Ct., available at: <https://www.fl-counties.com/sites/default/files/2020-07/7.27.20%20Final%20Order.pdf> (last visited Mar. 12, 2021).

³⁹ *Id.* at 8.

⁴⁰ Section 8B-7(2)(e) and (o) of the Code of Miami-Dade County state, "(2) Once a Local State of Emergency has been declared, the Manager is authorized by the Mayor and the Board to order any or all of the following actions: (e) Curfew: In the period before, or during and immediately after an event, an order imposing a general curfew applicable to Miami-Dade County as a whole, or to geographical area(s) of Miami-Dade County and during hours the Manager deems necessary, and from time to time, to modify the hours the curfew will be in effect and what area(s) it applies to; (o) Such other orders as are immediately necessary for the protection of life and property; provided, however that any such orders shall, at the earliest practicable time, be presented to the Board for ratification or confirmation in accordance with this chapter."

⁴¹ *Miami-Dade County v. Miami Gardens Square One, Inc.*, --- So.3d ---, 2020 WL 6472542 (Fla. 3rd DCA Nov. 4, 2020).

order⁴² forbidding local governments from enacting COVID-19 emergency measures that "prevent[ed] an individual from working or from operating a business" did not expressly preempt the imposition of a curfew by the county.

In reaching this decision, the court found that the State Emergency Management Act did not expressly preempt emergency powers to the state. The imposition of a curfew was within the home rule powers of Miami-Dade County. The court specifically noted the provision in the State Emergency Management Act, which states, "[s]afeguarding the life and property of its citizens is an innate responsibility of the governing body of each political subdivision of the state."⁴³

Broward County Curfew

On October 16, 2020, Broward County issued Emergency Order 20-28, which allowed businesses to re-open subject to certain health protocols related to COVID-19. Sections 1 and 2 of Emergency Order 20-28, however, prohibited the sale or consumption of food or alcohol between the hours of midnight and 5:00 a.m. In response, a collective of restaurants and entertainment establishments licensed to serve food and libations in Broward County filed a lawsuit challenging the curfew.⁴⁴

On December 21, 2020, the Southern District of Florida U.S. District Court granted the Plaintiffs' motion for a temporary restraining order and preliminary injunction. It enjoined Broward County from enforcing the midnight to 5:00 a.m. curfew on the sale or consumption of food or alcohol. The court reasoned that the curfew restrictions did not "quantify the economic impact of each limitation or requirement on those restaurants" and "explain why each limitation or requirement is necessary for public health[.]" As required by Governor DeSantis' Executive Order 20-244. When discussing this issue, the court states:

"And, the restrictions on the sale, service, or consumption of food, is not related, in this record, to the increasing likelihood of contracting COVID-19. The record is certainly absent any analysis that "quantif[ies] the economic impact of each limitation or requirement on those restaurants" and "explain[s] why each limitation or requirement is necessary for public health" as applied to food service. Fla. Exec. Order 20-244, §§ 3(A)(i), (ii) (Sept. 25, 2020). Thus, on this record, the temporal restrictions on food and alcohol service are rather arbitrary."

III. Effect of Proposed Changes:

Section 1 amends s. 252.38, F.S., to establish that a political subdivision that deprives any person of a constitutional right, fundamental liberty, statutory right, or property to address a purported emergency bears the burden of proving that the exercise of police power is narrowly tailored, serves a compelling governmental interest, and accomplishes the intended goal through the use of the least intrusive means. It also provides that the Governor, or Legislature by concurrent resolution, may invalidate a political subdivision's emergency action if the Governor

⁴²EO 20-244 (Sep. 25, 2020).

⁴³ *Id.* at 5.

⁴⁴ *828 Management, LLC v. Broward county*, 2020 WL 7635169 (S.D. Fla. Dec. 21, 2020).

or Legislature determines that the action unnecessarily restricts a constitutional right, fundamental liberty, or statutory right.

Section 2 amends s. 252.46, F.S., to provide that an emergency order issued by a political subdivision will automatically expire 10 days after its issuance unless extended by a majority vote of the governing body of the political subdivision. Upon the expiration of an order, a political subdivision may not issue a substantially similar order to respond to the same emergency.

Section 3 states that the bill takes effect July 1, 2021.

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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 252.38 and 252.46 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 16, 2021:

The committee substitute:

- Provides a more precise iteration of the strict scrutiny standard of judicial review,
- Provides that the Governor, or Legislature by concurrent resolution, may at any time invalidate an emergency action by a political subdivision if it unnecessarily restricts a constitutional right, fundamental liberty, or statutory right, and
- Provides that an order issued by a political subdivision under s. 252.46, F.S., will automatically expire after 10 days unless extended by a majority vote of the political subdivision's governing body and that upon the expiration of an order, a political subdivision may not issue a substantially similar order to respond to the same emergency.

- B. **Amendments:**

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/17/2021	.	
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The Committee on Community Affairs (Diaz) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 252.38, Florida Statutes, is amended to
read:

252.38 Emergency management powers of political
subdivisions.—Safeguarding the life and property of its citizens
is an innate responsibility of the governing body of each
political subdivision of the state. However, political



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11 subdivisions are given police powers to preserve, not impair,
12 private rights. Therefore, a political subdivision that deprives
13 any person of a constitutional right, fundamental liberty,
14 statutory right, or property to address a purported emergency
15 bears the burden of proving that the exercise of police power is
16 narrowly tailored, serves a compelling governmental interest,
17 and accomplishes the intended goal through the use of the least
18 intrusive means.

19 (1) COUNTIES.—

20 (a) In order to provide effective and orderly governmental
21 control and coordination of emergency operations in emergencies
22 within the scope of ss. 252.31-252.90, each county within this
23 state shall be within the jurisdiction of, and served by, the
24 division. Except as otherwise provided in ss. 252.31-252.90,
25 each local emergency management agency shall have jurisdiction
26 over and serve an entire county. Unless part of an
27 interjurisdictional emergency management agreement entered into
28 pursuant to paragraph (3) (b) which is recognized by the Governor
29 by executive order or rule, each county must establish and
30 maintain such an emergency management agency and shall develop a
31 county emergency management plan and program that is coordinated
32 and consistent with the state comprehensive emergency management
33 plan and program. Counties that are part of an
34 interjurisdictional emergency management agreement entered into
35 pursuant to paragraph (3) (b) which is recognized by the Governor
36 by executive order or rule shall cooperatively develop an
37 emergency management plan and program that is coordinated and
38 consistent with the state comprehensive emergency management
39 plan and program.



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40 (b) Each county emergency management agency created and
41 established pursuant to ss. 252.31-252.90 shall have a director.
42 The director must meet the minimum training and education
43 qualifications established in a job description approved by the
44 county. The director shall be appointed by the board of county
45 commissioners or the chief administrative officer of the county,
46 as described in chapter 125 or the county charter, if
47 applicable, to serve at the pleasure of the appointing
48 authority, in conformance with applicable resolutions,
49 ordinances, and laws. A county constitutional officer, or an
50 employee of a county constitutional officer, may be appointed as
51 director following prior notification to the division. Each
52 board of county commissioners shall promptly inform the division
53 of the appointment of the director and other personnel. Each
54 director has direct responsibility for the organization,
55 administration, and operation of the county emergency management
56 agency. The director shall coordinate emergency management
57 activities, services, and programs within the county and shall
58 serve as liaison to the division and other local emergency
59 management agencies and organizations.

60 (c) Each county emergency management agency shall perform
61 emergency management functions within the territorial limits of
62 the county within which it is organized and, in addition, shall
63 conduct such activities outside its territorial limits as are
64 required pursuant to ss. 252.31-252.90 and in accordance with
65 state and county emergency management plans and mutual aid
66 agreements. Counties shall serve as liaison for and coordinator
67 of municipalities' requests for state and federal assistance
68 during postdisaster emergency operations.



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69 (d) During a declared state or local emergency and upon the
70 request of the director of a local emergency management agency,
71 the district school board or school boards in the affected area
72 shall participate in emergency management by providing
73 facilities and necessary personnel to staff such facilities.
74 Each school board providing transportation assistance in an
75 emergency evacuation shall coordinate the use of its vehicles
76 and personnel with the local emergency management agency.

77 (e) County emergency management agencies may charge and
78 collect fees for the review of emergency management plans on
79 behalf of external agencies and institutions. Fees must be
80 reasonable and may not exceed the cost of providing a review of
81 emergency management plans in accordance with fee schedules
82 established by the division.

83 (2) MUNICIPALITIES.—Legally constituted municipalities are
84 authorized and encouraged to create municipal emergency
85 management programs. Municipal emergency management programs
86 shall coordinate their activities with those of the county
87 emergency management agency. Municipalities without emergency
88 management programs shall be served by their respective county
89 agencies. If a municipality elects to establish an emergency
90 management program, it must comply with all laws, rules, and
91 requirements applicable to county emergency management agencies.
92 Each municipal emergency management plan must be consistent with
93 and subject to the applicable county emergency management plan.
94 In addition, each municipality must coordinate requests for
95 state or federal emergency response assistance with its county.
96 This requirement does not apply to requests for reimbursement
97 under federal public disaster assistance programs.



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98 (3) EMERGENCY MANAGEMENT POWERS; POLITICAL SUBDIVISIONS.—

99 (a) In carrying out the provisions of ss. 252.31-252.90,
100 each political subdivision shall have the power and authority:

101 1. To appropriate and expend funds; make contracts; obtain
102 and distribute equipment, materials, and supplies for emergency
103 management purposes; provide for the health and safety of
104 persons and property, including emergency assistance to the
105 victims of any emergency; and direct and coordinate the
106 development of emergency management plans and programs in
107 accordance with the policies and plans set by the federal and
108 state emergency management agencies.

109 2. To appoint, employ, remove, or provide, with or without
110 compensation, coordinators, rescue teams, fire and police
111 personnel, and other emergency management workers.

112 3. To establish, as necessary, a primary and one or more
113 secondary emergency operating centers to provide continuity of
114 government and direction and control of emergency operations.

115 4. To assign and make available for duty the offices and
116 agencies of the political subdivision, including the employees,
117 property, or equipment thereof relating to firefighting,
118 engineering, rescue, health, medical and related services,
119 police, transportation, construction, and similar items or
120 services for emergency operation purposes, as the primary
121 emergency management forces of the political subdivision for
122 employment within or outside the political limits of the
123 subdivision.

124 5. To request state assistance or invoke emergency-related
125 mutual-aid assistance by declaring a state of local emergency in
126 the event of an emergency affecting only one political



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127 subdivision. The duration of each state of emergency declared
128 locally is limited to 7 days; it may be extended, as necessary,
129 in 7-day increments. Further, the political subdivision has the
130 power and authority to waive the procedures and formalities
131 otherwise required of the political subdivision by law
132 pertaining to:

133 a. Performance of public work and taking whatever prudent
134 action is necessary to ensure the health, safety, and welfare of
135 the community.

136 b. Entering into contracts.

137 c. Incurring obligations.

138 d. Employment of permanent and temporary workers.

139 e. Utilization of volunteer workers.

140 f. Rental of equipment.

141 g. Acquisition and distribution, with or without
142 compensation, of supplies, materials, and facilities.

143 h. Appropriation and expenditure of public funds.

144 (b) Upon the request of two or more adjoining counties, or
145 if the Governor finds that two or more adjoining counties would
146 be better served by an interjurisdictional arrangement than by
147 maintaining separate emergency management agencies and services,
148 the Governor may delineate by executive order or rule an
149 interjurisdictional area adequate to plan for, prevent,
150 mitigate, or respond to emergencies in such area and may direct
151 steps to be taken as necessary, including the creation of an
152 interjurisdictional relationship, a joint emergency plan, a
153 provision for mutual aid, or an area organization for emergency
154 planning and services. A finding of the Governor pursuant to
155 this paragraph shall be based on one or more factors related to



156 the difficulty of maintaining an efficient and effective
157 emergency prevention, mitigation, preparedness, response, and
158 recovery system on a unijurisdictional basis, such as:

- 159 1. Small or sparse population.
- 160 2. Limitations on public financial resources severe enough
161 to make maintenance of a separate emergency management agency
162 and services unreasonably burdensome.
- 163 3. Unusual vulnerability to emergencies as evidenced by a
164 past history of emergencies, topographical features, drainage
165 characteristics, emergency potential, and presence of emergency-
166 prone facilities or operations.
- 167 4. The interrelated character of the counties in a
168 multicounty area.
- 169 5. Other relevant conditions or circumstances.

170 (4) EXPIRATION AND EXTENSION OF SIGNIFICANT EMERGENCY
171 ORDERS.—

172 (a) As used in this subsection, the term "significant
173 emergency order" means an order or ordinance issued or enacted
174 by a political subdivision in response to a state of emergency
175 declared pursuant to this chapter or a public health emergency
176 declared pursuant to chapter 381 which applies to all residents
177 of the political subdivision and limits the right of a resident
178 to:

- 179 1. Exercise religious freedom, including the right to
180 attend a religious service;
- 181 2. Speak freely or assemble;
- 182 3. Work, be rewarded for industry, or enter into a
183 contract;
- 184 4. Travel;



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- 185 5. Acquire, possess, or protect real or personal property;
- 186 6. Not be subject to unreasonable search and seizure; or
- 187 7. Purchase, keep, or bear a lawful firearm or ammunition.

188 (b) It is the intent of the Legislature to minimize the
189 negative effects and strictly scrutinize an extended significant
190 emergency order issued by a political subdivision. A significant
191 emergency order must be limited in duration, applicability, and
192 scope in order to reduce any infringement on individual liberty
193 to the greatest extent possible. Notwithstanding any other law,
194 in any action challenging a significant emergency order, the
195 issuing political subdivision bears the burden of proving that
196 the significant emergency order is narrowly tailored, serves a
197 compelling public health or safety purpose, and accomplishes the
198 intended goal through the use of the least intrusive means.

199 (c) A significant emergency order may provide exemptions
200 for first responders as defined in s. 112.1815(1); health care
201 practitioners as defined in s. 456.001; and employees of a
202 public utility as defined in s. 366.02(1).

203 (d) A significant emergency order shall automatically
204 expire 10 days after its issuance; however, such an order may be
205 extended before its expiration by a majority vote of the
206 governing body of the political subdivision if deemed necessary.

207 (e) Upon the expiration of a significant emergency order, a
208 political subdivision may not issue a substantially similar
209 order to respond to the same emergency.

210 Section 2. This act shall take effect July 1, 2021.

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

212 And the title is amended as follows:

213 Delete everything before the enacting clause



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214 and insert:

215 A bill to be entitled
216 An act relating to emergency management powers of
217 political subdivisions; amending s. 252.38, F.S.;
218 specifying that political subdivisions have the burden
219 of proving the proper exercise of its police power in
220 issuing certain emergency orders; defining the term
221 "significant emergency order"; providing legislative
222 intent; specifying limitations on the duration,
223 applicability, and scope of significant emergency
224 orders; specifying that political subdivisions have
225 the burden of proving the legality of a significant
226 emergency order in any action challenging such an
227 order; authorizing significant emergency orders to
228 exempt specified individuals; specifying the duration
229 of significant emergency orders; authorizing the
230 extension of such orders if certain conditions are
231 met; prohibiting the issuance of certain significant
232 emergency orders following an order's expiration;
233 providing an effective date.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2021	.	
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and insert:

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political subdivision of the state. However, political



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12 private rights. Therefore, a political subdivision that deprives
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24 division. Except as otherwise provided in ss. 252.31-252.90,
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26 over and serve an entire county. Unless part of an
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30 maintain such an emergency management agency and shall develop a
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32 and consistent with the state comprehensive emergency management
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38 consistent with the state comprehensive emergency management
39 plan and program.



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42 The director must meet the minimum training and education
43 qualifications established in a job description approved by the
44 county. The director shall be appointed by the board of county
45 commissioners or the chief administrative officer of the county,
46 as described in chapter 125 or the county charter, if
47 applicable, to serve at the pleasure of the appointing
48 authority, in conformance with applicable resolutions,
49 ordinances, and laws. A county constitutional officer, or an
50 employee of a county constitutional officer, may be appointed as
51 director following prior notification to the division. Each
52 board of county commissioners shall promptly inform the division
53 of the appointment of the director and other personnel. Each
54 director has direct responsibility for the organization,
55 administration, and operation of the county emergency management
56 agency. The director shall coordinate emergency management
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58 serve as liaison to the division and other local emergency
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62 the county within which it is organized and, in addition, shall
63 conduct such activities outside its territorial limits as are
64 required pursuant to ss. 252.31-252.90 and in accordance with
65 state and county emergency management plans and mutual aid
66 agreements. Counties shall serve as liaison for and coordinator
67 of municipalities' requests for state and federal assistance
68 during postdisaster emergency operations.



69 (d) During a declared state or local emergency and upon the
70 request of the director of a local emergency management agency,
71 the district school board or school boards in the affected area
72 shall participate in emergency management by providing
73 facilities and necessary personnel to staff such facilities.
74 Each school board providing transportation assistance in an
75 emergency evacuation shall coordinate the use of its vehicles
76 and personnel with the local emergency management agency.

77 (e) County emergency management agencies may charge and
78 collect fees for the review of emergency management plans on
79 behalf of external agencies and institutions. Fees must be
80 reasonable and may not exceed the cost of providing a review of
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82 established by the division.

83 (2) MUNICIPALITIES.—Legally constituted municipalities are
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90 management program, it must comply with all laws, rules, and
91 requirements applicable to county emergency management agencies.
92 Each municipal emergency management plan must be consistent with
93 and subject to the applicable county emergency management plan.
94 In addition, each municipality must coordinate requests for
95 state or federal emergency response assistance with its county.
96 This requirement does not apply to requests for reimbursement
97 under federal public disaster assistance programs.



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98 (3) EMERGENCY MANAGEMENT POWERS; POLITICAL SUBDIVISIONS.—

99 (a) In carrying out the provisions of ss. 252.31-252.90,
100 each political subdivision shall have the power and authority:

101 1. To appropriate and expend funds; make contracts; obtain
102 and distribute equipment, materials, and supplies for emergency
103 management purposes; provide for the health and safety of
104 persons and property, including emergency assistance to the
105 victims of any emergency; and direct and coordinate the
106 development of emergency management plans and programs in
107 accordance with the policies and plans set by the federal and
108 state emergency management agencies.

109 2. To appoint, employ, remove, or provide, with or without
110 compensation, coordinators, rescue teams, fire and police
111 personnel, and other emergency management workers.

112 3. To establish, as necessary, a primary and one or more
113 secondary emergency operating centers to provide continuity of
114 government and direction and control of emergency operations.

115 4. To assign and make available for duty the offices and
116 agencies of the political subdivision, including the employees,
117 property, or equipment thereof relating to firefighting,
118 engineering, rescue, health, medical and related services,
119 police, transportation, construction, and similar items or
120 services for emergency operation purposes, as the primary
121 emergency management forces of the political subdivision for
122 employment within or outside the political limits of the
123 subdivision.

124 5. To request state assistance or invoke emergency-related
125 mutual-aid assistance by declaring a state of local emergency in
126 the event of an emergency affecting only one political



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127 subdivision. The duration of each state of emergency declared
128 locally is limited to 7 days; it may be extended, as necessary,
129 in 7-day increments. Further, the political subdivision has the
130 power and authority to waive the procedures and formalities
131 otherwise required of the political subdivision by law
132 pertaining to:

133 a. Performance of public work and taking whatever prudent
134 action is necessary to ensure the health, safety, and welfare of
135 the community.

136 b. Entering into contracts.

137 c. Incurring obligations.

138 d. Employment of permanent and temporary workers.

139 e. Utilization of volunteer workers.

140 f. Rental of equipment.

141 g. Acquisition and distribution, with or without
142 compensation, of supplies, materials, and facilities.

143 h. Appropriation and expenditure of public funds.

144 (b) Upon the request of two or more adjoining counties, or
145 if the Governor finds that two or more adjoining counties would
146 be better served by an interjurisdictional arrangement than by
147 maintaining separate emergency management agencies and services,
148 the Governor may delineate by executive order or rule an
149 interjurisdictional area adequate to plan for, prevent,
150 mitigate, or respond to emergencies in such area and may direct
151 steps to be taken as necessary, including the creation of an
152 interjurisdictional relationship, a joint emergency plan, a
153 provision for mutual aid, or an area organization for emergency
154 planning and services. A finding of the Governor pursuant to
155 this paragraph shall be based on one or more factors related to



870038

156 the difficulty of maintaining an efficient and effective
157 emergency prevention, mitigation, preparedness, response, and
158 recovery system on a unijurisdictional basis, such as:

- 159 1. Small or sparse population.
- 160 2. Limitations on public financial resources severe enough
161 to make maintenance of a separate emergency management agency
162 and services unreasonably burdensome.
- 163 3. Unusual vulnerability to emergencies as evidenced by a
164 past history of emergencies, topographical features, drainage
165 characteristics, emergency potential, and presence of emergency-
166 prone facilities or operations.
- 167 4. The interrelated character of the counties in a
168 multicounty area.
- 169 5. Other relevant conditions or circumstances.

170 (4) INVALIDATION OF CERTAIN EMERGENCY MEASURES.—The
171 Governor, or the Legislature by concurrent resolution, may at
172 any time invalidate an order, an ordinance, a proclamation, a
173 rule, or any other measure issued by a political subdivision to
174 address a purported emergency if the Governor or Legislature
175 determines that such order unnecessarily restricts a
176 constitutional right, fundamental liberty, or statutory right.

177 Section 2. Subsection (4) is added to section 252.46,
178 Florida Statutes, to read:

179 252.46 Orders and rules.—

180 (4) An order issued by a political subdivision shall
181 automatically expire 10 days after its issuance; however, such
182 an order may be extended before its expiration by a majority
183 vote of the governing body of the political subdivision if
184 deemed necessary. Upon the expiration of an order, a political



185 subdivision may not issue a substantially similar order to
186 respond to the same emergency.

187 Section 3. This act shall take effect July 1, 2021.

188
189 ===== T I T L E A M E N D M E N T =====

190 And the title is amended as follows:

191 Delete everything before the enacting clause
192 and insert:

193 A bill to be entitled
194 An act relating to emergency management powers of
195 political subdivisions; amending s. 252.38, F.S.;
196 specifying that a political subdivision has the burden
197 of proving the proper exercise of its police power in
198 the issuance of certain emergency orders; authorizing
199 the Governor or the Legislature to invalidate
200 emergency orders issued by a political subdivision
201 under specified conditions; amending s. 252.46, F.S.;
202 providing for the expiration of emergency orders
203 issued by a political subdivision; authorizing the
204 extension of such orders if certain conditions are
205 met; prohibiting the political subdivision from
206 issuing a subsequent order for the same emergency that
207 is substantially similar to the expired order;
208 providing an effective date.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16/2021

Meeting Date

1068

Bill Number (if applicable)

Topic Local Housing Assistance Plans

Amendment Barcode (if applicable)

Name Devon West

Job Title Legislative Policy Advisor

Address 100 S. Andrews

Phone 954.357.7575

Street

Fort Lauderdale FL 33301

Email dewest@broward.org

City

State

Zip

Speaking: For Against Information

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

Representing Broward County

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16/21
Meeting Date

SB 1068
Bill Number (if applicable)

Topic Local Housing Assistance Plans Amendment Barcode (if applicable)

Name Tonnette [Fore-Net] Graham

Job Title Associate Director of Public Policy

Address 100 S. Monroe Street Phone 850.509.5333
Street

Tallahassee, FL 32301 Email tgraham@fl-counties.com
City State Zip

Speaking: For Against Information

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

Representing FL Association of Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

By Senator Taddeo

40-01110-21

20211068__

1 A bill to be entitled

2 An act relating to local housing assistance plans;
3 amending s. 420.9075, F.S.; revising the percentages
4 of local housing funds which must be reserved for
5 eligible housing; providing an effective date.

6
7 Be It Enacted by the Legislature of the State of Florida:

8
9 Section 1. Paragraphs (a), (b), and (c) of subsection (5)
10 of section 420.9075, Florida Statutes, are amended to read:

11 420.9075 Local housing assistance plans; partnerships.—

12 (5) The following criteria apply to awards made to eligible
13 sponsors or eligible persons for the purpose of providing
14 eligible housing:

15 (a) At least 50 ~~65~~ percent of the funds made available in
16 each county and eligible municipality from the local housing
17 distribution must be reserved for home ownership for eligible
18 persons.

19 (b) Up to 50 ~~25~~ percent of the funds made available in each
20 county and eligible municipality from the local housing
21 distribution may be reserved for rental housing for eligible
22 persons or for the purposes enumerated in s. 420.9072(7)(b).

23 (c) At least 50 ~~75~~ percent of the funds made available in
24 each county and eligible municipality from the local housing
25 distribution must be reserved for construction, rehabilitation,
26 or emergency repair of affordable, eligible housing.

27 Section 2. This act shall take effect July 1, 2021.

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 Community Affairs

BILL: SB 1068

INTRODUCER: Senator Taddeo

SUBJECT: Local Housing Assistance Plans

DATE: March 15, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	Pre-meeting
2.	_____	_____	ATD	_____
3.	_____	_____	AP	_____

I. Summary:

SB 1068 revises the restrictions for the use of funds disbursed to local governments through the State Housing Initiatives Partnership (SHIP) program for the purpose of providing affordable housing. The bill alters the threshold limits that dictate the types of activities local governments may fund using SHIP program funding. Specifically, the bill enables local governments to expend a larger portion of SHIP funds on certain rental assistance activities than allowed under current law, and decreases the expenditure threshold for new construction/rehabilitation/emergency repair.

The Florida Housing Finance Corporation, through the SHIP program, provides funding to all 67 counties and 52 cities on a population-based formula to finance and preserve affordable housing based on locally adopted affordable housing plans. The SHIP program is funded through a statutory distribution of documentary stamp tax revenues, which are deposited into the Local Government Housing Trust Fund.

Under the bill:

- At least 50 percent, instead of 75 percent, of SHIP funds *must* be reserved for construction, rehabilitation, or emergency repair of affordable housing; and
- Up to 50 percent, instead of 25 percent, of SHIP funds *may* be reserved for permitted rental services (i.e., security and utility deposit assistance, eviction prevention, rent subsidies, etc.);
- Within those restrictions, at least 50 percent, instead of 65 percent, of SHIP funds must be reserved for home ownership for eligible persons.

The bill takes effect July 1, 2021.

II. Present Situation:

Affordable Housing

Affordable housing is defined in terms of household income. Housing is considered affordable when monthly rent or mortgage payments including taxes and insurance do not exceed 30 percent of the household income.¹ Resident eligibility for Florida's state and federally funded housing programs is typically governed by area median income (AMI) levels, published annually by the U.S. Department of Housing and Urban Development (HUD) for every county and metropolitan area. The following are standard household income level definitions and their relationship to the 2020 Florida state median of \$68,000 for a family of four (as family size increases or decreases, the income range also increases or decreases):²

- Extremely low income – earning up to 30 percent AMI (at or below \$22,400);³
- Very low income – earning from 30.01 to 50 percent AMI (\$22,401 to \$34,000);⁴
- Low income – earning from 50.01 to 80 percent AMI (\$34,001 to \$54,400);⁵ and
- Moderate income – earning from 80.01 to 120 percent of AMI (\$54,401 to \$81,600).⁶

The two primary state housing assistance programs are the State Housing Initiatives Partnership (SHIP)⁷ and the State Apartment Incentive Loan (SAIL)⁸ programs. The SHIP program provides funds to eligible local governments, allocated using a population-based formula, to address local housing needs as identified by the local government. The SAIL program provides low interest loans on a competitive basis as gap financing for the construction or substantial rehabilitation of multifamily affordable housing developments.⁹

State Housing Initiatives Partnership (SHIP) Program

The SHIP Program was created in 1992¹⁰ to provide funds to local governments as an incentive to create partnerships that produce and preserve affordable homeownership and multifamily housing. The SHIP program provides funds to all 67 counties and 52 Community Development Block Grant¹¹ entitlement cities on a population-based formula to finance and preserve affordable housing based on locally adopted housing plans.¹² The program was designed to serve very-low, low, and moderate-income families and is administered by the Florida Housing

¹ Section 420.9071(2), F.S. Public housing, commonly referred to as Section 8 Housing, is provided by local housing agencies (HAs) for low-income residents. Funding for HAs is provided directly from HUD.

² U.S. Department of Housing and Urban Development, Office of Policy Research and Development, *FY 2017 HUD Income Limits Briefing Material*, p. 38, available at <https://www.huduser.gov/portal/datasets/il/il17/IncomeLimitsBriefingMaterial-FY17.pdf>.

³ Section 420.0004(9), F.S.

⁴ Section 420.9071(28), F.S.

⁵ Section 420.9071(19), F.S.

⁶ Section 420.9071(20), F.S.

⁷ Sections 420.907-9079, F.S.

⁸ Section 420.5087, F.S.

⁹ Section 420.5087, F.S.

¹⁰ Chapter 92-317, Laws of Fla.

¹¹ The CDBG program is a federal program created in 1974 that provides funding for housing and community development activities.

¹² See ss. 420.907-420.9089, F.S.

Finance Corporation (FHFC). The SHIP program distributed more than \$47 in fiscal year 19-20.¹³

A dedicated funding source for this program was established by the passage of the 1992 William E. Sadowski Affordable Housing Act. The SHIP Program is funded through a statutory distribution of documentary stamp tax revenues, which are deposited into the Local Government Housing Trust Fund. Subject to specific appropriation, funds are distributed quarterly to local governments participating in the program under an established formula.¹⁴ A county or eligible municipality seeking funds from the SHIP Program must adopt an ordinance that:

- Creates a local housing assistance trust fund;
- Adopts a local housing assistance plan to be implemented through a local housing partnership;
- Designates responsibility for administering the local housing assistance plan; and
- Creates an affordable housing advisory committee.¹⁵

Funds are expended per each local government's adopted Local Housing Assistance Plan (LHAP), which details the housing strategies it will use.¹⁶ Local governments submit their LHAPs to the FHFC for review to ensure that they meet the broad statutory guidelines and the requirements of the program rules. The FHFC must approve an LHAP before a local government may receive the SHIP funding.

A local government may not expend money distributed to it to provide ongoing rent subsidies, except for:¹⁷

- Security and utility deposit assistance;
- Eviction prevention not to exceed six months' rent; or
- A rent subsidy program for very-low-income households with at least one adult who is a person with special needs¹⁸ or is homeless,¹⁹ not to exceed 12 months' rental assistance.

Certain statutory requirements further restrict a local government's use of funds made available under the SHIP program (excluding amounts set aside for administrative costs):²⁰

¹³ *Ship Distributions for FY 19-20*, The Sadowski Housing Coalition, available at https://www.floridahousing.org/docs/default-source/programs/special-programs/ship---state-housing-initiatives-partnership-program/ship-collections-and-disbursements/2019-2020-disbursement-allocation.pdf?sfvrsn=9bbcf7b_2 (last visited March 14, 2021).

¹⁴ Section 420.9073, F.S.

¹⁵ Section 420.9072, F.S.

¹⁶ Section 420.9075, F.S. Section 420.9075(3), F.S. outlines a list of strategies LHAPs are encouraged to employ, such as helping those affected by mobile home park closures, encouraging innovative housing design to reduce long-term housing costs, preserving assisted housing, and reducing homelessness.

¹⁷ Section 420.072(7), F.S.

¹⁸ As defined in s. 420.0004, F.S., "Person with special needs" means an adult person requiring independent living services in order to maintain housing or develop independent living skills and who has a disabling condition; a young adult formerly in foster care who is eligible for services under s. 409.1451(5), F.S.; a survivor of domestic violence as defined in s. 741.28, F.S.; or a person receiving benefits under the Social Security Disability Insurance (SSDI) program or the Supplemental Security Income (SSI) program or from veterans' disability benefits.

¹⁹ As defined in s. 420.621, F.S., "homeless" means an individual or family who lacks or will imminently lose access to a fixed, regular, and adequate nighttime residence.

²⁰ Section 420.075(5), F.S.

- At least 75 percent of SHIP funds *must* be reserved for construction, rehabilitation, or emergency repair of affordable, eligible housing;²¹ and
- Up to 25 percent of SHIP funds *may* be reserved for allowed rental services;²²

Within those distributions by local governments, additional requirements must be met:

- At least 65 percent of SHIP funds must be reserved for home ownership for eligible persons;²³
- At least 20 percent of SHIP funds must serve persons with special needs;
- Up to 20 percent of SHIP funds may be used for manufactured housing; and
- At least 30 percent of SHIP funds must be used for awards to very-low-income persons or eligible sponsors serving very-low-income persons, and another 30 percent must be used for awards for low-income-persons or eligible sponsors serving low-income persons.

III. Effect of Proposed Changes:

The bill amends s. 420.9075, F.S., to revise the percentage thresholds for the use of funds disbursed to local governments through the SHIP program. The bill makes the following changes:

- At least 50 percent, instead of 75 percent, of SHIP funds *must* be reserved for construction, rehabilitation, or emergency repair of affordable, eligible housing;
- Up to 50 percent, instead of 25 percent, of SHIP funds *may* be reserved for permitted rental services; and
- And within those funds at least 50 percent, instead of 65 percent, of SHIP funds must be reserved for homeownership for eligible persons;

Other restrictions on the use of such funds are left unchanged.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

²¹ As defined in s. 420.071(8), “Eligible housing” means any real and personal property located within the county or the eligible municipality which is designed and intended for the primary purpose of providing decent, safe, and sanitary residential units, or manufactured housing constructed after June 1994, for home ownership or rental for eligible persons as designated by each county or eligible municipality participating in the State Housing Initiatives Partnership Program.

²² See s. 420.072(7)(b), F.S.

²³ As defined in s. 420.0721(10), F.S., “Eligible person” or “eligible household” means one or more natural persons or a family determined by the county or eligible municipality to be of very low income, low income, or moderate income based upon the annual gross income of the household.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

While the bill does not impact the amount of funds distributed to counties and municipalities under the SHIP program, the amended thresholds may positively impact those in rental housing and negatively impact those in the affordable housing construction industry.

C. Government Sector Impact:

The bill does not affect the amount of funds to be distributed to counties and municipalities under the SHIP program, but alters how those funds may be expended throughout a community.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends s. 420.9075 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.

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

By Senator Rodriguez

39-01480B-21

20211606__

1 A bill to be entitled
 2 An act relating to victims of communism; amending s.
 3 683.01, F.S.; establishing November 7 as the Victims
 4 of Communism legal holiday; requiring the Legislature
 5 to annually observe a moment of silence in observance
 6 of the victims of communism; providing an effective
 7 date.
 8
 9 WHEREAS, over 100 years have passed since the Bolshevik
 10 Revolution in Russia and the formation of the first communist
 11 government under Vladimir Lenin, leading to decades of
 12 oppression and violence under communist regimes throughout the
 13 world, and
 14 WHEREAS, based on the economic philosophies of Karl Marx,
 15 communism has proven incompatible with the ideals of liberty,
 16 prosperity, and dignity of human life and has given rise to such
 17 infamous totalitarian dictators as Joseph Stalin, Mao Zedong, Hồ
 18 Chí Minh, and Pol Pot, and
 19 WHEREAS, communist regimes worldwide have killed more than
 20 100 million people and subjected countless others to
 21 exploitation and unspeakable atrocities, with victims
 22 representing many different ethnicities, creeds, and
 23 backgrounds, and
 24 WHEREAS, through false promises of equality and liberation,
 25 communist regimes have systematically robbed their own citizens
 26 of the rights of freedom of worship, freedom of speech, and
 27 freedom of association through coercion, brutality, and fear,
 28 and
 29 WHEREAS, many victims of communism were persecuted as

Page 1 of 2

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

39-01480B-21

20211606__

30 political prisoners for speaking out against these regimes, and
 31 others were killed in genocidal state-sponsored purges of
 32 undesirable groups, and
 33 WHEREAS, in addition to violating basic human rights,
 34 communist regimes have suppressed intellectual freedom, cultural
 35 life, and self-determination movements in more than 40 nations,
 36 NOW, THEREFORE,
 37
 38 Be It Enacted by the Legislature of the State of Florida:
 39
 40 Section 1. Present paragraphs (q) through (u) of subsection
 41 (1) of section 683.01, Florida Statutes, are redesignated as
 42 paragraphs (r) through (v), respectively, and a new paragraph
 43 (q) is added to that subsection, to read:
 44 683.01 Legal holidays.—
 45 (1) The legal holidays, which are also public holidays, are
 46 the following:
 47 (q) Victims of Communism Day, November 7.
 48 Section 2. The Legislature shall, on the final day of each
 49 regular legislative session, observe a moment of silence in
 50 observance of the victims of communism.
 51 Section 3. This act shall take effect July 1, 2021.

Page 2 of 2

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

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 Community Affairs

BILL: SB 1606

INTRODUCER: Senator Rodriguez

SUBJECT: Victims of Communism

DATE: March 8, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	RC	_____

I. Summary:

SB 1606 establishes that November 7 is Victims of Communism Day, a legal and public holiday pursuant to s. 683.01, F.S. The bill's recitals describe the human costs and suffrage that victims of communism have endured. The bill provides that the Legislature shall observe a moment of silence in observance of the victims of communism on the final day of each regular legislative session.

The bill has an effective date of July 1, 2021.

II. Present Situation:

Legal Holidays and Special Observance Days

Chapter 683, F.S., establishes legal holidays and special observance days in Florida. Legal holidays are listed in s. 683.01, F.S., while ss. 683.04 – 683.333, F.S., establishes special observance days.

Section 683.01, F.S., enumerates legal holidays, which are also public holidays, under Florida law. This section also provides that if any legal holiday falls on a Sunday, the next following Monday is deemed a public holiday.¹ Florida's current list of legal holidays provides twenty-one separate holidays in chronological order:

- Sunday, the first day of each week.
- New Year's Day, January 1.
- Birthday of Martin Luther King, Jr., January 15.
- Birthday of Robert E. Lee, January 19.
- Lincoln's Birthday, February 12.

¹ Section 683.01(2), F.S.

- Susan B. Anthony's Birthday, February 15.
- Washington's Birthday, the third Monday in February.
- Good Friday.
- Pascua Florida Day, April 2.²
- Confederate Memorial Day, April 26.
- Memorial Day, the last Monday in May.
- Birthday of Jefferson Davis, June 3.
- Flag Day, June 14.
- Independence Day, July 4.
- Labor Day, the first Monday in September.
- Columbus Day and Farmers' Day, the second Monday in October.
- Veterans' Day, November 11.
- General Election Day.
- Thanksgiving Day, the fourth Thursday in November.
- Christmas Day, December 25.
- Shrove Tuesday, sometimes also known as "Mardi Gras," in counties where carnival associations are organized for the purpose of celebrating the same.

Under s. 683.02, F.S., whenever a contract is to be performed in the state and reference is made to "legal holidays," the term is understood to include the holidays designated in s. 683.01, F.S., and such other holidays as may be designated by law. Alternatively, a legal holiday designation does not necessarily make a day a paid holiday for public employees. Section 110.117, F.S., establishes which legal holidays are paid holidays for the employees of all state branches and agencies.³ Likewise, the court system does not necessarily use the legal holidays described in s. 683.01, F.S., while computing time frames for matters in civil and criminal procedure.⁴

The Legislature last amended s. 683.01, F.S., to add a holiday during the 1990 legislative session. This amendment added Flag Day, June 14, as a legal holiday in Florida.⁵

Unlike legal holidays, special observances, as provided in ss. 683.04 – 683.333, F.S., do not directly affect the definition of "legal holidays" in contracts. Special observance days may apply

² "Pascua Florida" is a Spanish term that means flowery festival or feast of flowers. Pascua Florida Day commemorates the arrival of Juan Ponce de Leon on the shores of the State of Florida in 1513. Since its entry into the Legislature, the holiday, while having no specific celebratory acts, usually culminates in a period of retrospection of Florida's rich history and the preceding events that led to it. The holiday is to be observed in the same manner as a "patriotic occasion." See Hatch, Jane M. (1978). *The American book of days*. The H. W. Wilson Company. ISBN 0-8242-0593-6.

³ Section 110.117(1), F.S., provides the following holidays as paid holidays for all state branches and agencies: New Year's Day; Martin Luther King Birthday; Memorial Day; Independence Day; Labor Day; Veteran's Day; Thanksgiving Day and Friday after Thanksgiving; and Christmas Day.

⁴ See *R.J. Reynolds Tobacco Co. v. Kenyon*, 826 So.2d 370 (Fla. 2nd DCA 2002) ("On the other hand, the supreme court has delegated considerable administrative authority to the chief judge of each circuit. See Fla. R. Jud. Admin. 2.050. It is undisputed that the chief judge of the Thirteenth Judicial Circuit exercised that authority to issue an administrative order specifying legal holidays. Without deciding whether days in addition to those in the local administrative order may be legal holidays, we hold that Christmas Eve of 2001 in the Thirteenth Judicial Circuit was a legal holiday as a result of the local administrative order."); see also *State v. Garber*, 726 So.2d 338 (Fla. 5th DCA 1999) ("While we deem it problematic to refer to section 683.01, in the context of a court proceeding, we reverse because we hold that when the supreme court designates a holiday, it is a "legal holiday" for purposes of the rules of criminal procedure.")

⁵ Chapter 90-59, Laws of Florida.

throughout the state, or they may be limited to particular counties. For example, "Gasparilla Day"⁶ is a legal holiday observed only in Hillsborough County, while "Bill of Rights Day,"⁷ if issued by the Governor, is observed throughout the state.

Communism

Communism is a political and economic philosophy that aims to replace private property and a profit-based economy with public ownership and communal control of the major means of production and society's natural resources. Communism is a form of socialism. Modern communism grew out of the socialist movement in 19th-century Europe. These socialist critics blamed capitalism for the unfavorable and often-hazardous conditions of workers during the Industrial Revolution. As leaders of this socialist movement, Karl Marx and his associate, Friedrich Engels, established the modern definition of communism in their widely circulated pamphlet, *The Communist Manifesto*.⁸

One explicit facet of the communist theory is that the proletariat (the social class whose only economic asset is their own labor) would capture political power, abolish private property ownership, and take the private property of the bourgeoisie (the social class who own the capital or means of production). Communism postulates that the taking and abolishment of private property by the proletariat would result in shared ownership of the means of production, ushering the world into a communal economic and societal utopia with equality for all.⁹

However, before reaching this utopia, the communist theory posits that the taking and abolishment of private property will result in a dictatorship of the proletariat. The ideological father of communism, Karl Marx, claimed that communism entailed the withering away of the state and that the dictatorship of the proletariat was to be a strictly temporary phenomenon.¹⁰ In Friedrich Engels' words, "State-ownership of the productive forces is not the solution of the conflict, but concealed within it are the technical conditions that form the elements of that solution." In the communist view, total state-ownership of property is a likely occurrence and a positive sign that a society is progressing toward a communist utopia.¹¹ As a practical matter, communist movements throughout history have been unable to transition out of State control and dictatorship into the utopia of equality promised by communism and instead devolved into State tyranny and democide.¹²

⁶ Section 683.08, F.S.

⁷ Section 683.25, F.S.

⁸ Encyclopedia Britannica, *Communism*, available at: <https://www.britannica.com/topic/communism> (last visited Mar. 9, 2021).

⁹ Engels, Friedrich. Marx & Engels Selected Works, Volume One, pp. 81–97, Progress Publishers, Moscow, 1969.

"Principles of Communism". No. 4 – "How did the proletariat originate?".

¹⁰ Rosser, Mariana V. and J Barkley Jr. (23 July 2003). *Comparative Economics in a Transforming World Economy*. MIT Press. p. 14. ISBN 978-0262182348.

¹¹ Engels, Friedrich. [1880] 1970. "Historical Materialism." Part 3 in *Socialism: Utopian and Scientific*, translated by E. Aveling (1892), (Marx/Engels Selected Works 3, p. 95–151). Progress Publishers.

¹² *Democide* is "the intentional killing of an unarmed or disarmed person by government agents acting in their authoritative capacity and pursuant to government policy or high command." See Harff, Barbara (1996). "Death by Government by R. J. Rummel". *The Journal of Interdisciplinary History*. 27 (1): 117–119.

Victims of Communism

Although living under communism may cause victimization in all areas of life, the absolute use of State power over the individual is easily characterized by the intentional State-sanctioned killing of innocent civilians. State-sanctioned killings provide some cognizable metric one may consider when reflecting on the victims of communism.

With this understood, the Soviet Union appears to have directly caused the most significant number of victims. The Soviet Union is approximately responsible for killing near 61,911,000 people. Stalin himself is responsible for almost 43,000,000 of these. Most of the deaths, around 39,000,000, are due to lethal forced labor in gulag and transit thereto.¹³

Communist China and the People's Republic of China (PRC) have caused the second most victims of communism. Communist China (1923 – 1949) was responsible for 3,466,000 intentional killings and the PRC (1949 – present) is responsible for an additional 35,236,000.¹⁴

Notwithstanding these atrocities, the most deadly of all communist countries in this century by far has been Cambodia under the Khmer Rouge. Pol Pot and State actors likely killed some 2,000,000 Cambodians from April 1975 through December 1978 out of a population of around 7,000,000. This amount is an annual rate of over 8 percent of the population murdered. During this time, the odds of an average Cambodian surviving Pol Pot's rule was slightly over 2 to 1.¹⁵

In sum, from 1900 to 1987, communist dictators and regimes have been responsible for the intentional murder of approximately 110,000,000 individuals.¹⁶ Although not an exact figure, this total number of deaths under communist regimes is roughly one-third of the current U.S. population.

III. Effect of Proposed Changes:

Section 1 amends s. 683.01, F.S., to establish that November 7 is Victims of Communism Day, a legal and public holiday. Pursuant to s. 683.02, F.S., any reference to "legal holidays" made by a contract meant to be performed in the state is understood to include November 7, Victims of Communism Day.

Section 2 states that the Legislature shall observe a moment of silence in observance of the victims of communism on the final day of each regular legislative session.

Section 3 provides an effective date of July 1, 2021.

¹³ Rummel, R.J., (1993). "How Many Did Communist Regimes Murder?" *available at*: <https://www.hawaii.edu/powerkills/COM.ART.HTM> (last visited Mar. 10, 2021).

¹⁴ *Id.*, See Table 1.

¹⁵ *Id.*

¹⁶ *Id.*

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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 683.01 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.

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16/21

Meeting Date

1624

Bill Number (if applicable)

Topic Special District Accountability

Amendment Barcode (if applicable)

Name Chris Lyon

Job Title _____

Address 315 S. Calhoun St., Suite 830

Phone 222-5702

Street

Tallahassee

FL

32301

Email clyon@llw-law.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Association of Special Districts / Florida Mosquito Control Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-16-21

Meeting Date

1624

Bill Number (if applicable)

Topic Special District Accountability

Amendment Barcode (if applicable)

Name Justin Thames

Job Title Director of Governmental Affairs

Address 119 S. Monroe St. suite 121

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Street

Email justin@hipa.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Institute of CPAs

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

By Senator Albritton

26-01565A-21

20211624__

1 A bill to be entitled
 2 An act relating to special district accountability;
 3 creating s. 189.0695, F.S.; defining the term
 4 "performance audit"; requiring certain independent
 5 special districts to contract with an independent
 6 entity to conduct performance audits; providing an
 7 exception; specifying the frequency of such audits;
 8 requiring the Office of Program Policy Analysis and
 9 Government Accountability to conduct performance
 10 audits of certain classifications of independent
 11 special districts; providing criteria for contracting
 12 for such audits; requiring the performance audits to
 13 be reported by a time certain; amending s. 218.32,
 14 F.S.; requiring additional information to be reported
 15 by special districts in the annual report; amending s.
 16 218.39, F.S.; requiring that certain data be included
 17 in financial audits of special districts; requiring
 18 certain community redevelopment agencies to file
 19 separate audited financial statements; conforming
 20 provisions to changes made by the act; providing an
 21 effective date.

22
 23 Be It Enacted by the Legislature of the State of Florida:

24
 25 Section 1. Section 189.0695, Florida Statutes, is created
 26 to read:

27 189.0695 Independent special districts; performance
 28 audits.-

29 (1) The term "performance audit" has the same meaning as in

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

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30 s. 11.45(1).

31 (2) (a) Each independent special district as described in
 32 paragraph (c) must contract with an independent entity to
 33 conduct a performance audit of the district. The Office of
 34 Program Policy Analysis and Government Accountability must
 35 generate a list of independent entities qualified to perform the
 36 performance audit and the independent special district must
 37 select an independent entity from the list. To be included on
 38 the list, an entity must have at least 5 years of experience
 39 conducting performance audits, must conduct audits according to
 40 applicable auditing or evaluation standards of appropriate
 41 authoritative bodies, and must follow any applicable industry
 42 best practices.

43 (b) The entity's final report of the performance audit must
 44 be filed with the governing board of the district, the Auditor
 45 General, the President of the Senate, and the Speaker of the
 46 House of Representatives no later than 9 months from the
 47 beginning of the district's fiscal year according to the
 48 schedule provided in paragraph (c). However, a performance audit
 49 of a district conducted by the Auditor General during the same
 50 fiscal year in which a performance audit is due pursuant to
 51 paragraph (c) qualifies as that district's scheduled performance
 52 audit under this section.

53 (c)1. Beginning October 1, 2021, and every 5 years
 54 thereafter, each independent special fire control district as
 55 defined in s. 191.003, must have a performance audit conducted.

56 2. Beginning October 1, 2022, and every 5 years thereafter,
 57 each hospital licensed under chapter 395 which is governed by
 58 the governing body of a special district as defined in s.

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59 189.012 or by the board of trustees of a public health trust
60 created under s. 154.07, must have a performance audit
61 conducted.

62 (3) The Office of Program Policy Analysis and Government
63 Accountability must conduct a performance audit of all
64 independent special districts within the classifications
65 described in paragraphs (a) and (b). The performance audit must
66 compare the services provided by each district examined with
67 similar services provided by the county and municipal
68 governments wholly or partially within the boundaries of the
69 district, expressly stating the similarities and differences,
70 and relative costs and efficiencies, between the services
71 provided by the district and those provided by the relevant
72 counties and municipalities. The Office of Program Policy
73 Analysis and Government Accountability shall submit the final
74 report of the performance audit to the President of the Senate
75 and the Speaker of the House of Representatives as follows:

76 (a) For all independent mosquito control districts as
77 defined in s. 388.011, no later than September 30, 2023.

78 (b) For all soil and water conservation districts as
79 defined in s. 582.01, no later than September 30, 2024.

80 Section 2. Paragraph (e) of subsection (1) of section
81 218.32, Florida Statutes, is amended to read:

82 218.32 Annual financial reports; local governmental
83 entities.—

84 (1)(e)1. Each local governmental entity that is not
85 required to provide for an audit under s. 218.39 must submit the
86 annual financial report to the department no later than 9 months
87 after the end of the fiscal year. The department shall consult

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88 with the Auditor General in the development of the format of
89 annual financial reports submitted pursuant to this paragraph.
90 The format must include balance sheet information used by the
91 Auditor General pursuant to s. 11.45(7)(f). The department must
92 forward the financial information contained within the annual
93 financial reports to the Auditor General in electronic form.
94 This paragraph does not apply to housing authorities created
95 under chapter 421.

96 2. The annual financial report filed by a dependent special
97 district or an independent special district shall specify
98 separately:

99 a. The total number of district employees.

100 b. The amounts budgeted by the district for employee
101 salaries and the amounts budgeted for employee benefits.

102 c. Each construction project approved by the district to
103 begin after October 1 of the fiscal year being reported together
104 with the amount budgeted for such project.

105 3. The annual financial report of an independent special
106 district that imposes ad valorem taxes shall include the millage
107 rate or rates imposed by the district, the total amount of ad
108 valorem taxes collected by or on behalf of the district, and the
109 total amount of outstanding bonds issued by the district and the
110 terms of such bonds.

111 4. The annual financial report of an independent special
112 district that imposes non-ad valorem special assessments shall
113 include the rate or rates of such assessments imposed by the
114 district, the total amount of special assessments collected by
115 or on behalf of the district, and the total amount of
116 outstanding bonds issued by the district and the terms of such

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117 bonds.

118 Section 3. Paragraph (h) of subsection (1) of section
 119 218.39, Florida Statutes, is redesignated as paragraph (i), a
 120 new paragraph (h) is added to that subsection, and subsection
 121 (3) of that section is amended, to read:

122 218.39 Annual financial audit reports.—

123 (1) If, by the first day in any fiscal year, a local
 124 governmental entity, district school board, charter school, or
 125 charter technical career center has not been notified that a
 126 financial audit for that fiscal year will be performed by the
 127 Auditor General, each of the following entities shall have an
 128 annual financial audit of its accounts and records completed
 129 within 9 months after the end of its fiscal year by an
 130 independent certified public accountant retained by it and paid
 131 from its public funds:

132 (h) As required by s. 163.387(8) (a), each community
 133 redevelopment agency with revenues or a total of expenditures
 134 and expenses in excess of \$100,000, as reported on the trust
 135 fund financial statements.

136 (3) (a) A dependent special district, excluding a community
 137 redevelopment agency with revenues or a total of expenditures
 138 and expenses in excess of \$100,000, as reported on the trust
 139 fund financial statements, may provide for an annual financial
 140 audit by being included in the audit of the local governmental
 141 entity upon which it is dependent. An independent special
 142 district may not make provision for an annual financial audit by
 143 being included in the audit of another local governmental
 144 entity.

145 (b) A special district that is a component unit, as defined

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146 by generally accepted accounting principles, of a local
 147 governmental entity shall provide the local governmental entity,
 148 within a reasonable time period as established by the local
 149 governmental entity, with financial information necessary to
 150 comply with this section. The failure of a component unit to
 151 provide this financial information must be noted in the annual
 152 financial audit report of the local governmental entity.

153 (c) The financial audit of a dependent special district or
 154 of an independent special district, or the financial audit of a
 155 local governmental entity including the information of a
 156 dependent special district as provided in paragraph (a) of this
 157 subsection, shall separately include and specify the information
 158 required in s. 218.32(1) (e)2.

159 Section 4. This act shall take effect October 1, 2021.

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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 Community Affairs

BILL: SB 1624

INTRODUCER: Senator Albritton

SUBJECT: Special District Accountability

DATE: March 15, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	Favorable
2.	_____	_____	GO	_____
3.	_____	_____	AP	_____

I. Summary:

SB 1624 requires all independent special fire control districts and each hospital governed by the governing body of a special district or the board of trustees of a public health trust to conduct a performance audit¹ every five years beginning October 1, 2021, and October 1, 2022, respectively. It also requires the Office of Program Policy Analysis and Government Accountability to conduct performance audits of all independent mosquito control districts and soil and water conservation districts by September 30, 2023, and September 30, 2024, respectively.

The bill requires the annual financial report and annual financial audit report of all special districts to specify separately the following information:

- The total number of people employed by the district;
- The amounts budgeted by the district for employee salaries and benefits; and
- Each construction project approved by the district to begin after October 1 of the fiscal year being reported and the amount budgeted for the project.

It also requires the annual financial report of each independent special district that levies ad valorem taxes or non-ad valorem special assessments to include the rate of such levies, the total amount collected by the levies, and the total amount of all outstanding bonds issued by the district and the terms of such bonds.

¹ A performance audit is an examination of a program, activity, or function of a governmental entity, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies. The purpose of a performance audit is to provide objective information that may be used by to assist in governance and oversight by providing information that will improve program performance, reduce costs to taxpayers, and otherwise facilitate decision-making.

Finally, the bill clarifies that the annual financial auditing report of a community redevelopment agency must be filed separately from the annual financial auditing report of the county or municipality that created the district.

The bill takes effect on October 1, 2021.

II. Present Situation:

Independent Special Districts

A “special district” is a unit of local government created for a particular purpose, with jurisdiction to operate within a limited geographic boundary.² Special districts are created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.³ A special district has only those powers expressly provided by, or reasonably implied from, the authority provided in the district’s charter. Special districts provide specific municipal services in addition to, or in place of, those provided by a municipality or county.⁴ Special districts are funded through the imposition of ad valorem taxes, fees, or charges on the users of those services as authorized by law.⁵

A “dependent special district” is a special district where the membership of the governing body is identical to the governing body of a single county or municipality, all members of the governing body are appointed by the governing body of a single county or municipality, members of the district’s governing body are removable at will by the governing body of a single county or municipality, or the district’s budget is subject to the approval of governing body of a single county or municipality.⁶ An “independent special district” is any district that is not a dependent special district.⁷

According to the Department of Economic Opportunity’s Special District Accountability Program Official List of Special Districts, as of March 3, 2021, the state had 1,785 special districts. There were 1,159 independent special districts and 626 dependent districts.

² See *Halifax Hospital Medical Center v. State of Fla.*, et al., 278 So. 3d 545, 547 (Fla. 2019).

³ See ss. 189.031(3), 189.02(1), and 190.005(1), F.S. See, generally, s. 189.012(6), F.S.

⁴ 2020 – 2022 Local Gov’t Formation Manual, p. 64, available at:

<https://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=3117&Session=2021&DocumentType=General+Publications&FileName=2021-2022+Local+Government+Formation+Manual.pdf> (last visited Mar. 1, 2021).

⁵ The method of financing a district must be stated in its charter. Ss. 189.02(4)(g), 189.031(3), F.S. Independent special districts may be authorized to impose ad valorem taxes as well as non-ad valorem special assessments in the special acts comprising their charters. See, e.g., ch. 2017-220, s. 6(6) of s. 3, Laws of Fla. (Sunbridge Stewardship District). See also, e.g., ss. 190.021 (community development districts), 191.009 (independent fire control districts), 197.3631 (non-ad valorem assessments), 298.305 (water control districts), 388.221 (mosquito control), ch. 2004-397, s. 27 of s. 3, Laws of Fla. (South Broward Hospital District).

⁶ Section 189.012(2), F.S.

⁷ Section 189.012(3), F.S.

Special districts are governed generally by the Uniform Special District Accountability Act (Act).⁸ The Act centralizes provisions governing special districts and applies to the formation,⁹ governance,¹⁰ administration,¹¹ supervision,¹² merger,¹³ and dissolution¹⁴ of special districts, unless otherwise expressly provided in law.¹⁵

Special districts do not possess “home rule” powers and may impose only those taxes, assessments, or fees authorized by special or general law. The special act creating an independent special district may provide for funding from a variety of sources while prohibiting others. For example, ad valorem tax authority is not mandatory for a special district.¹⁶

Independent Special Fire Control Districts

Independent special fire control districts are created by the Legislature to provide fire suppression and related activities within the territorial jurisdiction of the district.¹⁷ As of March 1, 2021, there were 64 active independent special fire control districts.¹⁸

The Independent Special Fire Control District Act¹⁹ provides standards, direction, and procedures for greater uniformity in the operation and governance of these districts, including financing authority, fiscally-responsible service delivery, and election of members to the governing boards.²⁰ The Act controls over more specific provisions in any special act or general law of local application creating a fire control district’s charter,²¹ requires every fire control district be governed by a five-member board,²² and provides:

- General powers;²³
- Special powers;²⁴
- Authority and procedures for the assessment and collection of ad valorem taxes;²⁵

⁸ Section 189.01, F.S., but see ch. 190, F.S. (community development districts), ch. 191, F.S. (independent special fire control districts), ch. 298, F.S. (water control districts), ch. 388, F.S. (mosquito control districts), and ch. 582, F.S. (soil and water conservation districts).

⁹ See ss. 189.02 (creation of dependent special districts) and 189.031, F.S. (creation of independent special districts).

¹⁰ See s. 189.0311, F.S. (charter requirements for independent special districts).

¹¹ See s. 189.019, F.S. (requiring codification of charters incorporating all special acts for the district).

¹² See s. 189.0651, F.S. (oversight for special districts created by special act of the Legislature).

¹³ Sections 189.071 and 189.074, F.S.

¹⁴ Sections 189.071 and 189.072, F.S.

¹⁵ See, e.g., s. 190.004, F.S. (Ch. 190, F.S. as “sole authorization” for creation of community development districts).

¹⁶ See, e.g., ch. 2006-354, Laws of Fla. (Argyle Fire District may impose special assessments, but has no ad valorem tax authority).

¹⁷ Section 191.003(5), F.S.

¹⁸ Dept. of Economic Opportunity, Special District Accountability Program, “Official List of Special Districts,” *available at*: <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Mar. 1, 2021).

¹⁹ Chapter 191, F.S.

²⁰ Section 191.002, F.S.

²¹ Section 191.004, F.S. Provisions in other laws pertaining to district boundaries or geographical sub-districts for electing members to the governing board are excepted from this section.

²² Section 191.005(1)(a), F.S. (fire control district may continue to be governed by a three-member board if authorized by special act adopted in or after 1997).

²³ Section 191.006, F.S. (e.g. the power to sue and be sued in the name of the district, the power to contract, and the power of eminent domain).

²⁴ Section 191.008, F.S.

²⁵ Sections 191.006(14) and 191.009(1), F.S.

- Authority and procedures for the imposition, levy, and collection of non-ad valorem assessments, charges, and fees;²⁶ and
- Issuance of district bonds and evidence of debt.²⁷

Fire control districts may levy ad valorem taxes on real property within the district of no more than 3.75 mills unless a greater amount was previously authorized.²⁸ A district also may levy non-ad valorem assessments.²⁹ The district board may adopt a schedule of reasonable fees for services performed.³⁰ Additionally, the district board may impose an impact fee if so authorized by law and the local general purpose government has not adopted an impact fee for fire services that is distributed to the district for construction.³¹

Hospital Districts

Hospital districts are a type of independent special district specializing in the provision of health care services. As of March 1, 2021, there are 27 active hospital districts: 24 that directly operate health care facilities and three that provide oversight for facilities leased by local governments to private sector entities.³² The charters of hospital districts generally possess a set of core features: a board appointed by the Governor; the authority to build and operate hospitals; the power of eminent domain; the ability to issue bonds payable from ad valorem taxes; the use of ad valorem tax revenue for operating and maintaining hospitals; and providing that such facilities are established for the benefit of the indigent sick.³³

Mosquito Control Districts

Mosquito control districts (MCDs) are created to protect health and safety, improve quality of life, promote economic development, and to allow for the enjoyment of natural attractions of the state by reducing the number of insects that transmit disease within their boundaries.³⁴ As of March 1, 2021, there are 18 mosquito control districts: 15 independent and three dependent districts.³⁵

A MCD may contain part or all of a county or municipality.³⁶ The creation of new independent MCDs has been prohibited since July 1, 1980.³⁷ In counties without a district, the board of

²⁶ Sections 191.006(11) and (15); 191.009(2), (3), and (4); and 191.011, F.S.

²⁷ Section 191.012, F.S.

²⁸ Section 191.009(1), F.S. But see art. VII, s. 9, Fla. Const. (special districts may not levy an ad valorem tax in excess of the millage “authorized by law approved by vote of the electors.”)

²⁹ Section 191.009(2), F.S. If the district levies a non-ad valorem assessment to fund emergency medical and transport services, the district is prohibited from levying an ad valorem tax to fund those services.

³⁰ Section 191.009(3), F.S.

³¹ Section 191.009(4), F.S.

³² Dept. of Economic Opportunity, Special District Accountability Program, “Official List of Special Districts,” at <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Mar. 1, 2021).

³³ Florida TaxWatch, Florida’s Fragmented Hospital Taxing District System in Need of Reexamination, Briefings (Feb. 2009), available at: <https://floridataxwatch.org/Research/Full-Library/ArtMID/34407/ArticleID/16012/Floridas-Fragmented-Hospital-Taxing-District-System-in-Need-of-Reexamination> (last visited Mar. 1, 2021).

³⁴ Sections 388.0101 and 388.011(5), F.S.

³⁵ Dept. of Economic Opportunity, Special District Accountability Program, “Official List of Special Districts,” available at: <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Mar. 1, 2021).

³⁶ Section 388.021(1), F.S.

³⁷ Section 388.021(2), F.S.

county commissioners may exercise all the rights, powers, and duties authorized by statute for a MCD or may direct the county health department to do so.³⁸

Mosquito control districts are authorized to levy ad valorem taxes not exceeding 10 mills on real and personal property.³⁹ Each MCD or county participating in arthropod control under the statutes must submit to the Department of Agriculture and Consumer Services (DACS) a report for the preceding month of expenditures from all funds for arthropod control, within 30 days after the end of each month.⁴⁰

Soil and Water Conservation Districts

The stated purpose of soil and water conservation districts (S&WC) is to provide assistance, guidance, and education to landowners, land occupiers, the agricultural industry, and the general public in implementing land and water resource protection practices.⁴¹ All S&WC are created by DACS upon petition by landowners in the proposed district.⁴² DACS must provide for an annual audit of the accounts of receipts and disbursements for each district.⁴³ As of March 1, 2021, there are 56 active districts.⁴⁴

Beginning in 1937,⁴⁵ S&WC initially were established to encourage cooperation between governments and local landowners concerning local conservation needs.⁴⁶ The authority of S&WC now overlap significantly with other agencies created to manage and protect the state's land and water resources, such as the Department of Environmental Protection,⁴⁷ the Department of Economic Opportunity,⁴⁸ and water management districts.⁴⁹ Due to this jurisdictional overlap, S&WC today primarily focus on working with partners to provide funding and technical support to aid local landowners in conservation efforts.⁵⁰

Local Government Financial Reports and Audits

Florida law requires all units of local government, including special districts, to complete annual financial reports and annual financial audit reports. Each district must submit its annual financial

³⁸ Sections 388.241 and 388.251, F.S. The county health department must keep the books and make all reports require under ch. 388, F.S., and all purchases, whether by bid or otherwise, must be made in accordance with the procedures allowed by the BOCC. The health department must also submit to the BOCC itemized monthly statements of expenses incurred in carrying out the control program in the county.

³⁹ Section 388.221(1), F.S.

⁴⁰ Section 388.341, F.S. The reports must detail activities and accomplishments as may be required by DACS.

⁴¹ Section 582.02(4), F.S.

⁴² Sections 582.10-582.15, F.S.

⁴³ Section 582.055(3), F.S.

⁴⁴ Dept. of Economic Opportunity, Special District Accountability Program, "Official List of Special Districts," *available at*: <http://specialdistrictreports.floridajobs.org/webreports/criteria.aspx> (last visited Mar. 1, 2021).

⁴⁵ See ch. 18144, s. 2, Laws of Florida (1937). Originally the districts were called Soil Conservation Districts.

⁴⁶ DACS Office of Agricultural Water Policy, Soil and Water Conservation District Supervisor Handbook 3, *available at*: https://www.fdacs.gov/content/download/7357/file/Fswcd_Handbook_Final.pdf (last visited Mar. 1, 2021).

⁴⁷ See, e.g., ch. 408, F.S.

⁴⁸ See, e.g., ch. 380, F.S.

⁴⁹ See, e.g., ch. 373, F.S.

⁵⁰ The primary partners for soil and water conservation districts are the United States Department of Agriculture's Natural Resource Conservation Service, DACS's Office of Agricultural Water Policy, and county governments. DACS Office of Agricultural Water Policy, *supra* note 58.

report to the Department of Financial Services (DFS) within nine months of the completion of its fiscal year.⁵¹ If a district fails to file a completed annual financial report within the required period, DFS must notify the Legislative Auditing Committee and the Special District Accountability Program of the Department of Economic Opportunity.⁵²

Special districts with revenues or total expenditures and expenses exceeding \$100,000 must have an annual financial audit prepared by an independent certified public accountant, unless the district has been notified before the start of the fiscal year that the Auditor General will conduct a financial audit for that year.⁵³ Special districts with revenues (or a total of expenditures and expenses) between \$50,000 and \$100,000 are required to conduct a financial audit every three years.⁵⁴ The financial audit must be performed according to specific statutory criteria and the rules of the Auditor General.⁵⁵ The audit report for a dependent special district may be included in the annual financial audit report of the county or municipality on which it is dependent. The audit report must be filed with the Auditor General within 45 days of its receipt by the district, but no later than nine months after the end of the fiscal year.⁵⁶

Community Redevelopment Agency Auditing Requirements

Each community redevelopment agency with revenues or a total of expenditures and expenses in excess of \$100,000 must have an annual financial audit prepared by an independent certified public accountant.⁵⁷ The audit report must accompany the annual financial report of the county or municipality that created the district.⁵⁸

Performance Audits

A performance audit is an examination of a program, activity, or function of a governmental entity, conducted in accordance with applicable government auditing standards or auditing and evaluation standards of other appropriate authoritative bodies.⁵⁹ This may include examining:

- The economy, efficiency, or effectiveness of the program;
- How a program is structured or designed to accomplish its goals and objectives;
- The adequacy of the program to meet the needs identified by the Legislature or local governing body;
- Whether alternative methods exist to deliver services provided by the program;
- The goals, objectives, and performance measures used by the agency to monitor and report program accomplishments;

⁵¹ A district that is required to complete a financial audit report must submit both reports within 45 days of the completion of the audit report, but still no later than nine months after the completion of the fiscal year. S. 218.32(1)(d), F.S.

⁵² Section 218.32(1)(f), F.S. A special district required to have a financial audit conducted must file a copy of the audit report along with its annual financial report. S. 218.32(1)(d) F.S.

⁵³ Section 218.39(1), F.S.

⁵⁴ Section 218.39(1)(h), F.S.

⁵⁵ Section 218.39(2)-(7), F.S. See ch. 10.550, Local Governmental Entity Audits (9-30-2019), *available at*: https://flauditor.gov/pages/pdf_files/10_550.pdf (last visited Mar. 1, 2020).

⁵⁶ Section 218.39(7), F.S.

⁵⁷ Section 163.387(8)(a), F.S.

⁵⁸ Section 163.387(8)(c), F.S.

⁵⁹ Section 11.45(1)(j), F.S.

- The accuracy or adequacy of public documents, reports, or requests prepared under the program by state agencies;
- The program's compliance with appropriate policies, rules, or laws; and
- Any other issues related to governmental entities as directed by the Legislative Auditing Committee.⁶⁰

The purpose of a performance audit is to provide objective information that may be used to assist in governance and oversight by providing information that will improve program performance, reduce costs to taxpayers, and otherwise facilitate decision-making.⁶¹ The Auditor General currently conducts a performance audit at least once every three years of the local government financial reporting system and the Department of Revenue's administration of the ad valorem tax laws.⁶² A performance audit also must be conducted on any program associated with a proposed discretionary sales surtax levy.⁶³

III. Effect of Proposed Changes:

Performance Audits (Section 1)

The bill creates s. 189.0695, F.S., to require all independent special fire control districts and each hospital governed by the governing body of a special district or the board of trustees of a public health trust to conduct a performance audit every five years beginning October 1, 2021, and October 1, 2022, respectively. The performance audit must be conducted by a qualified independent entity from a list generated by the Office of Program Policy Analysis and Government Accountability (OPPAGA). To be included on the list, an entity must have at least five years of experience conducting performance audits, must conduct audits according to applicable auditing or evaluation standards of appropriate authoritative bodies, and must follow any relevant industry best practices. The audit report must be filed with the governing body of the district, the Auditor General, the President of the Senate, and the Speaker of the House of Representatives no later than nine months from the beginning of the fiscal year in which the report is due. If the Auditor General conducts a performance audit of a district in the same fiscal year, that report may be used to satisfy this requirement.

The bill also require all independent mosquito control districts and soil and water conservation districts to undergo a performance audit conducted by OPPAGA. The performance audit must compare the services provided by each district with similar services provided by counties and municipalities, examining the similarities and differences as well as relative costs and efficiencies of services. OPPAGA must submit the performance audits of the districts to the President of the Senate and the Speaker of the House of Representatives:

- By September 30, 2023, for independent mosquito control districts.
- By September 30, 2024, for soil and water conservation districts.

⁶⁰ Section 11.45(1)(j), F.S.

⁶¹ Gov't Auditing Standards, s. 1.21 (Gov't Accountability Office 2018). Rule 10.55(3) of the Auditor General incorporate the 2018 Government Auditing Standards adopted by the U.S. Government Accounting Office (2018 Yellow Book).

⁶² Section 11.45(2)(g)-(h), F.S.

⁶³ Section 212.055(11)(a), F.S.

The bill defines the term “performance audit” as having the same meaning used in statutes concerning audits performed by the Auditor General.⁶⁴

Annual Financial Report and Annual Financial Audit Report (Sections 2 & 3)

The bill amends ss. 218.32 and 218.39, F.S., to require the annual financial report and annual financial audit report for all special districts to specify separately the following information:

- The total number of people employed by the district;
- The amounts budgeted by the district for employee salaries and benefits; and
- Each construction project approved by the district to begin after October 1 of the fiscal year being reported and the amount budgeted for the project.

The bill requires the annual financial report of each independent special district that levies ad valorem taxes or non-ad valorem special assessments to include the rates of such levies, the total amount collected by the levies, and the total amount of all outstanding bonds issued by the district and the terms of such bonds.

The bill revises requirements concerning annual financial audit reports to clarify that the annual financial audit report of a community redevelopment agency with revenues or a total of expenditures and expenses in excess of \$100,000 must be provided separately from the annual financial audit report of the county or municipality that created the district.

The effective date of the bill is October 1, 2021.

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.

⁶⁴ See notes 60, 61, supra, and related text.

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

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill may require expenditures by special districts to the extent additional staff may be necessary to comply with additional reporting requirements created by the bill.

Independent special fire control districts and hospitals governed by special districts or the board of trustees of a public health trust will incur expenditures related to the conduct of performance audits.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 218.32, 218.39
This bill creates section 189.0695 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
Comm: WD	.	
03/17/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Hooper) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Paragraph (j) of subsection (1) of section
11.45, Florida Statutes, is amended to read:

11.45 Definitions; duties; authorities; reports; rules.—

(1) DEFINITIONS.—As used in ss. 11.40-11.51, the term:

(j) "Performance audit" means an audit ~~examination~~ of a
program, activity, or function of a governmental entity.7



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11 Performance audits must be conducted in accordance with
12 applicable government auditing standards ~~or auditing and~~
13 ~~evaluation standards of other appropriate authoritative bodies.~~
14 The term includes an assessment ~~examination~~ of issues related
15 to:

- 16 1. Economy, efficiency, or effectiveness of the program;;-
- 17 2. Structure or design of the program to accomplish its
18 goals and objectives;;-
- 19 3. Adequacy of the program to meet the needs identified by
20 the Legislature or governing body;;-
- 21 4. Alternative methods of providing program services or
22 products;;-
- 23 5. Goals, objectives, and performance measures used by the
24 agency to monitor and report program accomplishments;;-
- 25 6. The accuracy or adequacy of public documents, reports,
26 or requests prepared under the program by state agencies;;-
- 27 7. Compliance of the program with appropriate policies,
28 rules, or laws; or -
- 29 8. Any other issues related to governmental entities as
30 directed by the Legislative Auditing Committee.

31 Section 2. Section 189.0695, Florida Statutes, is created
32 to read:

33 189.0695 Independent special districts; performance
34 audits.-

35 (1) The term "performance audit" has the same meaning as in
36 s. 11.45(1).

37 (2) (a) Each independent special district as described in
38 paragraph (c) must contract with an independent audit
39 organization, as defined in accordance with applicable



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40 government auditing standards and other professional standards,
41 to conduct a performance audit of the district and follow the
42 procurement process outlined in s. 287.057. At a minimum, an
43 audit organization must have experience conducting performance
44 audits, must conduct audits according to applicable auditing or
45 evaluation standards of appropriate authoritative bodies, and
46 must follow any applicable industry best practices.

47 (b) The audit organization's final report of the
48 performance audit must be filed with the governing board of the
49 district, the Auditor General, the President of the Senate, and
50 the Speaker of the House of Representatives no later than 9
51 months from the beginning of the district's fiscal year
52 according to the schedule provided in paragraph (c). However, a
53 performance audit of a district conducted by the Auditor General
54 during the same fiscal year in which a performance audit is due
55 pursuant to paragraph (c) qualifies as that district's scheduled
56 performance audit under this section.

57 (c)1. Beginning October 1, 2021, and every 5 years
58 thereafter, each independent special fire control district as
59 defined in s. 191.003, must have a performance audit conducted.

60 2. Beginning October 1, 2022, and every 5 years thereafter,
61 each hospital licensed under chapter 395 which is governed by
62 the governing body of a special district as defined in s.
63 189.012 or by the board of trustees of a public health trust
64 created under s. 154.07, must have a performance audit
65 conducted.

66 (3) The Office of Program Policy Analysis and Government
67 Accountability must conduct a performance audit of all
68 independent special districts within the classifications



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69 described in paragraphs (a) and (b). The performance audit must
70 compare the services provided by each district examined with
71 similar services provided by the county and municipal
72 governments wholly or partially within the boundaries of the
73 district, expressly stating the similarities and differences
74 between the services provided by the district and those provided
75 by the relevant counties and municipalities. The Office of
76 Program Policy Analysis and Government Accountability shall
77 submit the final report of the performance audit to the
78 President of the Senate and the Speaker of the House of
79 Representatives as follows:

80 (a) For all independent mosquito control districts as
81 defined in s. 388.011, no later than September 30, 2023.

82 (b) For all soil and water conservation districts as
83 defined in s. 582.01, no later than September 30, 2024.

84 Section 3. Paragraph (e) of subsection (1) of section
85 218.32, Florida Statutes, is amended to read:

86 218.32 Annual financial reports; local governmental
87 entities.—

88 (1) (e) 1. Each local governmental entity that is not
89 required to provide for an audit under s. 218.39 must submit the
90 annual financial report to the department no later than 9 months
91 after the end of the fiscal year. The department shall consult
92 with the Auditor General in the development of the format of
93 annual financial reports submitted pursuant to this paragraph.
94 The format must include balance sheet information used by the
95 Auditor General pursuant to s. 11.45(7)(f). The department must
96 forward the financial information contained within the annual
97 financial reports to the Auditor General in electronic form.



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98 This paragraph does not apply to housing authorities created
99 under chapter 421.

100 2. The annual financial report filed by a dependent special
101 district or an independent special district shall specify
102 separately:

103 a. The total number of district employees.

104 b. The amounts budgeted by the district for employee
105 salaries and the amounts budgeted for employee benefits.

106 c. Each construction project approved by the district to
107 begin after October 1 of the fiscal year being reported together
108 with the amount budgeted for such project.

109 3. The annual financial report of an independent special
110 district that imposes ad valorem taxes shall include the millage
111 rate or rates imposed by the district, the total amount of ad
112 valorem taxes collected by or on behalf of the district, and the
113 total amount of outstanding bonds issued by the district and the
114 terms of such bonds.

115 4. The annual financial report of an independent special
116 district that imposes non-ad valorem special assessments shall
117 include the rate or rates of such assessments imposed by the
118 district, the total amount of special assessments collected by
119 or on behalf of the district, and the total amount of
120 outstanding bonds issued by the district and the terms of such
121 bonds.

122 Section 4. Paragraph (c) is added to subsection (3) of
123 section 218.39, Florida Statutes, to read:

124 218.39 Annual financial audit reports.—

125 (3)

126 (c) The financial audit of a dependent special district or



127 of an independent special district, or the financial audit of a
128 local governmental entity including the information of a
129 dependent special district as provided in paragraph (a) of this
130 subsection, shall separately include and specify the information
131 required in s. 218.32(1)(e)2.

132 Section 5. This act shall take effect October 1, 2021.

133

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

135 And the title is amended as follows:

136 Delete everything before the enacting clause
137 and insert:

138 A bill to be entitled
139 An act relating to special district accountability;
140 amending s. 11.45, F.S.; revising the definition of
141 the term "performance audit"; creating s. 189.0695,
142 F.S.; defining the term "performance audit"; requiring
143 certain independent special districts to contract with
144 an independent audit organization to conduct
145 performance audits; specifying the frequency of such
146 audits; requiring the Office of Program Policy
147 Analysis and Government Accountability to conduct
148 performance audits of certain classifications of
149 independent special districts; providing criteria for
150 contracting for such audits; requiring specified
151 performance audits to be reported by certain times;
152 amending s. 218.32, F.S.; requiring additional
153 information to be reported by special districts in the
154 annual report; amending s. 218.39, F.S.; conforming
155 provisions to changes made by the act; providing an



665086

156

effective date.

Community Appearance

THE FLORIDA SENATE

APPEARANCE RECORD

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

3-16-21
Meeting Date

1884
Bill Number (if applicable)

Topic Preemption / Sun & Ammunition

Amendment Barcode (if applicable)

Name Barbara DeBene

Job Title _____

Address 625 E Broadway St
Street

Phone 257-4280

City

State

Zip

Email barbaradebene1@john.com

Speaking: For Against Information

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

Representing FL NOW

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

03/16/2021

Meeting Date

SB1884

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Gaby Loewenstein

Job Title _____

Address _____

Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing Moms Demand Action, FL Chapter

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

3-16-2021

Meeting Date

THE FLORIDA SENATE

APPEARANCE RECORD

SB-1884

Bill Number (if applicable)

Topic Preemption of Firearms & Ammunition

Amendment Barcode (if applicable)

Name MARION P HAMMER

Job Title _____

Address P.O. Box 1387

Phone 850-222-9518

Street

TALLAHASSEE

FL

32302

Email mphammer1@aol.c

City

State

Zip

Speaking: For Against Information

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

Representing NRA & Unified Sportsmen of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16/21

Meeting Date

1884

Bill Number (if applicable)

Topic Preemption of Firearms

Amendment Barcode (if applicable)

Name Tda V. Eskamani

Job Title _____

Address _____

Street

Phone _____

City

State

Zip

Email _____

Speaking: For Against Information

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

Representing Florida Rising

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

By Senator Rodrigues

27-01664A-21

20211884__

1 A bill to be entitled
 2 An act relating to the preemption of firearms and
 3 ammunition regulation; amending s. 790.33, F.S.;
 4 providing that written or unwritten policies are
 5 subject to provisions allowing for recovery of damages
 6 if such policies violate specified provisions;
 7 providing that a plaintiff challenging a local
 8 government regulation concerning firearms is
 9 considered a prevailing plaintiff for certain purposes
 10 in specified circumstances; providing an effective
 11 date.

12
 13 Be It Enacted by the Legislature of the State of Florida:

14
 15 Section 1. Paragraph (f) of subsection (3) of section
 16 790.33, Florida Statutes, is amended to read:

17 790.33 Field of regulation of firearms and ammunition
 18 preempted.—

19 (3) PROHIBITIONS; PENALTIES.—

20 (f)1. A person or an organization whose membership is
 21 adversely affected by any ordinance, regulation, measure,
 22 directive, rule, enactment, order, or policy, whether written or
 23 unwritten, promulgated or caused to be enforced in violation of
 24 this section may file suit against any county, agency,
 25 municipality, district, or other entity in any court of this
 26 state having jurisdiction over any defendant to the suit for
 27 declaratory and injunctive relief and for actual damages, as
 28 limited herein, caused by the violation. A court shall award the
 29 prevailing plaintiff in any such suit:

Page 1 of 2

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

27-01664A-21

20211884__

30 ~~a.1~~ Reasonable attorney ~~attorney's~~ fees and costs in
 31 accordance with the laws of this state, including a contingency
 32 fee multiplier, as authorized by law; and
 33 ~~b.2~~ The actual damages incurred, but not more than
 34 \$100,000.
 35 2. If after the filing of a complaint a defendant
 36 voluntarily changes the ordinance, regulation, measure,
 37 directive, rule, enactment, order, or policy, written or
 38 unwritten, promulgated or caused to be enforced in violation of
 39 this section, with or without court action, the plaintiff is
 40 considered a prevailing plaintiff for purposes of this section.
 41
 42 Interest on the sums awarded pursuant to this subsection shall
 43 accrue at the legal rate from the date on which suit was filed.
 44 Section 2. This act shall take effect July 1, 2021.

Page 2 of 2

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

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 Community Affairs

BILL: SB 1884

INTRODUCER: Senator Rodrigues

SUBJECT: Preemption of Firearms and Ammunition Regulation

DATE: March 12, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Paglialonga	Ryon	CA	Favorable
2.	_____	_____	JU	_____
3.	_____	_____	RC	_____

I. Summary:

Section 790.33, F.S., preempts the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the state. Any person or organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated in violation of s. 790.33 F.S., may file suit against the governmental entity for a declaratory judgment and injunctive relief. If a court determines the plaintiff is the prevailing party, the plaintiff may recover actual damages (up to \$100,000) and attorney fees.

SB 1884 provides that a person or organization whose membership is adversely affected by a governmental entity action in violation of s. 790.33, F.S., may file suit whether the governmental action is *written or unwritten*.

The bill also provides that if the governmental entity defendant to a complaint alleging a violation of s. 790.33, F.S., voluntarily changes the ordinance, regulation, measure, directive, rule, enactment, order, or policy, written or unwritten, allegedly in violation of s. 790.33, F.S., the plaintiff is considered a prevailing plaintiff, with or without court action, and may recover actual damages and attorney fees.

The bill takes effect July 1, 2021.

II. Present Situation:

Home Rule Powers and Preemption

The Florida Constitution

The Florida Constitution establishes and describes the duties, powers, structure, function, and limitations of government in Florida. Article VIII, section 1 of the Florida Constitution, endows

counties and municipalities the power of self-government or home rule power. Under the home rule power, local governments have broad authority to exercise the state's sovereign police powers and legislate on any matter that is not inconsistent with the federal and state constitution and laws.

Counties

A county without a charter has such power of self-government as provided by general or special law and may enact county ordinances not inconsistent with general law.¹ Counties operating under county charters have all the powers of local self-government not inconsistent with general law or with special law approved by a vote of the electors.² General law authorizes counties "the power to carry on county government"³ and to "perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."⁴

Municipalities

Municipalities may be established or abolished, and their charters amended by general or special law. Municipalities have governmental, corporate, and proprietary powers to conduct municipal government, perform municipal functions, and render municipal services. They may exercise any of these powers for municipal purposes except as otherwise provided by law.⁵ Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,⁶ acknowledges these constitutional grants of police powers and better defines municipal powers of self-government.⁷ Chapter 166, F.S., provides municipalities with broad home rule powers to act in a manner not inconsistent with the Florida Constitution, general and special law, and a charter for the county in which the municipality is located.⁸

State Preemption

Although local governments have broad home rule powers, the state legislature may preempt this self-government power and preclude local governments from exercising legislative authority in particular areas of law.⁹ Florida law recognizes two types of preemption: express and implied.

Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹⁰ In cases where the Legislature expressly preempts an area or forbids local governments from certain actions, there is no problem with ascertaining what the Legislature

¹ FLA. CONST. art. VIII, s. 1(f).

² *Id.* at (g).

³ Section 125.01(1), F.S.

⁴ *Id.* at (w).

⁵ FLA. CONST. art. VIII, s. 2.

⁶ Section 166.011, F.S.

⁷ Florida House of Representatives, Publications, *The Local Government Formation Manual 2017-2018*, p. 16, available at: <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2017&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf> (last visited Mar. 11, 2021).

⁸ Section 166.021(4), F.S.

⁹ Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

¹⁰ See *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).

intended.¹¹ On the other hand, implied preemption is found where the local legislation would present the danger of conflicting with the state's pervasive regulatory scheme.¹² Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area to the state, and there are strong public policy reasons for doing so.¹³ In cases determining the validity of ordinances enacted in the face of express and implied state preemption, the effect has been to find such ordinances null, void, and unenforceable.¹⁴

The Joe Carlucci Uniform Firearms Act

The Joe Carlucci Uniform Firearms Act (Act), codified in s. 790.33, F.S., became law in 1987.¹⁵ The policy and intent of the Act is stated as follows:

It is the intent of this section to provide uniform firearms laws in the state; to declare all ordinances and regulations null and void which have been enacted by any jurisdictions other than state and federal, which regulate firearms, ammunition, or components thereof; to prohibit the enactment of any future ordinances or regulations relating to firearms, ammunition, or components thereof unless specifically authorized by this section or general law; and to require local jurisdictions to enforce state firearms laws.¹⁶

The Act accomplished its stated purpose by "occupying the whole field of regulation of firearms and ammunition," as stated in subsection (1) of the Act:

PREEMPTION.— Except as expressly provided by the State Constitution or general law, the Legislature hereby declares that it is occupying the whole field of regulation of firearms and ammunition, including the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation thereof, to the exclusion of all existing and future county, city, town, or municipal ordinances or any administrative regulations or rules adopted by local or state government relating thereto. Any such existing ordinances, rules, or regulations are hereby declared null and void.¹⁷

Since 1990 there has been a statewide three-day waiting period as outlined in Florida's Constitution.¹⁸ In 2011, the Legislature substantially amended the Act to provide an updated

¹¹ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

¹² *See GLA & Assocs., Inc. v. City of Boca Raton*, 855 So. 2d 278, 282 (Fla. 4th DCA 2003).

¹³ *Id.*

¹⁴ *Thomas v. State*, 614 So.2d 468, 470 (Fla.1993); *Hillsborough County v. Fla. Rest. Ass'n*, 603 So.2d 587, 591 (Fla. 2d DCA 1992) ("If [a county] has enacted such an inconsistent ordinance, the ordinance must be declared null and void.")

¹⁵ Chapter 87-23, Laws of Fla.

¹⁶ Section 790.33(3)(a), F.S.

¹⁷ Section 790.33(1), F.S.

¹⁸ There shall be a mandatory period of three days, excluding weekends and legal holidays, between the purchase and delivery at retail of any handgun. For the purposes of this section, "purchase" means the transfer of money or other valuable consideration to the retailer, and "handgun" means a firearm capable of being carried and used by one hand, such as a pistol or revolver. Holders of a concealed weapon permit as prescribed in Florida law shall not be subject to the provisions of this paragraph. ... This restriction shall not apply to a trade in of another gun. FLA. CONST. art. I, s. 8(b), 8(d).

statutory overlay to the constitutional provisions addressing firearms.¹⁹ These revisions included various express prohibitions and exceptions.²⁰

Despite the provisions of the 1987 Joe Carlucci Act and a Florida appellate court opinion upholding the Act,²¹ local governments have enacted or considered enacting ordinances that required trigger locks, prohibited concealed carry permit holders from lawfully carrying their firearms on municipal or county property, required special use permits for certain sporting goods stores, and banned recreational shooting. Courts have continuously struck down these local regulations as violations of the Act's express state preemption in the field of firearms.²²

Liability, Recovery, and Attorney Fees

The Act also includes provisions related to a party's liability that violates the Act's express state preemption. Any person, county, agency, municipality, district, or other entity that violates the state's express preemption in the field of firearms, the Act directs courts to declare the improper ordinance, regulation, or rule invalid and issue a permanent injunction enjoining its enforcement.²³ If a court determines that the violation was knowing and willful, the elected or appointed official having jurisdiction may be assessed up to a \$5,000 civil fine (that may not be paid with public funds) and may be terminated or removed from the position.²⁴

Furthermore, any person or an organization whose membership is adversely affected by any ordinance, regulation, measure, directive, rule, enactment, order, or policy promulgated or caused to be enforced in violation of the Act may sue the violator for a declaratory judgment, injunctive relief, and actual damages caused by the violation. If the plaintiff prevails in the suit, the Act directs a court to award reasonable attorney's fees and costs, including a contingency fee multiplier and actual damages up to \$100,000.²⁵

III. Effect of Proposed Changes:

The bill amends s. 790.33, F.S., to provide that a person or organization whose membership is adversely affected by a governmental entity action in violation of s. 790.33, F.S., may file suit whether the governmental action is written or unwritten. This amendment may provide a cause of action to persons and organizations that have been adversely affected by unwritten firearm regulations.

The bill also provides that if the governmental entity defendant to a complaint alleging a violation s. 790.33, F.S., voluntarily changes the ordinance, regulation, measure, directive, rule, enactment, order, or policy, written or unwritten, allegedly in violation of s. 790.33, F.S., the plaintiff is considered a prevailing plaintiff, with or without court action. As the prevailing party, the plaintiff may recover actual damages and attorney fees.

¹⁹ Chapter 2011-109, Laws of Fla.

²⁰ Section 790.33(3),(4), F.S.

²¹ *National Rifle Association v. City of South Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).

²² *See Jensen v. Pinellas County*, 198 So.3d 754 (Fla. 2nd DCA 2016); *see also Florida Carry, Inc. v. University of Florida*, 180 So.3d 137 (Fla. 1st DCA 2015).

²³ Section 790.33(3)(b), F.S.

²⁴ *Id.* at (c), (d), and (e).

²⁵ *Id.* at (f).

The bill takes effect July 1, 2021.

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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an indeterminate net positive fiscal impact for persons and organizations adversely affected by a local government's unwritten action regarding the purchase, sale, transfer, taxation, manufacture, ownership, possession, storage, and transportation of firearms and ammunition.

The bill also may have an indeterminate net positive fiscal impact on plaintiffs challenging actions as violating s. 790.33, F.S. Under the bill, these plaintiffs may more easily recover attorney fees and actual damages by being declared the prevailing party if a defendant voluntarily changes the policy allegedly violating s. 790.33, F.S., after a complaint is filed.

C. Government Sector Impact:

The bill may cause an indeterminate net negative fiscal impact on government entities that violate s. 790.33, F.S., by providing that a plaintiff may recover attorney fees and actual damages if the governmental entity voluntarily changes the alleged violation.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is difficult to determine the nature of the unwritten policies covered by the bill. Unwritten policies may include oral instructions given within a law enforcement agency.²⁶

VIII. Statutes Affected:

This bill substantially amends section 790.33 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.

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

²⁶ See *Dougan v. Bradshaw*, 198 So.3d 878 (Fla. 4th DCA 2016)(The Sheriff argued that a cause of action under section 790.33, F.S., could not be maintained because the “policy” alleged in Appellant's complaint—i.e. retaining firearms seized as a result of a safety call or safety check until ordered by the court to return them—was an oral instruction pursuant to an Administrative Order and not a “policy” within the meaning of s. 790.33 F.S.).

THE FLORIDA SENATE
APPEARANCE RECORD

3/16/21

Meeting Date

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

SB 630

Bill Number (if applicable)

Topic Community Associations

Amendment Barcode (if applicable)

Name Laura Pearce

Job Title General Counsel

Address _____
Street

Phone 850-566-8613

City

State

Zip

Email Lpearce@faia.com

Speaking: For Against Information

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

Representing Florida Association of Insurance Agents

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-16-21

Meeting Date

630

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Pete Doubar

Job Title _____

Address 106 E College

Phone 909-4100

Street

Tallahassee

Email _____

City

State

Zip

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing Real Property Probate & Trust Law Section

Florida Bar

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-16-2021

Meeting Date

630

Bill Number (if applicable)

Topic SB 630

Amendment Barcode (if applicable)

Name Matthew Mercier

Job Title National Director - Community Association Division

Address 1605 Main Street #1010

Phone (941) 596-0702

Street

Sarasota,

FL

34236

Email mmercier@cbiz.com

City

State

Zip

Speaking: For Against Information

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

Representing CBIZ Insurance Services

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

9-16-21

Meeting Date

630

Bill Number (if applicable)

Topic Community Associations

Amendment Barcode (if applicable)

Name Rusty Patton

Job Title CEO

Address 2600 Centennial Pkwy

Phone 567-1073

Street
Tally FL 32317
City State Zip

Email r.pattone@fhba.com

Speaking: For Against Information

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

Representing Florida Home Builders Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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3/16/21

Meeting Date

630

Bill Number (if applicable)

Topic Community Assoc.

Amendment Barcode (if applicable)

Name Marco Paredes

Job Title Dir. of Govt. Affairs

Address 106 E College Ave, Ste 700

Phone 850-354-7608

Street

Tallahassee FL 32301

City

State

Zip

Email mparedes@stearnsweaver.com

Speaking: For Against Information

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

Representing On Top of the World Communities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-16-21
Meeting Date

630
Bill Number (if applicable)

Topic Community Associations

Amendment Barcode (if applicable)

Name William Sklar

Job Title _____

Address 215 S. Manne Ste 500
Street
Tallahassee, FL 32301
City State Zip

Phone 561-843-2909

Email WSKlar@carltonfields.com

Speaking: For Against Information

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

Representing Florida Homebuilders Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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3-16-21
Meeting Date

630

Bill Number (if applicable)

Topic Community Associations

Amendment Barcode (if applicable)

Name TRAVIS MOORE

Job Title _____

Address P.O. Box 2020

Phone 727.421.6902

St. Petersburg FL 33731
City State Zip

Email travis@moore-relations.com

Speaking: For Against Information

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

Representing Community Associations Institute + FirstService Residential

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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3/16/21

Meeting Date

SB 630

Bill Number (if applicable)

Topic SB 630

Amendment Barcode (if applicable)

Name Mark Anderson

Job Title Lobbyist

Address 110 S Monroe st

Phone 407-205-0658

Street

Tallahassee

City

FL

State

32301

Zip

Email mark@consoftanderson.com

Speaking: For Against Information

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

Representing Chief Executive Officers of Management Companies (CEOMC)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

March 16, 2021
Meeting Date

SB630
Bill Number (if applicable)

Topic Community Associations

Amendment Barcode (if applicable)

Name Chief Ray Colburn

Job Title Executive Director

Address 5289 Palm Dr.
Street

Phone 407-468-6622

Melbourne Beach FL 32951
City State Zip

Email ray@ffca.org

Speaking: For Against Information

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

Representing Florida Fire Chiefs' Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

By the Committee on Regulated Industries; and Senators Baxley,
Hutson, and Rodriguez

580-02171-21

2021630c1

1 A bill to be entitled
2 An act relating to community associations; amending s.
3 627.714, F.S.; prohibiting insurance policies from
4 providing specified rights of subrogation under
5 certain circumstances; amending s. 718.103, F.S.;
6 revising the definition of the terms
7 "multicondominium," "operation," and "operation of the
8 condominium"; amending s. 718.111, F.S.; requiring
9 that certain records be maintained for a specified
10 time; prohibiting an association from requiring
11 certain actions relating to the inspection of records;
12 revising requirements relating to the posting of
13 digital copies of certain documents by certain
14 condominium associations; amending s. 718.112, F.S.;
15 authorizing a condominium association to extinguish
16 discriminatory restrictions; revising the calculation
17 used in determining a board member's term limit;
18 providing requirements for certain notices; revising
19 the fees that an association may charge for transfers;
20 deleting a prohibition against employing or
21 contracting with certain service providers; amending
22 s. 718.113, F.S.; revising legislative findings;
23 defining the terms "natural gas fuel" and "natural gas
24 fuel vehicle"; revising requirements for electric
25 vehicle charging stations; providing requirements for
26 natural gas fuel stations on property governed by
27 condominium associations; amending s. 718.117, F.S.;
28 conforming provisions to changes made by the act;
29 amending s. 718.121, F.S.; providing that labor and

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

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30 materials associated with the installation of a
31 natural gas fuel station may not serve as the basis
32 for filing a lien against an association but may serve
33 as the basis for filing a lien against a unit owner;
34 requiring that notices of intent to record a claim of
35 lien specify certain dates; amending s. 718.1255,
36 F.S.; authorizing parties to initiate presuit
37 mediation under certain circumstances; specifying the
38 circumstances under which arbitration is binding on
39 the parties; providing requirements for presuit
40 mediation; making technical changes; amending s.
41 718.1265, F.S.; revising the emergency powers of
42 condominium associations; prohibiting condominium
43 associations from taking certain actions during a
44 declared state of emergency; amending s. 718.202,
45 F.S.; revising the allowable uses of certain escrow
46 funds withdrawn by developers; defining the term
47 "actual costs"; amending s. 718.303, F.S.; revising
48 requirements for certain actions for failure to comply
49 with specified provisions relating to condominium
50 associations; revising requirements for certain fines;
51 amending s. 718.405, F.S.; providing clarifying
52 language relating to certain multicondominium
53 declarations; providing applicability; amending s.
54 718.501, F.S.; conforming provisions to changes made
55 by the act; amending s. 718.5014, F.S.; revising a
56 requirement regarding the location of the principal
57 office of the Office of the Condominium Ombudsman;
58 amending s. 719.103, F.S.; revising the definition of

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59 the term "unit" to specify that an interest in a
 60 cooperative unit is an interest in real property;
 61 amending s. 719.104, F.S.; prohibiting an association
 62 from requiring certain actions relating to the
 63 inspection of records; amending s. 719.106, F.S.;
 64 revising provisions relating to a quorum and voting
 65 rights for members remotely participating in meetings;
 66 revising the procedure to challenge a board member
 67 recall; authorizing cooperative associations to
 68 extinguish discriminatory restrictions; amending s.
 69 719.128, F.S.; revising emergency powers for
 70 cooperative associations; prohibiting cooperative
 71 associations from taking certain actions during a
 72 declared state of emergency; amending s. 720.301,
 73 F.S.; revising the definition of the term "governing
 74 documents"; amending s. 720.303, F.S.; authorizing an
 75 association to adopt procedures for electronic meeting
 76 notices; revising the documents that constitute the
 77 official records of an association; revising the types
 78 of records that are not accessible to members or
 79 parcel owners; revising the circumstances under which
 80 a specified statement must be included in an
 81 association's financial report; revising requirements
 82 for such statement; revising the circumstances under
 83 which an association is deemed to have provided for
 84 reserve accounts; revising the procedure to challenge
 85 a board member recall; amending s. 720.305, F.S.;
 86 providing requirements for certain fines levied by a
 87 board of administration; amending s. 720.306, F.S.;

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88 revising requirements for providing certain notices;
 89 providing limitations on associations when a parcel
 90 owner attempts to rent or lease his or her parcel;
 91 defining the term "affiliated entity"; amending the
 92 procedure for election disputes; amending s. 720.307,
 93 F.S.; revising the circumstances under which members
 94 other than the developer are entitled to elect members
 95 to the board of directors of the homeowners'
 96 association; amending s. 720.311, F.S.; revising the
 97 dispute resolution requirements for election disputes
 98 and recall disputes; amending s. 720.3075, F.S.;
 99 authorizing homeowners' associations to extinguish
 100 discriminatory restrictions; amending s. 720.316,
 101 F.S.; revising emergency powers of homeowners'
 102 associations; prohibiting homeowners' associations
 103 from taking certain actions during a declared state of
 104 emergency; providing an effective date.

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

108 Section 1. Subsection (4) of section 627.714, Florida
 109 Statutes, is amended to read:

110 627.714 Residential condominium unit owner coverage; loss
 111 assessment coverage required.-

112 (4) Every individual unit owner's residential property
 113 policy must contain a provision stating that the coverage
 114 afforded by such policy is excess coverage over the amount
 115 recoverable under any other policy covering the same property.

116 If a condominium association's insurance policy does not provide

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117 rights for subrogation against the unit owners in the
 118 association, an insurance policy issued to an individual unit
 119 owner in the association may not provide rights of subrogation
 120 against the condominium association.

121 Section 2. Subsections (20) and (21) of section 718.103,
 122 Florida Statutes, are amended to read:

123 718.103 Definitions.—As used in this chapter, the term:

124 (20) "Multicondominium" means real property ~~a real estate~~
 125 ~~development~~ containing two or more condominiums, all of which
 126 are operated by the same association.

127 (21) "Operation" or "operation of the condominium" includes
 128 the administration and management of the condominium property
 129 and the association.

130 Section 3. Paragraphs (a), (b), (c), and (g) of subsection
 131 (12) of section 718.111, Florida Statutes, are amended to read:

132 718.111 The association.—

133 (12) OFFICIAL RECORDS.—

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

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

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

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

144 4. A certified copy of the articles of incorporation of the
 145 association, or other documents creating the association, and

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146 each amendment thereto.

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

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

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

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

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

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

170 11. Accounting records for the association and separate
 171 accounting records for each condominium that the association
 172 operates. Any person who knowingly or intentionally defaces or
 173 destroys such records, or who knowingly or intentionally fails
 174 to create or maintain such records, with the intent of causing

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175 harm to the association or one or more of its members, is
 176 personally subject to a civil penalty pursuant to s.
 177 718.501(1)(d). The accounting records must include, but are not
 178 limited to:

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

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

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

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

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

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

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

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

203 ~~16.~~ A copy of the inspection report as described in s.

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204 718.301(4)(p).

205 ~~16.17.~~ Bids for materials, equipment, or services.
 206 17. All other written records of the association not
 207 specified in subparagraphs 1.-16. which are related to the
 208 operation of the association.

209 (b) The official records specified in subparagraphs (a)1.-
 210 6. must be permanently maintained from the inception of the
 211 association. Bids for work to be performed or for materials,
 212 equipment, or services must be maintained for at least 1 year
 213 after receipt of the bid. All other official records must be
 214 maintained within the state for at least 7 years, unless
 215 otherwise provided by general law. The records of the
 216 association shall be made available to a unit owner within 45
 217 miles of the condominium property or within the county in which
 218 the condominium property is located within 10 working days after
 219 receipt of a written request by the board or its designee.
 220 However, such distance requirement does not apply to an
 221 association governing a timeshare condominium. This paragraph
 222 may be complied with by having a copy of the official records of
 223 the association available for inspection or copying on the
 224 condominium property or association property, or the association
 225 may offer the option of making the records available to a unit
 226 owner electronically via the Internet or by allowing the records
 227 to be viewed in electronic format on a computer screen and
 228 printed upon request. The association is not responsible for the
 229 use or misuse of the information provided to an association
 230 member or his or her authorized representative in pursuant to
 231 the compliance with requirements of this chapter unless the
 232 association has an affirmative duty not to disclose such

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233 information ~~under~~ pursuant to this chapter.

234 (c)1. The official records of the association are open to
 235 inspection by any association member or the authorized
 236 representative of such member at all reasonable times. The right
 237 to inspect the records includes the right to make or obtain
 238 copies, at the reasonable expense, if any, of the member or
 239 authorized representative of such member. A renter of a unit has
 240 a right to inspect and copy only the declaration of condominium
 241 and the association's bylaws and rules. The association may
 242 adopt reasonable rules regarding the frequency, time, location,
 243 notice, and manner of record inspections and copying, but may
 244 not require a member to demonstrate any purpose or state any
 245 reason for the inspection. The failure of an association to
 246 provide the records within 10 working days after receipt of a
 247 written request creates a rebuttable presumption that the
 248 association willfully failed to comply with this paragraph. A
 249 unit owner who is denied access to official records is entitled
 250 to the actual damages or minimum damages for the association's
 251 willful failure to comply. Minimum damages are \$50 per calendar
 252 day for up to 10 days, beginning on the 11th working day after
 253 receipt of the written request. The failure to permit inspection
 254 entitles any person prevailing in an enforcement action to
 255 recover reasonable attorney fees from the person in control of
 256 the records who, directly or indirectly, knowingly denied access
 257 to the records.

258 2. Any person who knowingly or intentionally defaces or
 259 destroys accounting records that are required by this chapter to
 260 be maintained during the period for which such records are
 261 required to be maintained, or who knowingly or intentionally

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262 fails to create or maintain accounting records that are required
 263 to be created or maintained, with the intent of causing harm to
 264 the association or one or more of its members, is personally
 265 subject to a civil penalty pursuant to s. 718.501(1)(d).

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

284 a. Any record protected by the lawyer-client privilege as
 285 described in s. 90.502 and any record protected by the work-
 286 product privilege, including a record prepared by an association
 287 attorney or prepared at the attorney's express direction, which
 288 reflects a mental impression, conclusion, litigation strategy,
 289 or legal theory of the attorney or the association, and which
 290 was prepared exclusively for civil or criminal litigation or for

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291 adversarial administrative proceedings, or which was prepared in
292 anticipation of such litigation or proceedings until the
293 conclusion of the litigation or proceedings.

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

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

304 d. Medical records of unit owners.

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

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320 disclosure of other contact information described in this sub-
321 subparagraph. The association is not liable for the inadvertent
322 disclosure of information that is protected under this sub-
323 subparagraph if the information is included in an official
324 record of the association and is voluntarily provided by an
325 owner and not requested by the association.

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

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

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

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

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

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

348 b. The association's website or application must be

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349 accessible through the Internet and must contain a subpage, web
350 portal, or other protected electronic location that is
351 inaccessible to the general public and accessible only to unit
352 owners and employees of the association.

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

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

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

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

365 c. The articles of incorporation of the association, or
366 other documents creating the association, and each amendment to
367 the articles of incorporation or other documents ~~therein~~. The
368 copy posted pursuant to this sub-subparagraph must be a copy of
369 the articles of incorporation filed with the Department of
370 State.

371 d. The rules of the association.

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

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

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

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

386 h. The certification of each director required by s.
387 718.112(2)(d)4.b.

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

393 j. Any contract or document regarding a conflict of
394 interest or possible conflict of interest as provided in ss.
395 468.436(2)(b)6. and 718.3027(3).

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

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407 1. Notice of any board meeting, the agenda, and any other
 408 document required for the meeting as required by s.
 409 718.112(2)(c), which must be posted no later than the date
 410 required for notice under ~~pursuant to~~ s. 718.112(2)(c).

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

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

428 Section 4. Paragraphs (d), (i), (j), (k), and (p) of
 429 subsection (2) of section 718.112, Florida Statutes, are
 430 amended, and paragraph (c) is added to subsection (1) of that
 431 section, to read:

432 718.112 Bylaws.—

433 (1) GENERALLY.—

434 (c) The association may extinguish a discriminatory
 435 restriction as provided under s. 712.065.

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

439 (d) *Unit owner meetings*.—

440 1. An annual meeting of the unit owners must be held at the
 441 location provided in the association bylaws and, if the bylaws
 442 are silent as to the location, the meeting must be held within
 443 45 miles of the condominium property. However, such distance
 444 requirement does not apply to an association governing a
 445 timeshare condominium.

446 2. Unless the bylaws provide otherwise, a vacancy on the
 447 board caused by the expiration of a director's term must be
 448 filled by electing a new board member, and the election must be
 449 by secret ballot. An election is not required if the number of
 450 vacancies equals or exceeds the number of candidates. For
 451 purposes of this paragraph, the term "candidate" means an
 452 eligible person who has timely submitted the written notice, as
 453 described in sub-subparagraph 4.a., of his or her intention to
 454 become a candidate. Except in a timeshare or nonresidential
 455 condominium, or if the staggered term of a board member does not
 456 expire until a later annual meeting, or if all members' terms
 457 would otherwise expire but there are no candidates, the terms of
 458 all board members expire at the annual meeting, and such members
 459 may stand for reelection unless prohibited by the bylaws. Board
 460 members may serve terms longer than 1 year if permitted by the
 461 bylaws or articles of incorporation. A board member may not
 462 serve more than 8 consecutive years unless approved by an
 463 affirmative vote of unit owners representing two-thirds of all
 464 votes cast in the election or unless there are not enough

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465 eligible candidates to fill the vacancies on the board at the
 466 time of the vacancy. Only board service that occurs on or after
 467 July 1, 2018, may be used when calculating a board member's term
 468 limit. If the number of board members whose terms expire at the
 469 annual meeting equals or exceeds the number of candidates, the
 470 candidates become members of the board effective upon the
 471 adjournment of the annual meeting. Unless the bylaws provide
 472 otherwise, any remaining vacancies shall be filled by the
 473 affirmative vote of the majority of the directors making up the
 474 newly constituted board even if the directors constitute less
 475 than a quorum or there is only one director. In a residential
 476 condominium association of more than 10 units or in a
 477 residential condominium association that does not include
 478 timeshare units or timeshare interests, co-owners of a unit may
 479 not serve as members of the board of directors at the same time
 480 unless they own more than one unit or unless there are not
 481 enough eligible candidates to fill the vacancies on the board at
 482 the time of the vacancy. A unit owner in a residential
 483 condominium desiring to be a candidate for board membership must
 484 comply with sub-subparagraph 4.a. and must be eligible to be a
 485 candidate to serve on the board of directors at the time of the
 486 deadline for submitting a notice of intent to run in order to
 487 have his or her name listed as a proper candidate on the ballot
 488 or to serve on the board. A person who has been suspended or
 489 removed by the division under this chapter, or who is delinquent
 490 in the payment of any monetary obligation due to the
 491 association, is not eligible to be a candidate for board
 492 membership and may not be listed on the ballot. A person who has
 493 been convicted of any felony in this state or in a United States

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494 District or Territorial Court, or who has been convicted of any
 495 offense in another jurisdiction which would be considered a
 496 felony if committed in this state, is not eligible for board
 497 membership unless such felon's civil rights have been restored
 498 for at least 5 years as of the date such person seeks election
 499 to the board. The validity of an action by the board is not
 500 affected if it is later determined that a board member is
 501 ineligible for board membership due to having been convicted of
 502 a felony. This subparagraph does not limit the term of a member
 503 of the board of a nonresidential or timeshare condominium.

504 3. The bylaws must provide the method of calling meetings
 505 of unit owners, including annual meetings. Written notice of an
 506 annual meeting must include an agenda; ~~it must~~ be mailed, hand
 507 delivered, or electronically transmitted to each unit owner at
 508 least 14 days before the annual meeting; ~~it~~ and ~~must~~ be posted in
 509 a conspicuous place on the condominium property or association
 510 property at least 14 continuous days before the annual meeting.
 511 Written notice of a meeting other than an annual meeting must
 512 include an agenda; be mailed, hand delivered, or electronically
 513 transmitted to each unit owner; and be posted in a conspicuous
 514 place on the condominium property or association property within
 515 the timeframe specified in the bylaws. If the bylaws do not
 516 specify a timeframe for written notice of a meeting other than
 517 an annual meeting, notice must be provided at least 14
 518 continuous days before the meeting. Upon notice to the unit
 519 owners, the board shall, by duly adopted rule, designate a
 520 specific location on the condominium property or association
 521 property where all notices of unit owner meetings must be
 522 posted. This requirement does not apply if there is no

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523 condominium property for posting notices. In lieu of, or in
 524 addition to, the physical posting of meeting notices, the
 525 association may, by reasonable rule, adopt a procedure for
 526 conspicuously posting and repeatedly broadcasting the notice and
 527 the agenda on a closed-circuit cable television system serving
 528 the condominium association. However, if broadcast notice is
 529 used in lieu of a notice posted physically on the condominium
 530 property, the notice and agenda must be broadcast at least four
 531 times every broadcast hour of each day that a posted notice is
 532 otherwise required under this section. If broadcast notice is
 533 provided, the notice and agenda must be broadcast in a manner
 534 and for a sufficient continuous length of time so as to allow an
 535 average reader to observe the notice and read and comprehend the
 536 entire content of the notice and the agenda. In addition to any
 537 of the authorized means of providing notice of a meeting of the
 538 board, the association may, by rule, adopt a procedure for
 539 conspicuously posting the meeting notice and the agenda on a
 540 website serving the condominium association for at least the
 541 minimum period of time for which a notice of a meeting is also
 542 required to be physically posted on the condominium property.
 543 Any rule adopted shall, in addition to other matters, include a
 544 requirement that the association send an electronic notice in
 545 the same manner as a notice for a meeting of the members, which
 546 must include a hyperlink to the website where the notice is
 547 posted, to unit owners whose e-mail addresses are included in
 548 the association's official records. Unless a unit owner waives
 549 in writing the right to receive notice of the annual meeting,
 550 such notice must be hand delivered, mailed, or electronically
 551 transmitted to each unit owner. Notice for meetings and notice

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552 for all other purposes must be mailed to each unit owner at the
 553 address last furnished to the association by the unit owner, or
 554 hand delivered to each unit owner. However, if a unit is owned
 555 by more than one person, the association must provide notice to
 556 the address that the developer identifies for that purpose and
 557 thereafter as one or more of the owners of the unit advise the
 558 association in writing, or if no address is given or the owners
 559 of the unit do not agree, to the address provided on the deed of
 560 record. An officer of the association, or the manager or other
 561 person providing notice of the association meeting, must provide
 562 an affidavit or United States Postal Service certificate of
 563 mailing, to be included in the official records of the
 564 association affirming that the notice was mailed or hand
 565 delivered in accordance with this provision.

566 4. The members of the board of a residential condominium
 567 shall be elected by written ballot or voting machine. Proxies
 568 may not be used in electing the board in general elections or
 569 elections to fill vacancies caused by recall, resignation, or
 570 otherwise, unless otherwise provided in this chapter. This
 571 subparagraph does not apply to an association governing a
 572 timeshare condominium.

573 a. At least 60 days before a scheduled election, the
 574 association shall mail, deliver, or electronically transmit, by
 575 separate association mailing or included in another association
 576 mailing, delivery, or transmission, including regularly
 577 published newsletters, to each unit owner entitled to a vote, a
 578 first notice of the date of the election. A unit owner or other
 579 eligible person desiring to be a candidate for the board must
 580 give written notice of his or her intent to be a candidate to

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581 the association at least 40 days before a scheduled election.
 582 Together with the written notice and agenda as set forth in
 583 subparagraph 3., the association shall mail, deliver, or
 584 electronically transmit a second notice of the election to all
 585 unit owners entitled to vote, together with a ballot that lists
 586 all candidates not less than 14 days or more than 34 days before
 587 the date of the election. Upon request of a candidate, an
 588 information sheet, no larger than 8 1/2 inches by 11 inches,
 589 which must be furnished by the candidate at least 35 days before
 590 the election, must be included with the mailing, delivery, or
 591 transmission of the ballot, with the costs of mailing, delivery,
 592 or electronic transmission and copying to be borne by the
 593 association. The association is not liable for the contents of
 594 the information sheets prepared by the candidates. In order to
 595 reduce costs, the association may print or duplicate the
 596 information sheets on both sides of the paper. The division
 597 shall by rule establish voting procedures consistent with this
 598 sub-subparagraph, including rules establishing procedures for
 599 giving notice by electronic transmission and rules providing for
 600 the secrecy of ballots. Elections shall be decided by a
 601 plurality of ballots cast. There is no quorum requirement;
 602 however, at least 20 percent of the eligible voters must cast a
 603 ballot in order to have a valid election. A unit owner may not
 604 authorize any other person to vote his or her ballot, and any
 605 ballots improperly cast are invalid. A unit owner who violates
 606 this provision may be fined by the association in accordance
 607 with s. 718.303. A unit owner who needs assistance in casting
 608 the ballot for the reasons stated in s. 101.051 may obtain such
 609 assistance. The regular election must occur on the date of the

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610 annual meeting. Notwithstanding this sub-subparagraph, an
 611 election is not required unless more candidates file notices of
 612 intent to run or are nominated than board vacancies exist.
 613 b. Within 90 days after being elected or appointed to the
 614 board of an association of a residential condominium, each newly
 615 elected or appointed director shall certify in writing to the
 616 secretary of the association that he or she has read the
 617 association's declaration of condominium, articles of
 618 incorporation, bylaws, and current written policies; that he or
 619 she will work to uphold such documents and policies to the best
 620 of his or her ability; and that he or she will faithfully
 621 discharge his or her fiduciary responsibility to the
 622 association's members. In lieu of this written certification,
 623 within 90 days after being elected or appointed to the board,
 624 the newly elected or appointed director may submit a certificate
 625 of having satisfactorily completed the educational curriculum
 626 administered by a division-approved condominium education
 627 provider within 1 year before or 90 days after the date of
 628 election or appointment. The written certification or
 629 educational certificate is valid and does not have to be
 630 resubmitted as long as the director serves on the board without
 631 interruption. A director of an association of a residential
 632 condominium who fails to timely file the written certification
 633 or educational certificate is suspended from service on the
 634 board until he or she complies with this sub-subparagraph. The
 635 board may temporarily fill the vacancy during the period of
 636 suspension. The secretary shall cause the association to retain
 637 a director's written certification or educational certificate
 638 for inspection by the members for 5 years after a director's

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639 election or the duration of the director's uninterrupted tenure,
 640 whichever is longer. Failure to have such written certification
 641 or educational certificate on file does not affect the validity
 642 of any board action.

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

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

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

666 7. Unit owners have the right to participate in meetings of
 667 unit owners with reference to all designated agenda items.

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668 However, the association may adopt reasonable rules governing
 669 the frequency, duration, and manner of unit owner participation.

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

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

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

693
 694 Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a., an
 695 association of 10 or fewer units may, by affirmative vote of a
 696 majority of the total voting interests, provide for different

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697 voting and election procedures in its bylaws, which may be by a
698 proxy specifically delineating the different voting and election
699 procedures. The different voting and election procedures may
700 provide for elections to be conducted by limited or general
701 proxy.

702 (i) *Transfer fees.*~~An association may not~~ charge a fee
703 ~~shall be made by the association or any body thereof~~ in
704 connection with the sale, mortgage, lease, sublease, or other
705 transfer of a unit unless the association is required to approve
706 such transfer and a fee for such approval is provided for in the
707 declaration, articles, or bylaws. Any such fee may be preset,
708 but may not in no event may such fee exceed \$150 ~~\$100~~ per
709 applicant. For the purpose of calculating the fee, spouses or a
710 parent or parents and any dependent children ~~other than~~
711 ~~husband/wife or parent/dependent child, which~~ are considered one
712 applicant. However, if the lease or sublease is a renewal of a
713 lease or sublease with the same lessee or sublessee, a charge
714 may not ~~no charge shall~~ be made. Such fees must be adjusted
715 every 5 years in an amount equal to the total of the annual
716 increases occurring in the Consumer Price Index for All Urban
717 Consumers, U.S. City Average, All Items during that 5-year
718 period. The Department of Business and Professional Regulation
719 shall periodically calculate the fees, rounded to the nearest
720 dollar, and publish the amounts, as adjusted, on its website.
721 The foregoing notwithstanding, ~~an association may,~~ if the
722 authority to do so appears in the declaration, articles, or
723 bylaws, an association may require that a prospective lessee
724 place a security deposit, in an amount not to exceed the
725 equivalent of 1 month's rent, into an escrow account maintained

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726 by the association. The security deposit shall protect against
727 damages to the common elements or association property. Payment
728 of interest, claims against the deposit, refunds, and disputes
729 under this paragraph shall be handled in the same fashion as
730 provided in part II of chapter 83.

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

742 1. If the recall is approved by a majority of all voting
743 interests by a vote at a meeting, the recall will be effective
744 as provided in this paragraph. The board shall duly notice and
745 hold a board meeting within 5 full business days after the
746 adjournment of the unit owner meeting to recall one or more
747 board members. Such member or members shall be recalled
748 effective immediately upon conclusion of the board meeting,
749 provided that the recall is facially valid. A recalled member
750 must turn over to the board, within 10 full business days after
751 the vote, any and all records and property of the association in
752 their possession.

753 2. If the proposed recall is by an agreement in writing by
754 a majority of all voting interests, the agreement in writing or

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755 a copy thereof shall be served on the association by certified
 756 mail or by personal service in the manner authorized by chapter
 757 48 and the Florida Rules of Civil Procedure. The board of
 758 administration shall duly notice and hold a meeting of the board
 759 within 5 full business days after receipt of the agreement in
 760 writing. Such member or members shall be recalled effective
 761 immediately upon the conclusion of the board meeting, provided
 762 that the recall is facially valid. A recalled member must turn
 763 over to the board, within 10 full business days, any and all
 764 records and property of the association in their possession.

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

772 4. If the board fails to duly notice and hold the required
 773 meeting or at the conclusion of the meeting determines that the
 774 recall is not facially valid, the unit owner representative may
 775 file a petition or court action under ~~pursuant to~~ s. 718.1255
 776 challenging the board's failure to act or challenging the
 777 board's determination on facial validity. The petition or action
 778 must be filed within 60 days after the expiration of the
 779 applicable 5-full-business-day period. The review of a petition
 780 or action under this subparagraph is limited to the sufficiency
 781 of service on the board and the facial validity of the written
 782 agreement or ballots filed.

783 5. If a vacancy occurs on the board as a result of a recall

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

796 6. A board member who has been recalled may file a petition
 797 or court action under ~~pursuant to~~ s. 718.1255 challenging the
 798 validity of the recall. The petition or action must be filed
 799 within 60 days after the recall. The association and the unit
 800 owner representative shall be named as the respondents. The
 801 petition or action may challenge the facial validity of the
 802 written agreement or ballots filed or the substantial compliance
 803 with the procedural requirements for the recall. If the
 804 arbitrator or court determines the recall was invalid, the
 805 petitioning board member shall immediately be reinstated and the
 806 recall is null and void. A board member who is successful in
 807 challenging a recall is entitled to recover reasonable attorney
 808 fees and costs from the respondents. The arbitrator or court may
 809 award reasonable attorney fees and costs to the respondents if
 810 they prevail, if the arbitrator or court makes a finding that
 811 the petitioner's claim is frivolous.

812 7. The division or a court of competent jurisdiction may

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813 not accept for filing a recall petition or court action, whether
 814 filed ~~under pursuant to~~ subparagraph 1., subparagraph 2.,
 815 subparagraph 4., or subparagraph 6., when there are 60 or fewer
 816 days until the scheduled reelection of the board member sought
 817 to be recalled or when 60 or fewer days have elapsed since the
 818 election of the board member sought to be recalled.

819 (k) ~~Alternative dispute resolution Arbitration.~~ There must
 820 ~~shall~~ be a provision for alternative dispute resolution
 821 ~~mandatory nonbinding arbitration~~ as provided for in s. 718.1255
 822 for any residential condominium.

823 ~~(p) Service providers; conflicts of interest. An~~
 824 ~~association, which is not a timeshare condominium association,~~
 825 ~~may not employ or contract with any service provider that is~~
 826 ~~owned or operated by a board member or with any person who has a~~
 827 ~~financial relationship with a board member or officer, or a~~
 828 ~~relative within the third degree of consanguinity by blood or~~
 829 ~~marriage of a board member or officer. This paragraph does not~~
 830 ~~apply to a service provider in which a board member or officer,~~
 831 ~~or a relative within the third degree of consanguinity by blood~~
 832 ~~or marriage of a board member or officer, owns less than 1~~
 833 ~~percent of the equity shares.~~

834 Section 5. Subsection (8) of section 718.113, Florida
 835 Statutes, is amended to read:

836 718.113 Maintenance; limitation upon improvement; display
 837 of flag; hurricane shutters and protection; display of religious
 838 decorations.—

839 (8) The Legislature finds that the use of electric and
 840 natural gas fuel vehicles conserves and protects the state's
 841 environmental resources, provides significant economic savings

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842 to drivers, and serves an important public interest. The
 843 participation of condominium associations is essential to the
 844 state's efforts to conserve and protect the state's
 845 environmental resources and provide economic savings to drivers.
 846 For purposes of this subsection, the term "natural gas fuel" has
 847 the same meaning as in s. 206.9951, and the term "natural gas
 848 fuel vehicle" means any motor vehicle, as defined in s. 320.01,
 849 that is powered by natural gas fuel. Therefore, the installation
 850 of an electric vehicle charging station or a natural gas fuel
 851 station shall be governed as follows:

852 (a) A declaration of condominium or restrictive covenant
 853 may not prohibit or be enforced so as to prohibit any unit owner
 854 from installing an electric vehicle charging station or a
 855 natural gas fuel station within the boundaries of the unit
 856 owner's limited common element or exclusively designated parking
 857 area. The board of administration of a condominium association
 858 may not prohibit a unit owner from installing an electric
 859 vehicle charging station for an electric vehicle, as defined in
 860 s. 320.01, or a natural gas fuel station for a natural gas fuel
 861 vehicle within the boundaries of his or her limited common
 862 element or exclusively designated parking area. The installation
 863 of such charging or fuel stations are subject to the provisions
 864 of this subsection.

865 (b) The installation may not cause irreparable damage to
 866 the condominium property.

867 (c) The electricity for the electric vehicle charging
 868 station or natural gas fuel station must be separately metered
 869 or metered by an embedded meter and payable by the unit owner
 870 installing such charging or fuel station or by his or her

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871 successor.

872 (d) The cost for supply and storage of the natural gas fuel
 873 must be paid by the unit owner installing the natural gas fuel
 874 station or by his or her successor.

875 (e) (d) The unit owner who is installing an electric vehicle
 876 charging station or a natural gas fuel station is responsible
 877 for the costs of installation, operation, maintenance, and
 878 repair, including, but not limited to, hazard and liability
 879 insurance. The association may enforce payment of such costs
 880 under pursuant to s. 718.116.

881 (f) (e) If the unit owner or his or her successor decides
 882 there is no longer a need for the electric electronic vehicle
 883 charging station or natural gas fuel station, such person is
 884 responsible for the cost of removal of such the electronic
 885 vehiele charging or fuel station. The association may enforce
 886 payment of such costs under pursuant to s. 718.116.

887 (g) The unit owner installing, maintaining, or removing the
 888 electric vehicle charging station or natural gas fuel station is
 889 responsible for complying with all federal, state, or local laws
 890 and regulations applicable to such installation, maintenance, or
 891 removal.

892 (h) (f) The association may require the unit owner to:

893 1. Comply with bona fide safety requirements, consistent
 894 with applicable building codes or recognized safety standards,
 895 for the protection of persons and property.

896 2. Comply with reasonable architectural standards adopted
 897 by the association that govern the dimensions, placement, or
 898 external appearance of the electric vehicle charging station or
 899 natural gas fuel station, provided that such standards may not

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900 prohibit the installation of such charging or fuel station or
 901 substantially increase the cost thereof.

902 3. Engage the services of a licensed and registered firm
 903 ~~electrical contractor or engineer~~ familiar with the installation
 904 or removal and core requirements of an electric vehicle charging
 905 station or a natural gas fuel station.

906 4. Provide a certificate of insurance naming the
 907 association as an additional insured on the owner's insurance
 908 policy for any claim related to the installation, maintenance,
 909 or use of the electric vehicle charging station or natural gas
 910 fuel station within 14 days after receiving the association's
 911 approval to install such charging or fuel station or notice to
 912 provide such a certificate.

913 5. Reimburse the association for the actual cost of any
 914 increased insurance premium amount attributable to the electric
 915 vehicle charging station or natural gas fuel station within 14
 916 days after receiving the association's insurance premium
 917 invoice.

918 (i) (g) The association provides an implied easement across
 919 the common elements of the condominium property to the unit
 920 owner for purposes of ~~the installation of the~~ electric vehicle
 921 charging station or natural gas fuel station installation, and
 922 the furnishing of electrical power or natural gas fuel supply,
 923 including any necessary equipment, to such charging or fuel
 924 station, subject to the requirements of this subsection.

925 Section 6. Subsection (16) of section 718.117, Florida
 926 Statutes, is amended to read:

927 718.117 Termination of condominium.—

928 (16) RIGHT TO CONTEST.—A unit owner or lienor may contest a

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929 plan of termination by initiating a petition in accordance with
 930 ~~for mandatory nonbinding arbitration pursuant to s. 718.1255~~
 931 within 90 days after the date the plan is recorded. A unit owner
 932 or lienor may only contest the fairness and reasonableness of
 933 the apportionment of the proceeds from the sale among the unit
 934 owners, that the liens of the first mortgages of unit owners
 935 other than the bulk owner have not or will not be satisfied to
 936 the extent required by subsection (3), or that the required vote
 937 to approve the plan was not obtained. A unit owner or lienor who
 938 does not contest the plan within the 90-day period is barred
 939 from asserting or prosecuting a claim against the association,
 940 the termination trustee, any unit owner, or any successor in
 941 interest to the condominium property. In an action contesting a
 942 plan of termination, the person contesting the plan has the
 943 burden of pleading and proving that the apportionment of the
 944 proceeds from the sale among the unit owners was not fair and
 945 reasonable or that the required vote was not obtained. The
 946 apportionment of sale proceeds is presumed fair and reasonable
 947 if it was determined pursuant to the methods prescribed in
 948 subsection (12). If the petition is filed with the division for
 949 arbitration, the arbitrator shall determine the rights and
 950 interests of the parties in the apportionment of the sale
 951 proceeds. If the arbitrator determines that the apportionment of
 952 sales proceeds is not fair and reasonable, the arbitrator may
 953 void the plan or may modify the plan to apportion the proceeds
 954 in a fair and reasonable manner pursuant to this section based
 955 upon the proceedings and order the modified plan of termination
 956 to be implemented. If the arbitrator determines that the plan
 957 was not properly approved, or that the procedures to adopt the

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958 plan were not properly followed, the arbitrator may void the
 959 plan or grant other relief it deems just and proper. The
 960 arbitrator shall automatically void the plan upon a finding that
 961 any of the disclosures required in subparagraph (3)(c)5. are
 962 omitted, misleading, incomplete, or inaccurate. Any challenge to
 963 a plan, other than a challenge that the required vote was not
 964 obtained, does not affect title to the condominium property or
 965 the vesting of the condominium property in the trustee, but
 966 shall only be a claim against the proceeds of the plan. In any
 967 such action, the prevailing party shall recover reasonable
 968 attorney fees and costs.

969 Section 7. Subsections (2) and (4) of section 718.121,
 970 Florida Statutes, are amended to read:

971 718.121 Liens.—

972 (2) Labor performed on or materials furnished to a unit may
 973 ~~shall~~ not be the basis for the filing of a lien under pursuant
 974 ~~to~~ part I of chapter 713, the Construction Lien Law, against the
 975 unit or condominium parcel of any unit owner not expressly
 976 consenting to or requesting the labor or materials. Labor
 977 performed on or materials furnished for the installation of a
 978 natural gas fuel station or an electric electronic vehicle
 979 charging station under pursuant to s. 718.113(8) may not be the
 980 basis for filing a lien under part I of chapter 713 against the
 981 association, but such a lien may be filed against the unit
 982 owner. Labor performed on or materials furnished to the common
 983 elements are not the basis for a lien on the common elements,
 984 but if authorized by the association, the labor or materials are
 985 deemed to be performed or furnished with the express consent of
 986 each unit owner and may be the basis for the filing of a lien

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 987 against all condominium parcels in the proportions for which the
 988 owners are liable for common expenses.
 989 (4) Except as otherwise provided in this chapter, no lien
 990 may be filed by the association against a condominium unit until
 991 30 days after the date on which a notice of intent to file a
 992 lien has been delivered to the owner by registered or certified
 993 mail, return receipt requested, and by first-class United States
 994 mail to the owner at his or her last address as reflected in the
 995 records of the association, if the address is within the United
 996 States, and delivered to the owner at the address of the unit if
 997 the owner's address as reflected in the records of the
 998 association is not the unit address. If the address reflected in
 999 the records is outside the United States, sending the notice to
 1000 that address and to the unit address by first-class United
 1001 States mail is sufficient. ~~Delivery of the Notice is shall be~~
 1002 deemed to have been delivered given upon mailing as required by
 1003 this subsection, provided that it is. ~~The notice must be~~ in
 1004 substantially the following form:

NOTICE OF INTENT
 TO RECORD A CLAIM OF LIEN

RE: Unit of ...(name of association)...

The following amounts are currently due on your
 account to ...(name of association)..., and must be
 paid within 30 days after your receipt of this letter.
 This letter shall serve as the association's notice of
 intent to record a Claim of Lien against your property

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 1016 no sooner than 30 days after your receipt of this
 1017 letter, unless you pay in full the amounts set forth
 1018 below:
 1019
 1020 Maintenance due ...(dates)... \$.....
 1021 Late fee, if applicable \$.....
 1022 Interest through ...(dates)...* \$.....
 1023 Certified mail charges ...(dates)... \$.....
 1024 Other costs \$.....
 1025 TOTAL OUTSTANDING \$.....
 1026
 1027 *Interest accrues at the rate of percent per annum.
 1028 Section 8. Section 718.1255, Florida Statutes, is amended
 1029 to read:
 1030 718.1255 Alternative dispute resolution; ~~voluntary~~
 1031 mediation; ~~mandatory~~ nonbinding arbitration; legislative
 1032 findings.—
 1033 (1) DEFINITIONS.—As used in this section, the term
 1034 "dispute" means any disagreement between two or more parties
 1035 that involves:
 1036 (a) The authority of the board of directors, under this
 1037 chapter or association document, to:
 1038 1. Require any owner to take any action, or not to take any
 1039 action, involving that owner's unit or the appurtenances
 1040 thereto.
 1041 2. Alter or add to a common area or element.
 1042 (b) The failure of a governing body, when required by this
 1043 chapter or an association document, to:
 1044 1. Properly conduct elections.

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- 1045 2. Give adequate notice of meetings or other actions.
 1046 3. Properly conduct meetings.
 1047 4. Allow inspection of books and records.
 1048 (c) A plan of termination pursuant to s. 718.117.
 1049

1050 "Dispute" does not include any disagreement that primarily
 1051 involves: title to any unit or common element; the
 1052 interpretation or enforcement of any warranty; the levy of a fee
 1053 or assessment, or the collection of an assessment levied against
 1054 a party; the eviction or other removal of a tenant from a unit;
 1055 alleged breaches of fiduciary duty by one or more directors; or
 1056 claims for damages to a unit based upon the alleged failure of
 1057 the association to maintain the common elements or condominium
 1058 property.

1059 (2) ~~VOLUNTARY MEDIATION.~~ Voluntary Mediation through
 1060 Citizen Dispute Settlement Centers as provided for in s. 44.201
 1061 is encouraged.

1062 (3) LEGISLATIVE FINDINGS.—

1063 (a) The Legislature finds that unit owners are frequently
 1064 at a disadvantage when litigating against an association.
 1065 Specifically, a condominium association, with its statutory
 1066 assessment authority, is often more able to bear the costs and
 1067 expenses of litigation than the unit owner who must rely on his
 1068 or her own financial resources to satisfy the costs of
 1069 litigation against the association.

1070 (b) The Legislature finds that alternative dispute
 1071 resolution has been making progress in reducing court dockets
 1072 and trials and in offering a more efficient, cost-effective
 1073 option to court litigation. However, the Legislature also finds

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1074 that alternative dispute resolution should not be used as a
 1075 mechanism to encourage the filing of frivolous or nuisance
 1076 suits.

1077 (c) There exists a need to develop a flexible means of
 1078 alternative dispute resolution that directs disputes to the most
 1079 efficient means of resolution.

1080 (d) The high cost and significant delay of circuit court
 1081 litigation faced by unit owners in the state can be alleviated
 1082 by requiring nonbinding arbitration and mediation in appropriate
 1083 cases, thereby reducing delay and attorney ~~attorney's~~ fees while
 1084 preserving the right of either party to have its case heard by a
 1085 jury, if applicable, in a court of law.

1086 (4) ~~MANDATORY~~ NONBINDING ARBITRATION AND MEDIATION OF
 1087 DISPUTES.—The Division of Florida Condominiums, Timeshares, and
 1088 Mobile Homes of the Department of Business and Professional
 1089 Regulation may employ full-time attorneys to act as arbitrators
 1090 to conduct the arbitration hearings provided by this chapter.
 1091 The division may also certify attorneys who are not employed by
 1092 the division to act as arbitrators to conduct the arbitration
 1093 hearings provided by this chapter. A ~~No~~ person may not be
 1094 employed by the department as a full-time arbitrator unless he
 1095 or she is a member in good standing of The Florida Bar. A person
 1096 may only be certified by the division to act as an arbitrator if
 1097 he or she has been a member in good standing of The Florida Bar
 1098 for at least 5 years and has mediated or arbitrated at least 10
 1099 disputes involving condominiums in this state during the 3 years
 1100 immediately preceding the date of application, mediated or
 1101 arbitrated at least 30 disputes in any subject area in this
 1102 state during the 3 years immediately preceding the date of

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1103 application, or attained board certification in real estate law
 1104 or condominium and planned development law from The Florida Bar.
 1105 Arbitrator certification is valid for 1 year. An arbitrator who
 1106 does not maintain the minimum qualifications for initial
 1107 certification may not have his or her certification renewed. The
 1108 department may not enter into a legal services contract for an
 1109 arbitration hearing under this chapter with an attorney who is
 1110 not a certified arbitrator unless a certified arbitrator is not
 1111 available within 50 miles of the dispute. The department shall
 1112 adopt rules of procedure to govern such arbitration hearings
 1113 including mediation incident thereto. The decision of an
 1114 arbitrator ~~is shall be~~ final; however, a decision ~~is shall~~ not
 1115 ~~be~~ deemed final agency action. Nothing in this provision shall
 1116 be construed to foreclose parties from proceeding in a trial de
 1117 novo unless the parties have agreed that the arbitration is
 1118 binding. If judicial proceedings are initiated, the final
 1119 decision of the arbitrator ~~is shall be~~ admissible in evidence in
 1120 the trial de novo.

1121 (a) ~~Before~~ Prior to the institution of court litigation, a
 1122 party to a dispute, other than an election or recall dispute,
 1123 shall either petition the division for nonbinding arbitration or
 1124 initiate presuit mediation as provided in subsection (5).
 1125 Arbitration is binding on the parties if all parties in
 1126 arbitration agree to be bound in a writing filed in arbitration.
 1127 The petition must be accompanied by a filing fee in the amount
 1128 of \$50. Filing fees collected under this section must be used to
 1129 defray the expenses of the alternative dispute resolution
 1130 program.

1131 (b) The petition must recite, and have attached thereto,

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1132 supporting proof that the petitioner gave the respondents:
 1133 1. Advance written notice of the specific nature of the
 1134 dispute;
 1135 2. A demand for relief, and a reasonable opportunity to
 1136 comply or to provide the relief; and
 1137 3. Notice of the intention to file an arbitration petition
 1138 or other legal action in the absence of a resolution of the
 1139 dispute.
 1140
 1141 Failure to include the allegations or proof of compliance with
 1142 these prerequisites requires dismissal of the petition without
 1143 prejudice.
 1144 (c) Upon receipt, the petition shall be promptly reviewed
 1145 by the division to determine the existence of a dispute and
 1146 compliance with the requirements of paragraphs (a) and (b). If
 1147 emergency relief is required and is not available through
 1148 arbitration, a motion to stay the arbitration may be filed. The
 1149 motion must be accompanied by a verified petition alleging facts
 1150 that, if proven, would support entry of a temporary injunction,
 1151 and if an appropriate motion and supporting papers are filed,
 1152 the division may abate the arbitration pending a court hearing
 1153 and disposition of a motion for temporary injunction.
 1154 (d) Upon determination by the division that a dispute
 1155 exists and that the petition substantially meets the
 1156 requirements of paragraphs (a) and (b) and any other applicable
 1157 rules, the division shall assign or enter into a contract with
 1158 an arbitrator and serve a copy of the petition upon all
 1159 respondents. The arbitrator shall conduct a hearing within 30
 1160 days after being assigned or entering into a contract unless the

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1161 petition is withdrawn or a continuance is granted for good cause
1162 shown.

1163 (e) Before or after the filing of the respondents' answer
1164 to the petition, any party may request that the arbitrator refer
1165 the case to mediation under this section and any rules adopted
1166 by the division. Upon receipt of a request for mediation, the
1167 division shall promptly contact the parties to determine if
1168 there is agreement that mediation would be appropriate. If all
1169 parties agree, the dispute must be referred to mediation.
1170 Notwithstanding a lack of an agreement by all parties, the
1171 arbitrator may refer a dispute to mediation at any time.

1172 (f) Upon referral of a case to mediation, the parties must
1173 select a mutually acceptable mediator. To assist in the
1174 selection, the arbitrator shall provide the parties with a list
1175 of both volunteer and paid mediators that have been certified by
1176 the division under s. 718.501. If the parties are unable to
1177 agree on a mediator within the time allowed by the arbitrator,
1178 the arbitrator shall appoint a mediator from the list of
1179 certified mediators. If a case is referred to mediation, the
1180 parties shall attend a mediation conference, as scheduled by the
1181 parties and the mediator. If any party fails to attend a duly
1182 noticed mediation conference, without the permission or approval
1183 of the arbitrator or mediator, the arbitrator must impose
1184 sanctions against the party, including the striking of any
1185 pleadings filed, the entry of an order of dismissal or default
1186 if appropriate, and the award of costs and attorney fees
1187 incurred by the other parties. Unless otherwise agreed to by the
1188 parties or as provided by order of the arbitrator, a party is
1189 deemed to have appeared at a mediation conference by the

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1190 physical presence of the party or its representative having full
1191 authority to settle without further consultation, provided that
1192 an association may comply by having one or more representatives
1193 present with full authority to negotiate a settlement and
1194 recommend that the board of administration ratify and approve
1195 such a settlement within 5 days from the date of the mediation
1196 conference. The parties shall share equally the expense of
1197 mediation, unless they agree otherwise.

1198 (g) The purpose of mediation as provided for by this
1199 section is to present the parties with an opportunity to resolve
1200 the underlying dispute in good faith, and with a minimum
1201 expenditure of time and resources.

1202 (h) Mediation proceedings must generally be conducted in
1203 accordance with the Florida Rules of Civil Procedure, and these
1204 proceedings are privileged and confidential to the same extent
1205 as court-ordered mediation. Persons who are not parties to the
1206 dispute are not allowed to attend the mediation conference
1207 without the consent of all parties, with the exception of
1208 counsel for the parties and corporate representatives designated
1209 to appear for a party. If the mediator declares an impasse after
1210 a mediation conference has been held, the arbitration proceeding
1211 terminates, unless all parties agree in writing to continue the
1212 arbitration proceeding, in which case the arbitrator's decision
1213 shall be binding or nonbinding, as agreed upon by the parties;
1214 in the arbitration proceeding, the arbitrator shall not consider
1215 any evidence relating to the unsuccessful mediation except in a
1216 proceeding to impose sanctions for failure to appear at the
1217 mediation conference. If the parties do not agree to continue
1218 arbitration, the arbitrator shall enter an order of dismissal,

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1219 and either party may institute a suit in a court of competent
 1220 jurisdiction. The parties may seek to recover any costs and
 1221 attorney fees incurred in connection with arbitration and
 1222 mediation proceedings under this section as part of the costs
 1223 and fees that may be recovered by the prevailing party in any
 1224 subsequent litigation.

1225 (i) Arbitration shall be conducted according to rules
 1226 adopted by the division. The filing of a petition for
 1227 arbitration shall toll the applicable statute of limitations.

1228 (j) At the request of any party to the arbitration, the
 1229 arbitrator shall issue subpoenas for the attendance of witnesses
 1230 and the production of books, records, documents, and other
 1231 evidence and any party on whose behalf a subpoena is issued may
 1232 apply to the court for orders compelling such attendance and
 1233 production. Subpoenas shall be served and shall be enforceable
 1234 in the manner provided by the Florida Rules of Civil Procedure.
 1235 Discovery may, in the discretion of the arbitrator, be permitted
 1236 in the manner provided by the Florida Rules of Civil Procedure.
 1237 Rules adopted by the division may authorize any reasonable
 1238 sanctions except contempt for a violation of the arbitration
 1239 procedural rules of the division or for the failure of a party
 1240 to comply with a reasonable nonfinal order issued by an
 1241 arbitrator which is not under judicial review.

1242 (k) The arbitration decision shall be rendered within 30
 1243 days after the hearing and presented to the parties in writing.
 1244 An arbitration decision is final in those disputes in which the
 1245 parties have agreed to be bound. An arbitration decision is also
 1246 final if a complaint for a trial de novo is not filed in a court
 1247 of competent jurisdiction in which the condominium is located

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1248 within 30 days. The right to file for a trial de novo entitles
 1249 the parties to file a complaint in the appropriate trial court
 1250 for a judicial resolution of the dispute. The prevailing party
 1251 in an arbitration proceeding shall be awarded the costs of the
 1252 arbitration and reasonable attorney fees in an amount determined
 1253 by the arbitrator. Such an award shall include the costs and
 1254 reasonable attorney fees incurred in the arbitration proceeding
 1255 as well as the costs and reasonable attorney fees incurred in
 1256 preparing for and attending any scheduled mediation. An
 1257 arbitrator's failure to render a written decision within 30 days
 1258 after the hearing may result in the cancellation of his or her
 1259 arbitration certification.

1260 (l) The party who files a complaint for a trial de novo
 1261 shall be assessed the other party's arbitration costs, court
 1262 costs, and other reasonable costs, including attorney fees,
 1263 investigation expenses, and expenses for expert or other
 1264 testimony or evidence incurred after the arbitration hearing if
 1265 the judgment upon the trial de novo is not more favorable than
 1266 the arbitration decision. If the judgment is more favorable, the
 1267 party who filed a complaint for trial de novo shall be awarded
 1268 reasonable court costs and attorney fees.

1269 (m) Any party to an arbitration proceeding may enforce an
 1270 arbitration award by filing a petition in a court of competent
 1271 jurisdiction in which the condominium is located. A petition may
 1272 not be granted unless the time for appeal by the filing of a
 1273 complaint for trial de novo has expired. If a complaint for a
 1274 trial de novo has been filed, a petition may not be granted with
 1275 respect to an arbitration award that has been stayed. If the
 1276 petition for enforcement is granted, the petitioner shall

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1277 recover reasonable attorney fees and costs incurred in enforcing
 1278 the arbitration award. A mediation settlement may also be
 1279 enforced through the county or circuit court, as applicable, and
 1280 any costs and fees incurred in the enforcement of a settlement
 1281 agreement reached at mediation must be awarded to the prevailing
 1282 party in any enforcement action.

1283 (5) PRESUIT MEDIATION.—In lieu of the initiation of
 1284 nonbinding arbitration as provided in subsections (1)-(4), a
 1285 party may submit a dispute to presuit mediation in accordance
 1286 with s. 720.311; however, election and recall disputes are not
 1287 eligible for mediation and such disputes must be arbitrated by
 1288 the division or filed in a court of competent jurisdiction.

1289 (6) DISPUTES INVOLVING ELECTION IRREGULARITIES.—Every
 1290 arbitration petition received by the division and required to be
 1291 filed under this section challenging the legality of the
 1292 election of any director of the board of administration must be
 1293 handled on an expedited basis in the manner provided by the
 1294 division's rules for recall arbitration disputes.

1295 (7) ~~(6)~~ APPLICABILITY.—This section does not apply to a
 1296 nonresidential condominium unless otherwise specifically
 1297 provided for in the declaration of the nonresidential
 1298 condominium.

1299 Section 9. Section 718.1265, Florida Statutes, is amended
 1300 to read:

1301 718.1265 Association emergency powers.—

1302 (1) To the extent allowed by law, ~~and~~ unless specifically
 1303 prohibited by the declaration of condominium, the articles, or
 1304 the bylaws of an association, and consistent with ~~the provisions~~
 1305 of s. 617.0830, the board of administration, in response to

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1306 damage or injury caused by or anticipated in connection with an
 1307 emergency, as defined in s. 252.34(4), event for which a state
 1308 of emergency is declared pursuant to s. 252.36 in the locale in
 1309 which the condominium is located, ~~may, but is not required to,~~
 1310 exercise the following powers:

1311 (a) Conduct board meetings, committee meetings, elections,
 1312 and membership meetings, in whole or in part, by telephone,
 1313 real-time videoconferencing, or similar real-time electronic or
 1314 video communication with notice given as is practicable. Such
 1315 notice may be given in any practicable manner, including
 1316 publication, radio, United States mail, the Internet, electronic
 1317 transmission, public service announcements, and conspicuous
 1318 posting on the condominium property or association property or
 1319 any other means the board deems reasonable under the
 1320 circumstances. Notice of ~~board~~ decisions also may be
 1321 communicated as provided in this paragraph.

1322 (b) Cancel and reschedule any association meeting.

1323 (c) Name as assistant officers persons who are not
 1324 directors, which assistant officers shall have the same
 1325 authority as the executive officers to whom they are assistants
 1326 during the state of emergency to accommodate the incapacity or
 1327 unavailability of any officer of the association.

1328 (d) Relocate the association's principal office or
 1329 designate alternative principal offices.

1330 (e) Enter into agreements with local counties and
 1331 municipalities to assist counties and municipalities with debris
 1332 removal.

1333 (f) Implement a disaster plan or an emergency plan before,
 1334 during, or ~~immediately~~ following the event for which a state of

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1335 emergency is declared which may include, but is not limited to,
 1336 shutting down or off elevators; electricity; water, sewer, or
 1337 security systems; or air conditioners.

1338 (g) Based upon advice of emergency management officials or
 1339 public health officials, or upon the advice of licensed
 1340 professionals retained by or otherwise available to the board,
 1341 determine any portion of the condominium property or association
 1342 property unavailable for entry or occupancy by unit owners,
 1343 family members, tenants, guests, agents, or invitees to protect
 1344 the health, safety, or welfare of such persons.

1345 (h) Require the evacuation of the condominium property in
 1346 the event of a mandatory evacuation order in the locale in which
 1347 the condominium is located. Should any unit owner or other
 1348 occupant of a condominium fail or refuse to evacuate the
 1349 condominium property or association property where the board has
 1350 required evacuation, the association shall be immune from
 1351 liability or injury to persons or property arising from such
 1352 failure or refusal.

1353 (i) Based upon advice of emergency management officials or
 1354 public health officials, or upon the advice of licensed
 1355 professionals retained by or otherwise available to the board,
 1356 determine whether the condominium property, association
 1357 property, or any portion thereof can be safely inhabited,
 1358 accessed, or occupied. However, such determination is not
 1359 conclusive as to any determination of habitability pursuant to
 1360 the declaration.

1361 (j) Mitigate further damage, injury, or contagion,
 1362 including taking action to contract for the removal of debris
 1363 and to prevent or mitigate the spread of fungus or contagion,

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1364 including, but not limited to, mold or mildew, by removing and
 1365 disposing of wet drywall, insulation, carpet, cabinetry, or
 1366 other fixtures on or within the condominium property, even if
 1367 the unit owner is obligated by the declaration or law to insure
 1368 or replace those fixtures and to remove personal property from a
 1369 unit.

1370 (k) Contract, on behalf of any unit owner or owners, for
 1371 items or services for which the owners are otherwise
 1372 individually responsible, but which are necessary to prevent
 1373 further injury, contagion, or damage to the condominium property
 1374 or association property. In such event, the unit owner or owners
 1375 on whose behalf the board has contracted are responsible for
 1376 reimbursing the association for the actual costs of the items or
 1377 services, and the association may use its lien authority
 1378 provided by s. 718.116 to enforce collection of the charges.
 1379 Without limitation, such items or services may include the
 1380 drying of units, the boarding of broken windows or doors, ~~and~~
 1381 the replacement of damaged air conditioners or air handlers to
 1382 provide climate control in the units or other portions of the
 1383 property, and the sanitizing of the condominium property or
 1384 association property, as applicable.

1385 (l) Regardless of any provision to the contrary and even if
 1386 such authority does not specifically appear in the declaration
 1387 of condominium, articles, or bylaws of the association, levy
 1388 special assessments without a vote of the owners.

1389 (m) Without unit owners' approval, borrow money and pledge
 1390 association assets as collateral to fund emergency repairs and
 1391 carry out the duties of the association when operating funds are
 1392 insufficient. This paragraph does not limit the general

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1393 authority of the association to borrow money, subject to such
1394 restrictions as are contained in the declaration of condominium,
1395 articles, or bylaws of the association.

1396 (2) The special powers authorized under subsection (1)
1397 shall be limited to that time reasonably necessary to protect
1398 the health, safety, and welfare of the association and the unit
1399 owners and the unit owners' family members, tenants, guests,
1400 agents, or invitees and shall be reasonably necessary to
1401 mitigate further damage, injury, or contagion and make emergency
1402 repairs.

1403 (3) Notwithstanding paragraphs (1)(f)-(i), during a state
1404 of emergency declared by executive order or proclamation of the
1405 Governor pursuant to s. 252.36, an association may not prohibit
1406 unit owners, tenants, guests, agents, or invitees of a unit
1407 owner from accessing the unit and the common elements and
1408 limited common elements appurtenant thereto for the purposes of
1409 ingress to and egress from the unit and when access is necessary
1410 in connection with:

1411 (a) The sale, lease, or other transfer of title of a unit;
1412 or

1413 (b) The habitability of the unit or for the health and
1414 safety of such person unless a governmental order or
1415 determination, or a public health directive from the Centers for
1416 Disease Control and Prevention, has been issued prohibiting such
1417 access to the unit. Any such access is subject to reasonable
1418 restrictions adopted by the association.

1419 Section 10. Subsection (3) of section 718.202, Florida
1420 Statutes, is amended to read:

1421 718.202 Sales or reservation deposits prior to closing.-

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1422 (3) If the contract for sale of the condominium unit so
1423 provides, the developer may withdraw escrow funds in excess of
1424 10 percent of the purchase price from the special account
1425 required by subsection (2) when the construction of improvements
1426 has begun. He or she may use the funds for the actual costs
1427 incurred by the developer in the ~~actual~~ construction and
1428 development of the condominium property in which the unit to be
1429 sold is located. For purposes of this subsection, the term
1430 "actual costs" includes, but is not limited to, expenditures for
1431 demolition, site clearing, permit fees, impact fees, and utility
1432 reservation fees, as well as architectural, engineering, and
1433 surveying fees that directly relate to construction and
1434 development of the condominium property. However, no part of
1435 these funds may be used for salaries, commissions, or expenses
1436 of salespersons; ~~or~~ for advertising, marketing, or promotional
1437 purposes; or for loan fees and costs, principal and interest on
1438 loans, attorney fees, accounting fees, or insurance costs. A
1439 contract which permits use of the advance payments for these
1440 purposes shall include the following legend conspicuously
1441 printed or stamped in boldfaced type on the first page of the
1442 contract and immediately above the place for the signature of
1443 the buyer: ANY PAYMENT IN EXCESS OF 10 PERCENT OF THE PURCHASE
1444 PRICE MADE TO DEVELOPER PRIOR TO CLOSING PURSUANT TO THIS
1445 CONTRACT MAY BE USED FOR CONSTRUCTION PURPOSES BY THE DEVELOPER.

1446 Section 11. Subsection (1) and paragraph (b) of subsection
1447 (3) of section 718.303, Florida Statutes, are amended to read:

1448 718.303 Obligations of owners and occupants; remedies.-

1449 (1) Each unit owner, ~~each~~ tenant and other invitee, and
1450 ~~each~~ association is governed by, and must comply with the

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1451 provisions of, this chapter, the declaration, the documents
 1452 creating the association, and the association bylaws which are
 1453 ~~shall be deemed~~ expressly incorporated into any lease of a unit.
 1454 ~~Actions at law or in equity for damages or for injunctive~~
 1455 ~~relief~~, or both, for failure to comply with these provisions may
 1456 be brought by the association or by a unit owner against:

1457 (a) The association.
 1458 (b) A unit owner.
 1459 (c) Directors designated by the developer, for actions
 1460 taken by them before control of the association is assumed by
 1461 unit owners other than the developer.
 1462 (d) Any director who willfully and knowingly fails to
 1463 comply with these provisions.
 1464 (e) Any tenant leasing a unit, and any other invitee
 1465 occupying a unit.

1466 The prevailing party in any such action or in any action in
 1467 which the purchaser claims a right of voidability based upon
 1468 contractual provisions as required in s. 718.503(1)(a) is
 1469 entitled to recover reasonable attorney ~~attorney's~~ fees. A unit
 1470 owner prevailing in an action between the association and the
 1471 unit owner under this ~~subsection~~ section, in addition to
 1472 recovering his or her reasonable attorney ~~attorney's~~ fees, may
 1473 recover additional amounts as determined by the court to be
 1474 necessary to reimburse the unit owner for his or her share of
 1475 assessments levied by the association to fund its expenses of
 1476 the litigation. This relief does not exclude other remedies
 1477 provided by law. Actions arising under this subsection are not
 1478 considered ~~may not be deemed to be~~ actions for specific
 1479

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1480 performance.

1481 (3) The association may levy reasonable fines for the
 1482 failure of the owner of the unit or its occupant, licensee, or
 1483 invitee to comply with any provision of the declaration, the
 1484 association bylaws, or reasonable rules of the association. A
 1485 fine may not become a lien against a unit. A fine may be levied
 1486 by the board on the basis of each day of a continuing violation,
 1487 with a single notice and opportunity for hearing before a
 1488 committee as provided in paragraph (b). However, the fine may
 1489 not exceed \$100 per violation, or \$1,000 in the aggregate.

1490 (b) A fine or suspension levied by the board of
 1491 administration may not be imposed unless the board first
 1492 provides at least 14 days' written notice to the unit owner and,
 1493 if applicable, any tenant occupant, licensee, or invitee of the
 1494 unit owner sought to be fined or suspended, and an opportunity
 1495 for a hearing before a committee of at least three members
 1496 appointed by the board who are not officers, directors, or
 1497 employees of the association, or the spouse, parent, child,
 1498 brother, or sister of an officer, director, or employee. The
 1499 role of the committee is limited to determining whether to
 1500 confirm or reject the fine or suspension levied by the board. If
 1501 the committee does not approve the proposed fine or suspension
 1502 by majority vote, the fine or suspension may not be imposed. If
 1503 the proposed fine or suspension is approved by the committee,
 1504 the fine payment is due 5 days after notice of the approved fine
 1505 is provided to the unit owner and, if applicable, to any tenant,
 1506 licensee, or invitee of the unit owner ~~the date of the committee~~
 1507 ~~meeting at which the fine is approved~~. The association must
 1508 provide written notice of such fine or suspension by mail or

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1509 hand delivery to the unit owner and, if applicable, to any
 1510 tenant, licensee, or invitee of the unit owner.

1511 Section 12. Subsection (5) is added to section 718.405,
 1512 Florida Statutes, to read:

1513 718.405 Multicondominiums; multicondominium associations.—

1514 (5) This section does not prevent or restrict a
 1515 multicondominium association from adopting a consolidated or
 1516 combined declaration of condominium if such declaration complies
 1517 with s. 718.104 and does not serve to merge the condominiums or
 1518 change the legal descriptions of the condominium parcels as set
 1519 forth in s. 718.109, unless accomplished in accordance with law.
 1520 This section is intended to clarify existing law and applies to
 1521 associations existing on July 1, 2021.

1522 Section 13. Section 718.501, Florida Statutes, is amended
 1523 to read:

1524 718.501 Authority, responsibility, and duties of Division
 1525 of Florida Condominiums, Timeshares, and Mobile Homes.—

1526 (1) The division may enforce and ensure compliance with ~~the~~
 1527 ~~provisions of~~ this chapter and rules relating to the
 1528 development, construction, sale, lease, ownership, operation,
 1529 and management of residential condominium units. In performing
 1530 its duties, the division has complete jurisdiction to
 1531 investigate complaints and enforce compliance with respect to
 1532 associations that are still under developer control or the
 1533 control of a bulk assignee or bulk buyer pursuant to part VII of
 1534 this chapter and complaints against developers, bulk assignees,
 1535 or bulk buyers involving improper turnover or failure to
 1536 turnover, pursuant to s. 718.301. However, after turnover has
 1537 occurred, the division has jurisdiction to investigate

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1538 complaints related only to financial issues, elections, and the
 1539 maintenance of and unit owner access to association records
 1540 under ~~pursuant to~~ s. 718.111(12).

1541 (a)1. The division may make necessary public or private
 1542 investigations within or outside this state to determine whether
 1543 any person has violated this chapter or any rule or order
 1544 hereunder, to aid in the enforcement of this chapter, or to aid
 1545 in the adoption of rules or forms.

1546 2. The division may submit any official written report,
 1547 worksheet, or other related paper, or a duly certified copy
 1548 thereof, compiled, prepared, drafted, or otherwise made by and
 1549 duly authenticated by a financial examiner or analyst to be
 1550 admitted as competent evidence in any hearing in which the
 1551 financial examiner or analyst is available for cross-examination
 1552 and attests under oath that such documents were prepared as a
 1553 result of an examination or inspection conducted pursuant to
 1554 this chapter.

1555 (b) The division may require or permit any person to file a
 1556 statement in writing, under oath or otherwise, as the division
 1557 determines, as to the facts and circumstances concerning a
 1558 matter to be investigated.

1559 (c) For the purpose of any investigation under this
 1560 chapter, the division director or any officer or employee
 1561 designated by the division director may administer oaths or
 1562 affirmations, subpoena witnesses and compel their attendance,
 1563 take evidence, and require the production of any matter which is
 1564 relevant to the investigation, including the existence,
 1565 description, nature, custody, condition, and location of any
 1566 books, documents, or other tangible things and the identity and

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1567 location of persons having knowledge of relevant facts or any
 1568 other matter reasonably calculated to lead to the discovery of
 1569 material evidence. Upon the failure by a person to obey a
 1570 subpoena or to answer questions propounded by the investigating
 1571 officer and upon reasonable notice to all affected persons, the
 1572 division may apply to the circuit court for an order compelling
 1573 compliance.

1574 (d) Notwithstanding any remedies available to unit owners
 1575 and associations, if the division has reasonable cause to
 1576 believe that a violation of any provision of this chapter or
 1577 related rule has occurred, the division may institute
 1578 enforcement proceedings in its own name against any developer,
 1579 bulk assignee, bulk buyer, association, officer, or member of
 1580 the board of administration, or its assignees or agents, as
 1581 follows:

1582 1. The division may permit a person whose conduct or
 1583 actions may be under investigation to waive formal proceedings
 1584 and enter into a consent proceeding whereby orders, rules, or
 1585 letters of censure or warning, whether formal or informal, may
 1586 be entered against the person.

1587 2. The division may issue an order requiring the developer,
 1588 bulk assignee, bulk buyer, association, developer-designated
 1589 officer, or developer-designated member of the board of
 1590 administration, developer-designated assignees or agents, bulk
 1591 assignee-designated assignees or agents, bulk buyer-designated
 1592 assignees or agents, community association manager, or community
 1593 association management firm to cease and desist from the
 1594 unlawful practice and take such affirmative action as in the
 1595 judgment of the division carry out the purposes of this chapter.

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1596 If the division finds that a developer, bulk assignee, bulk
 1597 buyer, association, officer, or member of the board of
 1598 administration, or its assignees or agents, is violating or is
 1599 about to violate any provision of this chapter, any rule adopted
 1600 or order issued by the division, or any written agreement
 1601 entered into with the division, and presents an immediate danger
 1602 to the public requiring an immediate final order, it may issue
 1603 an emergency cease and desist order reciting with particularity
 1604 the facts underlying such findings. The emergency cease and
 1605 desist order is effective for 90 days. If the division begins
 1606 nonemergency cease and desist proceedings, the emergency cease
 1607 and desist order remains effective until the conclusion of the
 1608 proceedings under ss. 120.569 and 120.57.

1609 3. If a developer, bulk assignee, or bulk buyer, fails to
 1610 pay any restitution determined by the division to be owed, plus
 1611 any accrued interest at the highest rate permitted by law,
 1612 within 30 days after expiration of any appellate time period of
 1613 a final order requiring payment of restitution or the conclusion
 1614 of any appeal thereof, whichever is later, the division must
 1615 bring an action in circuit or county court on behalf of any
 1616 association, class of unit owners, lessees, or purchasers for
 1617 restitution, declaratory relief, injunctive relief, or any other
 1618 available remedy. The division may also temporarily revoke its
 1619 acceptance of the filing for the developer to which the
 1620 restitution relates until payment of restitution is made.

1621 4. The division may petition the court for appointment of a
 1622 receiver or conservator. If appointed, the receiver or
 1623 conservator may take action to implement the court order to
 1624 ensure the performance of the order and to remedy any breach

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1625 thereof. In addition to all other means provided by law for the
 1626 enforcement of an injunction or temporary restraining order, the
 1627 circuit court may impound or sequester the property of a party
 1628 defendant, including books, papers, documents, and related
 1629 records, and allow the examination and use of the property by
 1630 the division and a court-appointed receiver or conservator.

1631 5. The division may apply to the circuit court for an order
 1632 of restitution whereby the defendant in an action brought under
 1633 ~~pursuant to~~ subparagraph 4. is ordered to make restitution of
 1634 those sums shown by the division to have been obtained by the
 1635 defendant in violation of this chapter. At the option of the
 1636 court, such restitution is payable to the conservator or
 1637 receiver appointed under ~~pursuant to~~ subparagraph 4. or directly
 1638 to the persons whose funds or assets were obtained in violation
 1639 of this chapter.

1640 6. The division may impose a civil penalty against a
 1641 developer, bulk assignee, or bulk buyer, or association, or its
 1642 assignee or agent, for any violation of this chapter or related
 1643 rule. The division may impose a civil penalty individually
 1644 against an officer or board member who willfully and knowingly
 1645 violates ~~a provision of~~ this chapter, adopted rule, or a final
 1646 order of the division; may order the removal of such individual
 1647 as an officer or from the board of administration or as an
 1648 officer of the association; and may prohibit such individual
 1649 from serving as an officer or on the board of a community
 1650 association for a period of time. The term "willfully and
 1651 knowingly" means that the division informed the officer or board
 1652 member that his or her action or intended action violates this
 1653 chapter, a rule adopted under this chapter, or a final order of

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1654 the division and that the officer or board member refused to
 1655 comply with the requirements of this chapter, a rule adopted
 1656 under this chapter, or a final order of the division. The
 1657 division, before initiating formal agency action under chapter
 1658 120, must afford the officer or board member an opportunity to
 1659 voluntarily comply, and an officer or board member who complies
 1660 within 10 days is not subject to a civil penalty. A penalty may
 1661 be imposed on the basis of each day of continuing violation, but
 1662 the penalty for any offense may not exceed \$5,000. ~~By January 1,~~
 1663 ~~1998,~~ The division shall adopt, by rule, penalty guidelines
 1664 applicable to possible violations or to categories of violations
 1665 of this chapter or rules adopted by the division. The guidelines
 1666 must specify a meaningful range of civil penalties for each such
 1667 violation of the statute and rules and must be based upon the
 1668 harm caused by the violation, the repetition of the violation,
 1669 and upon such other factors deemed relevant by the division. For
 1670 example, the division may consider whether the violations were
 1671 committed by a developer, bulk assignee, or bulk buyer, or
 1672 owner-controlled association, the size of the association, and
 1673 other factors. The guidelines must designate the possible
 1674 mitigating or aggravating circumstances that justify a departure
 1675 from the range of penalties provided by the rules. It is the
 1676 legislative intent that minor violations be distinguished from
 1677 those which endanger the health, safety, or welfare of the
 1678 condominium residents or other persons and that such guidelines
 1679 provide reasonable and meaningful notice to the public of likely
 1680 penalties that may be imposed for proscribed conduct. This
 1681 subsection does not limit the ability of the division to
 1682 informally dispose of administrative actions or complaints by

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1683 stipulation, agreed settlement, or consent order. All amounts
 1684 collected shall be deposited with the Chief Financial Officer to
 1685 the credit of the Division of Florida Condominiums, Timeshares,
 1686 and Mobile Homes Trust Fund. If a developer, bulk assignee, or
 1687 bulk buyer fails to pay the civil penalty and the amount deemed
 1688 to be owed to the association, the division shall issue an order
 1689 directing that such developer, bulk assignee, or bulk buyer
 1690 cease and desist from further operation until such time as the
 1691 civil penalty is paid or may pursue enforcement of the penalty
 1692 in a court of competent jurisdiction. If an association fails to
 1693 pay the civil penalty, the division shall pursue enforcement in
 1694 a court of competent jurisdiction, and the order imposing the
 1695 civil penalty or the cease and desist order is not effective
 1696 until 20 days after the date of such order. Any action commenced
 1697 by the division shall be brought in the county in which the
 1698 division has its executive offices or in the county where the
 1699 violation occurred.

1700 7. If a unit owner presents the division with proof that
 1701 the unit owner has requested access to official records in
 1702 writing by certified mail, and that after 10 days the unit owner
 1703 again made the same request for access to official records in
 1704 writing by certified mail, and that more than 10 days has
 1705 elapsed since the second request and the association has still
 1706 failed or refused to provide access to official records as
 1707 required by this chapter, the division shall issue a subpoena
 1708 requiring production of the requested records where the records
 1709 are kept pursuant to s. 718.112.

1710 8. In addition to subparagraph 6., the division may seek
 1711 the imposition of a civil penalty through the circuit court for

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1712 any violation for which the division may issue a notice to show
 1713 cause under paragraph (r). The civil penalty shall be at least
 1714 \$500 but no more than \$5,000 for each violation. The court may
 1715 also award to the prevailing party court costs and reasonable
 1716 ~~attorney~~ attorney's fees and, if the division prevails, may also
 1717 award reasonable costs of investigation.

1718 (e) The division may prepare and disseminate a prospectus
 1719 and other information to assist prospective owners, purchasers,
 1720 lessees, and developers of residential condominiums in assessing
 1721 the rights, privileges, and duties pertaining thereto.

1722 (f) The division may adopt rules to administer and enforce
 1723 ~~the provisions of this chapter.~~

1724 (g) The division shall establish procedures for providing
 1725 notice to an association and the developer, bulk assignee, or
 1726 bulk buyer during the period in which the developer, bulk
 1727 assignee, or bulk buyer controls the association if the division
 1728 is considering the issuance of a declaratory statement with
 1729 respect to the declaration of condominium or any related
 1730 document governing such condominium community.

1731 (h) The division shall furnish each association that pays
 1732 the fees required by paragraph (2) (a) a copy of this chapter, as
 1733 amended, and the rules adopted thereto on an annual basis.

1734 (i) The division shall annually provide each association
 1735 with a summary of declaratory statements and formal legal
 1736 opinions relating to the operations of condominiums which were
 1737 rendered by the division during the previous year.

1738 (j) The division shall provide training and educational
 1739 programs for condominium association board members and unit
 1740 owners. The training may, in the division's discretion, include

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1741 web-based electronic media, and live training and seminars in
 1742 various locations throughout the state. The division may review
 1743 and approve education and training programs for board members
 1744 and unit owners offered by providers and shall maintain a
 1745 current list of approved programs and providers and make such
 1746 list available to board members and unit owners in a reasonable
 1747 and cost-effective manner.

1748 (k) The division shall maintain a toll-free telephone
 1749 number accessible to condominium unit owners.

1750 (l) The division shall develop a program to certify both
 1751 volunteer and paid mediators to provide mediation of condominium
 1752 disputes. The division shall provide, upon request, a list of
 1753 such mediators to any association, unit owner, or other
 1754 participant in alternative dispute resolution ~~arbitration~~
 1755 proceedings under s. 718.1255 requesting a copy of the list. The
 1756 division shall include on the list of volunteer mediators only
 1757 the names of persons who have received at least 20 hours of
 1758 training in mediation techniques or who have mediated at least
 1759 20 disputes. In order to become initially certified by the
 1760 division, paid mediators must be certified by the Supreme Court
 1761 to mediate court cases in county or circuit courts. However, the
 1762 division may adopt, by rule, additional factors for the
 1763 certification of paid mediators, which must be related to
 1764 experience, education, or background. Any person initially
 1765 certified as a paid mediator by the division must, in order to
 1766 continue to be certified, comply with the factors or
 1767 requirements adopted by rule.

1768 (m) If a complaint is made, the division must conduct its
 1769 inquiry with due regard for the interests of the affected

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1770 parties. Within 30 days after receipt of a complaint, the
 1771 division shall acknowledge the complaint in writing and notify
 1772 the complainant whether the complaint is within the jurisdiction
 1773 of the division and whether additional information is needed by
 1774 the division from the complainant. The division shall conduct
 1775 its investigation and, within 90 days after receipt of the
 1776 original complaint or of timely requested additional
 1777 information, take action upon the complaint. However, the
 1778 failure to complete the investigation within 90 days does not
 1779 prevent the division from continuing the investigation,
 1780 accepting or considering evidence obtained or received after 90
 1781 days, or taking administrative action if reasonable cause exists
 1782 to believe that a violation of this chapter or a rule has
 1783 occurred. If an investigation is not completed within the time
 1784 limits established in this paragraph, the division shall, on a
 1785 monthly basis, notify the complainant in writing of the status
 1786 of the investigation. When reporting its action to the
 1787 complainant, the division shall inform the complainant of any
 1788 right to a hearing under ~~pursuant to~~ ss. 120.569 and 120.57.

1789 (n) Condominium association directors, officers, and
 1790 employees; condominium developers; bulk assignees, bulk buyers,
 1791 and community association managers; and community association
 1792 management firms have an ongoing duty to reasonably cooperate
 1793 with the division in any investigation under ~~pursuant to~~ this
 1794 section. The division shall refer to local law enforcement
 1795 authorities any person whom the division believes has altered,
 1796 destroyed, concealed, or removed any record, document, or thing
 1797 required to be kept or maintained by this chapter with the
 1798 purpose to impair its verity or availability in the department's

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1799 investigation.

1800 (o) The division may:

1801 1. Contract with agencies in this state or other
1802 jurisdictions to perform investigative functions; or

1803 2. Accept grants-in-aid from any source.

1804 (p) The division shall cooperate with similar agencies in
1805 other jurisdictions to establish uniform filing procedures and
1806 forms, public offering statements, advertising standards, and
1807 rules and common administrative practices.1808 (q) The division shall consider notice to a developer, bulk
1809 assignee, or bulk buyer to be complete when it is delivered to
1810 the address of the developer, bulk assignee, or bulk buyer
1811 currently on file with the division.1812 (r) In addition to its enforcement authority, the division
1813 may issue a notice to show cause, which must provide for a
1814 hearing, upon written request, in accordance with chapter 120.1815 (s) The division shall submit to the Governor, the
1816 President of the Senate, the Speaker of the House of
1817 Representatives, and the chairs of the legislative
1818 appropriations committees an annual report that includes, but
1819 need not be limited to, the number of training programs provided
1820 for condominium association board members and unit owners, the
1821 number of complaints received by type, the number and percent of
1822 complaints acknowledged in writing within 30 days and the number
1823 and percent of investigations acted upon within 90 days in
1824 accordance with paragraph (m), and the number of investigations
1825 exceeding the 90-day requirement. The annual report must also
1826 include an evaluation of the division's core business processes
1827 and make recommendations for improvements, including statutory

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1828 changes. The report shall be submitted by September 30 following
1829 the end of the fiscal year.1830 (2) (a) Each condominium association which operates more
1831 than two units shall pay to the division an annual fee in the
1832 amount of \$4 for each residential unit in condominiums operated
1833 by the association. If the fee is not paid by March 1, the
1834 association shall be assessed a penalty of 10 percent of the
1835 amount due, and the association will not have standing to
1836 maintain or defend any action in the courts of this state until
1837 the amount due, plus any penalty, is paid.1838 (b) All fees shall be deposited in the Division of Florida
1839 Condominiums, Timeshares, and Mobile Homes Trust Fund as
1840 provided by law.1841 Section 14. Section 718.5014, Florida Statutes, is amended
1842 to read:1843 718.5014 Ombudsman location.—The ombudsman shall maintain
1844 his or her principal office in a Leon County ~~on the premises of~~
1845 ~~the division or, if suitable space cannot be provided there, at~~
1846 ~~another~~ place convenient to the offices of the division which
1847 will enable the ombudsman to expeditiously carry out the duties
1848 and functions of his or her office. The ombudsman may establish
1849 branch offices elsewhere in the state upon the concurrence of
1850 the Governor.1851 Section 15. Subsection (25) of section 719.103, Florida
1852 Statutes, is amended to read:

1853 719.103 Definitions.—As used in this chapter:

1854 (25) "Unit" means a part of the cooperative property which
1855 is subject to exclusive use and possession. A unit may be
1856 improvements, land, or land and improvements together, as

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1857 specified in the cooperative documents. An interest in a unit is
 1858 an interest in real property.

1859 Section 16. Paragraph (c) of subsection (2) of section
 1860 719.104, Florida Statutes, is amended to read:

1861 719.104 Cooperatives; access to units; records; financial
 1862 reports; assessments; purchase of leases.—

1863 (2) OFFICIAL RECORDS.—

1864 (c)The official records of the association are open to
 1865 inspection by any association member or the authorized
 1866 representative of such member at all reasonable times. The right
 1867 to inspect the records includes the right to make or obtain
 1868 copies, at the reasonable expense, if any, of the association
 1869 member. The association may adopt reasonable rules regarding the
 1870 frequency, time, location, notice, and manner of record
 1871 inspections and copying, but may not require a member to
 1872 demonstrate any purpose or state any reason for the inspection.

1873 The failure of an association to provide the records within 10
 1874 working days after receipt of a written request creates a
 1875 rebuttable presumption that the association willfully failed to
 1876 comply with this paragraph. A member ~~unit owner~~ who is denied
 1877 access to official records is entitled to the actual damages or
 1878 minimum damages for the association's willful failure to comply.
 1879 The minimum damages are \$50 per calendar day for up to 10 days,
 1880 beginning on the 11th working day after receipt of the written
 1881 request. The failure to permit inspection entitles any person
 1882 prevailing in an enforcement action to recover reasonable
 1883 attorney fees from the person in control of the records who,
 1884 directly or indirectly, knowingly denied access to the records.
 1885 Any person who knowingly or intentionally defaces or destroys

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1886 accounting records that are required by this chapter to be
 1887 maintained during the period for which such records are required
 1888 to be maintained, or who knowingly or intentionally fails to
 1889 create or maintain accounting records that are required to be
 1890 created or maintained, with the intent of causing harm to the
 1891 association or one or more of its members, is personally subject
 1892 to a civil penalty under ~~pursuant to~~ s. 719.501(1)(d). The
 1893 association shall maintain an adequate number of copies of the
 1894 declaration, articles of incorporation, bylaws, and rules, and
 1895 all amendments to each of the foregoing, as well as the question
 1896 and answer sheet as described in s. 719.504 and year-end
 1897 financial information required by the department, on the
 1898 cooperative property to ensure their availability to members
 1899 ~~unit owners~~ and prospective purchasers, and may charge its
 1900 actual costs for preparing and furnishing these documents to
 1901 those requesting the same. An association shall allow a member
 1902 or his or her authorized representative to use a portable
 1903 device, including a smartphone, tablet, portable scanner, or any
 1904 other technology capable of scanning or taking photographs, to
 1905 make an electronic copy of the official records in lieu of the
 1906 association providing the member or his or her authorized
 1907 representative with a copy of such records. The association may
 1908 not charge a member or his or her authorized representative for
 1909 the use of a portable device. Notwithstanding this paragraph,
 1910 the following records shall not be accessible to members ~~unit~~
 1911 ~~owners~~:

1912 1. Any record protected by the lawyer-client privilege as
 1913 described in s. 90.502 and any record protected by the work-
 1914 product privilege, including any record prepared by an

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1915 association attorney or prepared at the attorney's express
 1916 direction which reflects a mental impression, conclusion,
 1917 litigation strategy, or legal theory of the attorney or the
 1918 association, and which was prepared exclusively for civil or
 1919 criminal litigation or for adversarial administrative
 1920 proceedings, or which was prepared in anticipation of such
 1921 litigation or proceedings until the conclusion of the litigation
 1922 or proceedings.

1923 2. Information obtained by an association in connection
 1924 with the approval of the lease, sale, or other transfer of a
 1925 unit.

1926 3. Personnel records of association or management company
 1927 employees, including, but not limited to, disciplinary, payroll,
 1928 health, and insurance records. For purposes of this
 1929 subparagraph, the term "personnel records" does not include
 1930 written employment agreements with an association employee or
 1931 management company, or budgetary or financial records that
 1932 indicate the compensation paid to an association employee.

1933 4. Medical records of unit owners.

1934 5. Social security numbers, driver license numbers, credit
 1935 card numbers, e-mail addresses, telephone numbers, facsimile
 1936 numbers, emergency contact information, addresses of a unit
 1937 owner other than as provided to fulfill the association's notice
 1938 requirements, and other personal identifying information of any
 1939 person, excluding the person's name, unit designation, mailing
 1940 address, property address, and any address, e-mail address, or
 1941 facsimile number provided to the association to fulfill the
 1942 association's notice requirements. Notwithstanding the
 1943 restrictions in this subparagraph, an association may print and

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1944 distribute to unit ~~parcel~~ owners a directory containing the
 1945 name, unit ~~parcel~~ address, and all telephone numbers of each
 1946 unit ~~parcel~~ owner. However, an owner may exclude his or her
 1947 telephone numbers from the directory by so requesting in writing
 1948 to the association. An owner may consent in writing to the
 1949 disclosure of other contact information described in this
 1950 subparagraph. The association is not liable for the inadvertent
 1951 disclosure of information that is protected under this
 1952 subparagraph if the information is included in an official
 1953 record of the association and is voluntarily provided by an
 1954 owner and not requested by the association.

1955 6. Electronic security measures that are used by the
 1956 association to safeguard data, including passwords.

1957 7. The software and operating system used by the
 1958 association which allow the manipulation of data, even if the
 1959 owner owns a copy of the same software used by the association.
 1960 The data is part of the official records of the association.

1961 Section 17. Paragraphs (b), (f), and (l) of subsection (1)
 1962 of section 719.106, Florida Statutes, are amended, and
 1963 subsection (3) is added to that section, to read:

1964 719.106 Bylaws; cooperative ownership.—

1965 (1) MANDATORY PROVISIONS.—The bylaws or other cooperative
 1966 documents shall provide for the following, and if they do not,
 1967 they shall be deemed to include the following:

1968 (b) *Quorum; voting requirements; proxies.*—

1969 1. Unless otherwise provided in the bylaws, the percentage
 1970 of voting interests required to constitute a quorum at a meeting
 1971 of the members shall be a majority of voting interests, and
 1972 decisions shall be made by owners of a majority of the voting

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1973 interests. Unless otherwise provided in this chapter, or in the
 1974 articles of incorporation, bylaws, or other cooperative
 1975 documents, and except as provided in subparagraph (d)1.,
 1976 decisions shall be made by owners of a majority of the voting
 1977 interests represented at a meeting at which a quorum is present.

1978 2. Except as specifically otherwise provided herein, after
 1979 January 1, 1992, unit owners may not vote by general proxy, but
 1980 may vote by limited proxies substantially conforming to a
 1981 limited proxy form adopted by the division. Limited proxies and
 1982 general proxies may be used to establish a quorum. Limited
 1983 proxies shall be used for votes taken to waive or reduce
 1984 reserves in accordance with subparagraph (j)2., for votes taken
 1985 to waive the financial reporting requirements of s.
 1986 719.104(4)(b), for votes taken to amend the articles of
 1987 incorporation or bylaws pursuant to this section, and for any
 1988 other matter for which this chapter requires or permits a vote
 1989 of the unit owners. Except as provided in paragraph (d), after
 1990 January 1, 1992, no proxy, limited or general, shall be used in
 1991 the election of board members. General proxies may be used for
 1992 other matters for which limited proxies are not required, and
 1993 may also be used in voting for nonsubstantive changes to items
 1994 for which a limited proxy is required and given. Notwithstanding
 1995 the provisions of this section, unit owners may vote in person
 1996 at unit owner meetings. Nothing contained herein shall limit the
 1997 use of general proxies or require the use of limited proxies or
 1998 require the use of limited proxies for any agenda item or
 1999 election at any meeting of a timeshare cooperative.

2000 3. Any proxy given shall be effective only for the specific
 2001 meeting for which originally given and any lawfully adjourned

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2002 meetings thereof. In no event shall any proxy be valid for a
 2003 period longer than 90 days after the date of the first meeting
 2004 for which it was given. Every proxy shall be revocable at any
 2005 time at the pleasure of the unit owner executing it.

2006 4. A member of the board of administration or a committee
 2007 may submit in writing his or her agreement or disagreement with
 2008 any action taken at a meeting that the member did not attend.
 2009 This agreement or disagreement may not be used as a vote for or
 2010 against the action taken and may not be used for the purposes of
 2011 creating a quorum.

2012 5. A board member or committee member participating in a
 2013 meeting via telephone, real-time videoconferencing, or similar
 2014 real-time electronic or video communication counts toward a
 2015 quorum, and such member may vote as if physically present ~~When~~
 2016 ~~some or all of the board or committee members meet by telephone~~
 2017 ~~conference, those board or committee members attending by~~
 2018 ~~telephone conference may be counted toward obtaining a quorum~~
 2019 ~~and may vote by telephone. A telephone speaker must shall be~~
 2020 ~~used utilized~~ so that the conversation of such ~~these board or~~
 2021 ~~committee members attending by telephone~~ may be heard by the
 2022 board or committee members attending in person, as well as by
 2023 any unit owners present at a meeting.

2024 (f) *Recall of board members.*—Subject to s. 719.301, any
 2025 member of the board of administration may be recalled and
 2026 removed from office with or without cause by the vote or
 2027 agreement in writing by a majority of all the voting interests.
 2028 A special meeting of the voting interests to recall any member
 2029 of the board of administration may be called by 10 percent of
 2030 the unit owners giving notice of the meeting as required for a

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2031 meeting of unit owners, and the notice shall state the purpose
2032 of the meeting. Electronic transmission may not be used as a
2033 method of giving notice of a meeting called in whole or in part
2034 for this purpose.

2035 1. If the recall is approved by a majority of all voting
2036 interests by a vote at a meeting, the recall shall be effective
2037 as provided in this paragraph. The board shall duly notice and
2038 hold a board meeting within 5 full business days after the
2039 adjournment of the unit owner meeting to recall one or more
2040 board members. At the meeting, the board shall either certify
2041 the recall, in which case such member or members shall be
2042 recalled effective immediately and shall turn over to the board
2043 within 5 full business days any and all records and property of
2044 the association in their possession, or shall proceed as set
2045 forth in subparagraph 3.

2046 2. If the proposed recall is by an agreement in writing by
2047 a majority of all voting interests, the agreement in writing or
2048 a copy thereof shall be served on the association by certified
2049 mail or by personal service in the manner authorized by chapter
2050 48 and the Florida Rules of Civil Procedure. The board of
2051 administration shall duly notice and hold a meeting of the board
2052 within 5 full business days after receipt of the agreement in
2053 writing. At the meeting, the board shall either certify the
2054 written agreement to recall members of the board, in which case
2055 such members shall be recalled effective immediately and shall
2056 turn over to the board, within 5 full business days, any and all
2057 records and property of the association in their possession, or
2058 proceed as described in subparagraph 3.

2059 3. If the board determines not to certify the written

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2060 agreement to recall members of the board, or does not certify
2061 the recall by a vote at a meeting, the board shall, within 5
2062 full business days after the board meeting, file with the
2063 division a petition for binding arbitration under ~~pursuant to~~
2064 ~~the procedures of~~ s. 719.1255 or file an action with a court of
2065 competent jurisdiction. For purposes of this paragraph, the unit
2066 owners who voted at the meeting or who executed the agreement in
2067 writing shall constitute one party under the petition for
2068 arbitration or in a court action. If the arbitrator or court
2069 certifies the recall as to any member of the board, the recall
2070 is ~~shall be~~ effective upon the mailing of the final order of
2071 arbitration to the association or the final order of the court.
2072 If the association fails to comply with the order of the court
2073 or the arbitrator, the division may take action under ~~pursuant~~
2074 ~~to~~ s. 719.501. Any member so recalled shall deliver to the board
2075 any and all records and property of the association in the
2076 member's possession within 5 full business days after the
2077 effective date of the recall.

2078 4. If the board fails to duly notice and hold a board
2079 meeting within 5 full business days after service of an
2080 agreement in writing or within 5 full business days after the
2081 adjournment of the unit owner recall meeting, the recall is
2082 ~~shall be~~ deemed effective and the board members so recalled
2083 shall immediately turn over to the board any and all records and
2084 property of the association.

2085 5. If the board fails to duly notice and hold the required
2086 meeting or fails to file the required petition or action, the
2087 unit owner representative may file a petition under ~~pursuant to~~
2088 s. 719.1255 or file an action in a court of competent

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2089 jurisdiction challenging the board's failure to act. The
 2090 petition or action must be filed within 60 days after the
 2091 expiration of the applicable 5-full-business-day period. The
 2092 review of a petition or action under this subparagraph is
 2093 limited to the sufficiency of service on the board and the
 2094 facial validity of the written agreement or ballots filed.

2095 6. If a vacancy occurs on the board as a result of a recall
 2096 and less than a majority of the board members are removed, the
 2097 vacancy may be filled by the affirmative vote of a majority of
 2098 the remaining directors, notwithstanding any provision to the
 2099 contrary contained in this chapter. If vacancies occur on the
 2100 board as a result of a recall and a majority or more of the
 2101 board members are removed, the vacancies shall be filled in
 2102 accordance with procedural rules to be adopted by the division,
 2103 which rules need not be consistent with this chapter. The rules
 2104 must provide procedures governing the conduct of the recall
 2105 election as well as the operation of the association during the
 2106 period after a recall but before the recall election.

2107 7. A board member who has been recalled may file a petition
 2108 under pursuant to s. 719.1255 or file an action in a court of
 2109 competent jurisdiction challenging the validity of the recall.
 2110 The petition or action must be filed within 60 days after the
 2111 recall is deemed certified. The association and the unit owner
 2112 representative shall be named as the respondents.

2113 8. The division or court may not accept for filing a recall
 2114 petition or action, whether filed under pursuant to subparagraph
 2115 1., subparagraph 2., subparagraph 5., or subparagraph 7. and
 2116 regardless of whether the recall was certified, when there are
 2117 60 or fewer days until the scheduled reelection of the board

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2118 member sought to be recalled or when 60 or fewer days have not
 2119 elapsed since the election of the board member sought to be
 2120 recalled.

2121 (1) Alternative dispute resolution ~~Arbitration~~.—There shall
 2122 be a provision for alternative dispute resolution ~~mandatory~~
 2123 ~~nonbinding arbitration~~ of internal disputes arising from the
 2124 operation of the cooperative in accordance with s. 719.1255.

2125 (3) GENERALLY.—The association may extinguish a
 2126 discriminatory restriction as provided under s. 712.065.

2127 Section 18. Section 719.128, Florida Statutes, is amended
 2128 to read:

2129 719.128 Association emergency powers.—

2130 (1) To the extent allowed by law, unless specifically
 2131 prohibited by the cooperative documents, and consistent with s.
 2132 617.0830, the board of administration, in response to damage or
 2133 injury caused by or anticipated in connection with an emergency,
 2134 as defined in s. 252.34(4), event for which a state of emergency
 2135 is declared pursuant to s. 252.36 in the area encompassed by the
 2136 cooperative, may exercise the following powers:

2137 (a) Conduct board meetings, committee meetings, elections,
 2138 or membership meetings, in whole or in part, by telephone, real-
 2139 time videoconferencing, or similar real-time electronic or video
 2140 communication after notice of the meetings and board decisions
 2141 is provided in as practicable a manner as possible, including
 2142 via publication, radio, United States mail, the Internet,
 2143 electronic transmission, public service announcements,
 2144 conspicuous posting on the cooperative property, or any other
 2145 means the board deems appropriate under the circumstances.
 2146 Notice of decisions may also be communicated as provided in this

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2147 paragraph.

2148 (b) Cancel and reschedule an association meeting.

2149 (c) Designate assistant officers who are not directors. If
 2150 the executive officer is incapacitated or unavailable, the
 2151 assistant officer has the same authority during the state of
 2152 emergency as the executive officer he or she assists.

2153 (d) Relocate the association's principal office or
 2154 designate an alternative principal office.

2155 (e) Enter into agreements with counties and municipalities
 2156 to assist counties and municipalities with debris removal.

2157 (f) Implement a disaster or an emergency plan before,
 2158 during, or ~~immediately~~ following the event for which a state of
 2159 emergency is declared, which may include turning on or shutting
 2160 off elevators; electricity; water, sewer, or security systems;
 2161 or air conditioners for association buildings.

2162 (g) Based upon the advice of emergency management officials
 2163 or public health officials, or upon the advice of licensed
 2164 professionals retained by or otherwise available to the board of
 2165 administration, determine any portion of the cooperative
 2166 property unavailable for entry or occupancy by unit owners or
 2167 their family members, tenants, guests, agents, or invitees to
 2168 protect their health, safety, or welfare.

2169 (h) Based upon the advice of emergency management officials
 2170 or public health officials, or upon the advice of licensed
 2171 professionals retained by or otherwise available to the board of
 2172 administration, determine whether the cooperative property or
 2173 any portion thereof can be safely inhabited or occupied.
 2174 However, such determination is not conclusive as to any
 2175 determination of habitability pursuant to the cooperative

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2176 documents ~~declaration.~~

2177 (i) Require the evacuation of the cooperative property in
 2178 the event of a mandatory evacuation order in the area where the
 2179 cooperative is located or prohibit or restrict access to the
 2180 cooperative property in the event of a public health threat. If
 2181 a unit owner or other occupant of a cooperative fails to
 2182 evacuate the cooperative property for which the board has
 2183 required evacuation, the association is immune from liability
 2184 for injury to persons or property arising from such failure.

2185 (j) Mitigate further damage, injury, or contagion,
 2186 including taking action to contract for the removal of debris
 2187 and to prevent or mitigate the spread of fungus, including mold
 2188 or mildew, by removing and disposing of wet drywall, insulation,
 2189 carpet, cabinetry, or other fixtures on or within the
 2190 cooperative property, regardless of whether the unit owner is
 2191 obligated by the cooperative documents ~~declaration~~ or law to
 2192 insure or replace those fixtures and to remove personal property
 2193 from a unit or to sanitize the cooperative property.

2194 (k) Contract, on behalf of a unit owner, for items or
 2195 services for which the owner is otherwise individually
 2196 responsible, but which are necessary to prevent further injury,
 2197 contagion, or damage to the cooperative property. In such event,
 2198 the unit owner on whose behalf the board has contracted is
 2199 responsible for reimbursing the association for the actual costs
 2200 of the items or services, and the association may use its lien
 2201 authority provided by s. 719.108 to enforce collection of the
 2202 charges. Such items or services may include the drying of the
 2203 unit, the boarding of broken windows or doors, ~~and~~ the
 2204 replacement of a damaged air conditioner or air handler to

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2205 provide climate control in the unit or other portions of the
 2206 property, and the sanitizing of the cooperative property.

2207 (1) Notwithstanding a provision to the contrary, and
 2208 regardless of whether such authority does not specifically
 2209 appear in the cooperative documents, levy special assessments
 2210 without a vote of the owners.

2211 (m) Without unit owners' approval, borrow money and pledge
 2212 association assets as collateral to fund emergency repairs and
 2213 carry out the duties of the association if operating funds are
 2214 insufficient. This paragraph does not limit the general
 2215 authority of the association to borrow money, subject to such
 2216 restrictions contained in the cooperative documents.

2217 (2) The authority granted under subsection (1) is limited
 2218 to that time reasonably necessary to protect the health, safety,
 2219 and welfare of the association and the unit owners and their
 2220 family members, tenants, guests, agents, or invitees, and to
 2221 mitigate further damage, injury, or contagion and make emergency
 2222 repairs.

2223 (3) Notwithstanding paragraphs (1)(f)-(i), during a state
 2224 of emergency declared by executive order or proclamation of the
 2225 Governor pursuant to s. 252.36, an association may not prohibit
 2226 unit owners, tenants, guests, agents, or invitees of a unit
 2227 owner from accessing the common elements and limited common
 2228 elements appurtenant thereto for the purposes of ingress to and
 2229 egress from the unit when access is necessary in connection
 2230 with:

2231 (a) The sale, lease, or other transfer of title of a unit;

2232 or

2233 (b) The habitability of the unit or for the health and

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2234 safety of such person unless a governmental order or
 2235 determination, or a public health directive from the Centers for
 2236 Disease Control and Prevention, has been issued prohibiting such
 2237 access to the unit. Any such access is subject to reasonable
 2238 restrictions adopted by the association.

2239 Section 19. Subsection (8) of section 720.301, Florida
 2240 Statutes, is amended to read:

2241 720.301 Definitions.—As used in this chapter, the term:

2242 (8) "Governing documents" means:

2243 (a) The recorded declaration of covenants for a community
 2244 and all duly adopted and recorded amendments, supplements, and
 2245 recorded exhibits thereto; and

2246 (b) The articles of incorporation and bylaws of the
 2247 homeowners' association and any duly adopted amendments thereto;
 2248 ~~and~~

2249 ~~(c) Rules and regulations adopted under the authority of~~
 2250 ~~the recorded declaration, articles of incorporation, or bylaws~~
 2251 ~~and duly adopted amendments thereto.~~

2252 Section 20. Present paragraph (1) of subsection (4) of
 2253 section 720.303, Florida Statutes, is redesignated as paragraph
 2254 (m) and amended, a new paragraph (1) is added to that
 2255 subsection, and paragraph (c) of subsection (2), paragraph (c)
 2256 of subsection (5), paragraphs (c) and (d) of subsection (6), and
 2257 paragraphs (b), (d), (g), (k), and (l) of subsection (10) are
 2258 amended, to read:

2259 720.303 Association powers and duties; meetings of board;
 2260 official records; budgets; financial reporting; association
 2261 funds; recalls.—

2262 (2) BOARD MEETINGS.—

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2263 (c) The bylaws shall provide the following for giving
 2264 notice to parcel owners and members of all board meetings and,
 2265 if they do not do so, shall be deemed to include the following:

2266 1. Notices of all board meetings must be posted in a
 2267 conspicuous place in the community at least 48 hours in advance
 2268 of a meeting, except in an emergency. In the alternative, if
 2269 notice is not posted in a conspicuous place in the community,
 2270 notice of each board meeting must be mailed or delivered to each
 2271 member at least 7 days before the meeting, except in an
 2272 emergency. Notwithstanding this general notice requirement, for
 2273 communities with more than 100 members, the association bylaws
 2274 may provide for a reasonable alternative to posting or mailing
 2275 of notice for each board meeting, including publication of
 2276 notice, provision of a schedule of board meetings, or the
 2277 conspicuous posting and repeated broadcasting of the notice on a
 2278 closed-circuit cable television system serving the homeowners'
 2279 association. However, if broadcast notice is used in lieu of a
 2280 notice posted physically in the community, the notice must be
 2281 broadcast at least four times every broadcast hour of each day
 2282 that a posted notice is otherwise required. When broadcast
 2283 notice is provided, the notice and agenda must be broadcast in a
 2284 manner and for a sufficient continuous length of time so as to
 2285 allow an average reader to observe the notice and read and
 2286 comprehend the entire content of the notice and the agenda. In
 2287 addition to any of the authorized means of providing notice of a
 2288 meeting of the board, the association may, by rule, adopt a
 2289 procedure for conspicuously posting the meeting notice and the
 2290 agenda on the association's website or an application that can
 2291 be downloaded on a mobile device for at least the minimum period

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2292 of time for which a notice of a meeting is also required to be
 2293 physically posted on the association property. Any rule adopted
 2294 must, in addition to other matters, include a requirement that
 2295 the association send an electronic notice to members whose e-
 2296 mail addresses are included in the association's official
 2297 records in the same manner as is required for a notice of a
 2298 meeting of the members. Such notice must include a hyperlink to
 2299 the website or such mobile application on which the meeting
 2300 notice is posted. The association may provide notice by
 2301 electronic transmission in a manner authorized by law for
 2302 meetings of the board of directors, committee meetings requiring
 2303 notice under this section, and annual and special meetings of
 2304 the members to any member who has provided a facsimile number or
 2305 e-mail address to the association to be used for such purposes;
 2306 however, a member must consent in writing to receiving notice by
 2307 electronic transmission.

2308 2. An assessment may not be levied at a board meeting
 2309 unless the notice of the meeting includes a statement that
 2310 assessments will be considered and the nature of the
 2311 assessments. Written notice of any meeting at which special
 2312 assessments will be considered or at which amendments to rules
 2313 regarding parcel use will be considered must be mailed,
 2314 delivered, or electronically transmitted to the members and
 2315 parcel owners and posted conspicuously on the property or
 2316 broadcast on closed-circuit cable television not less than 14
 2317 days before the meeting.

2318 3. Directors may not vote by proxy or by secret ballot at
 2319 board meetings, except that secret ballots may be used in the
 2320 election of officers. This subsection also applies to the

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2321 meetings of any committee or other similar body, when a final
 2322 decision will be made regarding the expenditure of association
 2323 funds, and to any body vested with the power to approve or
 2324 disapprove architectural decisions with respect to a specific
 2325 parcel of residential property owned by a member of the
 2326 community.

2327 (4) OFFICIAL RECORDS.—The association shall maintain each
 2328 of the following items, when applicable, which constitute the
 2329 official records of the association:

2330 (1) Ballots, sign-in sheets, voting proxies, and all other
 2331 papers and electronic records relating to voting by parcel
 2332 owners, which must be maintained for at least 1 year after the
 2333 date of the election, vote, or meeting.

2334 (m) ~~(l)~~ All other written records of the association not
 2335 specifically included in this subsection ~~the foregoing~~ which are
 2336 related to the operation of the association.

2337 (5) INSPECTION AND COPYING OF RECORDS.—The official records
 2338 shall be maintained within the state for at least 7 years and
 2339 shall be made available to a parcel owner for inspection or
 2340 photocopying within 45 miles of the community or within the
 2341 county in which the association is located within 10 business
 2342 days after receipt by the board or its designee of a written
 2343 request. This subsection may be complied with by having a copy
 2344 of the official records available for inspection or copying in
 2345 the community or, at the option of the association, by making
 2346 the records available to a parcel owner electronically via the
 2347 Internet or by allowing the records to be viewed in electronic
 2348 format on a computer screen and printed upon request. If the
 2349 association has a photocopy machine available where the records

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2350 are maintained, it must provide parcel owners with copies on
 2351 request during the inspection if the entire request is limited
 2352 to no more than 25 pages. An association shall allow a member or
 2353 his or her authorized representative to use a portable device,
 2354 including a smartphone, tablet, portable scanner, or any other
 2355 technology capable of scanning or taking photographs, to make an
 2356 electronic copy of the official records in lieu of the
 2357 association's providing the member or his or her authorized
 2358 representative with a copy of such records. The association may
 2359 not charge a fee to a member or his or her authorized
 2360 representative for the use of a portable device.

2361 (c) The association may adopt reasonable written rules
 2362 governing the frequency, time, location, notice, records to be
 2363 inspected, and manner of inspections, but may not require a
 2364 parcel owner to demonstrate any proper purpose for the
 2365 inspection, state any reason for the inspection, or limit a
 2366 parcel owner's right to inspect records to less than one 8-hour
 2367 business day per month. The association may impose fees to cover
 2368 the costs of providing copies of the official records, including
 2369 the costs of copying and the costs required for personnel to
 2370 retrieve and copy the records if the time spent retrieving and
 2371 copying the records exceeds one-half hour and if the personnel
 2372 costs do not exceed \$20 per hour. Personnel costs may not be
 2373 charged for records requests that result in the copying of 25 or
 2374 fewer pages. The association may charge up to 25 cents per page
 2375 for copies made on the association's photocopier. If the
 2376 association does not have a photocopy machine available where
 2377 the records are kept, or if the records requested to be copied
 2378 exceed 25 pages in length, the association may have copies made

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2379 by an outside duplicating service and may charge the actual cost
 2380 of copying, as supported by the vendor invoice. The association
 2381 shall maintain an adequate number of copies of the recorded
 2382 governing documents, to ensure their availability to members and
 2383 prospective members. Notwithstanding this paragraph, the
 2384 following records are not accessible to members or parcel
 2385 owners:

2386 1. Any record protected by the lawyer-client privilege as
 2387 described in s. 90.502 and any record protected by the work-
 2388 product privilege, including, but not limited to, a record
 2389 prepared by an association attorney or prepared at the
 2390 attorney's express direction which reflects a mental impression,
 2391 conclusion, litigation strategy, or legal theory of the attorney
 2392 or the association and which was prepared exclusively for civil
 2393 or criminal litigation or for adversarial administrative
 2394 proceedings or which was prepared in anticipation of such
 2395 litigation or proceedings until the conclusion of the litigation
 2396 or proceedings.

2397 2. Information obtained by an association in connection
 2398 with the approval of the lease, sale, or other transfer of a
 2399 parcel.

2400 3. Information an association obtains in a gated community
 2401 in connection with guests' visits to parcel owners or community
 2402 residents.

2403 4. Personnel records of association or management company
 2404 employees, including, but not limited to, disciplinary, payroll,
 2405 health, and insurance records. For purposes of this
 2406 subparagraph, the term "personnel records" does not include
 2407 written employment agreements with an association or management

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2408 company employee or budgetary or financial records that indicate
 2409 the compensation paid to an association or management company
 2410 employee.

2411 ~~5.4-~~ Medical records of parcel owners or community
 2412 residents.

2413 ~~6.5-~~ Social security numbers, driver license numbers,
 2414 credit card numbers, electronic mailing addresses, telephone
 2415 numbers, facsimile numbers, emergency contact information, any
 2416 addresses for a parcel owner other than as provided for
 2417 association notice requirements, and other personal identifying
 2418 information of any person, excluding the person's name, parcel
 2419 designation, mailing address, and property address.
 2420 Notwithstanding the restrictions in this subparagraph, an
 2421 association may print and distribute to parcel owners a
 2422 directory containing the name, parcel address, and all telephone
 2423 numbers of each parcel owner. However, an owner may exclude his
 2424 or her telephone numbers from the directory by so requesting in
 2425 writing to the association. An owner may consent in writing to
 2426 the disclosure of other contact information described in this
 2427 subparagraph. The association is not liable for the disclosure
 2428 of information that is protected under this subparagraph if the
 2429 information is included in an official record of the association
 2430 and is voluntarily provided by an owner and not requested by the
 2431 association.

2432 ~~7.6-~~ Any electronic security measure that is used by the
 2433 association to safeguard data, including passwords.

2434 ~~8.7-~~ The software and operating system used by the
 2435 association which allows the manipulation of data, even if the
 2436 owner owns a copy of the same software used by the association.

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2437 The data is part of the official records of the association.

2438 (6) BUDGETS.—

2439 (c)1. If the budget of the association does not provide for
2440 reserve accounts ~~under pursuant to~~ paragraph (d), or the
2441 declaration of covenants, articles, or bylaws do not obligate
2442 the developer to create reserves, and the association is
2443 responsible for the repair and maintenance of capital
2444 improvements that may result in a special assessment if reserves
2445 are not provided or not fully funded, each financial report for
2446 the preceding fiscal year required by subsection (7) must
2447 contain the following statement in conspicuous type:

2448

2449 THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR FULLY FUNDED
2450 RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED
2451 MAINTENANCE THAT MAY RESULT IN SPECIAL ASSESSMENTS REGARDING
2452 THOSE ITEMS. OWNERS MAY ELECT TO PROVIDE FOR FULLY FUNDED
2453 RESERVE ACCOUNTS UNDER ~~PURSUANT TO~~ SECTION 720.303(6), FLORIDA
2454 STATUTES, UPON OBTAINING THE APPROVAL OF A MAJORITY OF THE TOTAL
2455 VOTING INTERESTS OF THE ASSOCIATION BY VOTE OF THE MEMBERS AT A
2456 MEETING OR BY WRITTEN CONSENT.

2457 2. If the budget of the association does provide for
2458 funding accounts for deferred expenditures, including, but not
2459 limited to, funds for capital expenditures and deferred
2460 maintenance, but such accounts are not created or established
2461 ~~under pursuant to~~ paragraph (d), each financial report for the
2462 preceding fiscal year required under subsection (7) must also
2463 contain the following statement in conspicuous type:

2464 THE BUDGET OF THE ASSOCIATION PROVIDES FOR LIMITED VOLUNTARY
2465 DEFERRED EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES

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2466 AND DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED
2467 IN OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED
2468 TO PROVIDE FOR RESERVE ACCOUNTS ~~UNDER PURSUANT TO~~ SECTION
2469 720.303(6), FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE
2470 RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR
2471 ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

2472 (d) An association is deemed to have provided for reserve
2473 accounts ~~if reserve accounts have been initially established by~~
2474 ~~the developer or if the membership of the association~~
2475 ~~affirmatively elects to provide for reserves. If reserve~~
2476 ~~accounts are established by the developer, the budget must~~
2477 ~~designate the components for which the reserve accounts may be~~
2478 ~~used. If reserve accounts are not initially provided by the~~
2479 ~~developer, the membership of the association may elect to do so~~
2480 upon the affirmative approval of a majority of the total voting
2481 interests of the association. Such approval may be obtained by
2482 vote of the members at a duly called meeting of the membership
2483 or by the written consent of a majority of the total voting
2484 interests of the association. The approval action of the
2485 membership must state that reserve accounts shall be provided
2486 for in the budget and must designate the components for which
2487 the reserve accounts are to be established. Upon approval by the
2488 membership, the board of directors shall include the required
2489 reserve accounts in the budget in the next fiscal year following
2490 the approval and each year thereafter. Once established as
2491 provided in this subsection, the reserve accounts must be funded
2492 or maintained or have their funding waived in the manner
2493 provided in paragraph (f).

2494 (10) RECALL OF DIRECTORS.—

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2495 (b)1. Board directors may be recalled by an agreement in
 2496 writing or by written ballot without a membership meeting. The
 2497 agreement in writing or the written ballots, or a copy thereof,
 2498 shall be served on the association by certified mail or by
 2499 personal service in the manner authorized by chapter 48 and the
 2500 Florida Rules of Civil Procedure.

2501 2. The board shall duly notice and hold a meeting of the
 2502 board within 5 full business days after receipt of the agreement
 2503 in writing or written ballots. At the meeting, the board shall
 2504 either certify the written ballots or written agreement to
 2505 recall a director or directors of the board, in which case such
 2506 director or directors shall be recalled effective immediately
 2507 and shall turn over to the board within 5 full business days any
 2508 and all records and property of the association in their
 2509 possession, or proceed as described in paragraph (d).

2510 3. When it is determined by the department pursuant to
 2511 binding arbitration proceedings or the court in an action filed
 2512 in a court of competent jurisdiction that an initial recall
 2513 effort was defective, written recall agreements or written
 2514 ballots used in the first recall effort and not found to be
 2515 defective may be reused in one subsequent recall effort.
 2516 However, in no event is a written agreement or written ballot
 2517 valid for more than 120 days after it has been signed by the
 2518 member.

2519 4. Any rescission or revocation of a member's written
 2520 recall ballot or agreement must be in writing and, in order to
 2521 be effective, must be delivered to the association before the
 2522 association is served with the written recall agreements or
 2523 ballots.

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2524 5. The agreement in writing or ballot shall list at least
 2525 as many possible replacement directors as there are directors
 2526 subject to the recall, when at least a majority of the board is
 2527 sought to be recalled; the person executing the recall
 2528 instrument may vote for as many replacement candidates as there
 2529 are directors subject to the recall.

2530 (d) If the board determines not to certify the written
 2531 agreement or written ballots to recall a director or directors
 2532 of the board or does not certify the recall by a vote at a
 2533 meeting, the board shall, within 5 full business days after the
 2534 meeting, file an action with a court of competent jurisdiction
 2535 or file with the department a petition for binding arbitration
 2536 under ~~pursuant to~~ the applicable procedures in ss. 718.112(2) (j)
 2537 and 718.1255 and the rules adopted thereunder. For the purposes
 2538 of this section, the members who voted at the meeting or who
 2539 executed the agreement in writing shall constitute one party
 2540 under the petition for arbitration or in a court action. If the
 2541 arbitrator or court certifies the recall as to any director or
 2542 directors of the board, the recall will be effective upon the
 2543 final order of the court or the mailing of the final order of
 2544 arbitration to the association. The director or directors so
 2545 recalled shall deliver to the board any and all records of the
 2546 association in their possession within 5 full business days
 2547 after the effective date of the recall.

2548 (g) If the board fails to duly notice and hold the required
 2549 meeting or fails to file the required petition or action, the
 2550 parcel unit owner representative may file a petition or a court
 2551 action under ~~pursuant to~~ s. 718.1255 challenging the board's
 2552 failure to act. The petition or action must be filed within 60

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2553 days after the expiration of the applicable 5-full-business-day
 2554 period. The review of a petition or action under this paragraph
 2555 is limited to the sufficiency of service on the board and the
 2556 facial validity of the written agreement or ballots filed.

2557 (k) A board member who has been recalled may file an action
 2558 with a court of competent jurisdiction or a petition under
 2559 ~~pursuant to~~ ss. 718.112(2)(j) and 718.1255 and the rules adopted
 2560 challenging the validity of the recall. The petition or action
 2561 must be filed within 60 days after the recall is deemed
 2562 certified. The association and the parcel ~~unit~~ owner
 2563 representative shall be named as respondents.

2564 (l) The division or a court of competent jurisdiction may
 2565 not accept for filing a recall petition or action, whether filed
 2566 under ~~pursuant to~~ paragraph (b), paragraph (c), paragraph (g),
 2567 or paragraph (k) and regardless of whether the recall was
 2568 certified, when there are 60 or fewer days until the scheduled
 2569 reelection of the board member sought to be recalled or when 60
 2570 or fewer days have not elapsed since the election of the board
 2571 member sought to be recalled.

2572 Section 21. Subsection (2) of section 720.305, Florida
 2573 Statutes, is amended to read:

2574 720.305 Obligations of members; remedies at law or in
 2575 equity; levy of fines and suspension of use rights.—

2576 (2) An ~~The~~ association may levy reasonable fines. A fine
 2577 may not exceed \$100 per violation against any member or any
 2578 member's tenant, guest, or invitee for the failure of the owner
 2579 of the parcel or its occupant, licensee, or invitee to comply
 2580 with any provision of the declaration, the association bylaws,
 2581 or reasonable rules of the association unless otherwise provided

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2582 in the governing documents. A fine may be levied by the board
 2583 for each day of a continuing violation, with a single notice and
 2584 opportunity for hearing, except that the fine may not exceed
 2585 \$1,000 in the aggregate unless otherwise provided in the
 2586 governing documents. A fine of less than \$1,000 may not become a
 2587 lien against a parcel. In any action to recover a fine, the
 2588 prevailing party is entitled to reasonable attorney fees and
 2589 costs from the nonprevailing party as determined by the court.

2590 (a) An association may suspend, for a reasonable period of
 2591 time, the right of a member, or a member's tenant, guest, or
 2592 invitee, to use common areas and facilities for the failure of
 2593 the owner of the parcel or its occupant, licensee, or invitee to
 2594 comply with any provision of the declaration, the association
 2595 bylaws, or reasonable rules of the association. This paragraph
 2596 does not apply to that portion of common areas used to provide
 2597 access or utility services to the parcel. A suspension may not
 2598 prohibit an owner or tenant of a parcel from having vehicular
 2599 and pedestrian ingress to and egress from the parcel, including,
 2600 but not limited to, the right to park.

2601 (b) A fine or suspension levied by the board of
 2602 administration may not be imposed unless the board first
 2603 provides at least 14 days' notice to the parcel owner and, if
 2604 applicable, any occupant, licensee, or invitee of the parcel
 2605 owner, sought to be fined or suspended and an opportunity for a
 2606 hearing before a committee of at least three members appointed
 2607 by the board who are not officers, directors, or employees of
 2608 the association, or the spouse, parent, child, brother, or
 2609 sister of an officer, director, or employee. If the committee,
 2610 by majority vote, does not approve a proposed fine or

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2611 suspension, the proposed fine or suspension may not be imposed.
 2612 The role of the committee is limited to determining whether to
 2613 confirm or reject the fine or suspension levied by the board. If
 2614 the proposed fine or suspension levied by the board is approved
 2615 by the committee, the fine payment is due 5 days after notice of
 2616 the approved fine is provided to the parcel owner and, if
 2617 applicable, to any occupant, licensee, or invitee of the parcel
 2618 owner ~~the date of the committee meeting at which the fine is~~
 2619 ~~approved~~. The association must provide written notice of such
 2620 fine or suspension by mail or hand delivery to the parcel owner
 2621 and, if applicable, to any occupant ~~tenant~~, licensee, or invitee
 2622 of the parcel owner.

2623 Section 22. Paragraph (g) of subsection (1) and paragraph
 2624 (c) of subsection (9) of section 720.306, Florida Statutes, are
 2625 amended, and paragraph (h) is added to subsection (1) of that
 2626 section, to read:

2627 720.306 Meetings of members; voting and election
 2628 procedures; amendments.—

2629 (1) QUORUM; AMENDMENTS.—

2630 (g) A notice required under this section must be mailed or
 2631 delivered to the address identified as the parcel owner's
 2632 mailing address in the official records of the association as
 2633 required under s. 720.303(4) on the property appraiser's website
 2634 ~~for the county in which the parcel is located~~, or electronically
 2635 transmitted in a manner authorized by the association if the
 2636 parcel owner has consented, in writing, to receive notice by
 2637 electronic transmission.

2638 (h)1. Except as provided herein, an amendment to a
 2639 governing document, rule, or regulation enacted after July 1,

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2640 2021, which prohibits a parcel owner from renting his or her
 2641 parcel, alters the authorized duration of a rental term, or
 2642 specifies or limits the number of times that a parcel owner may
 2643 rent his or her parcel during a specified period, applies only
 2644 to a parcel owner who consents, individually or through a
 2645 representative, to the amendment, and to parcel owners who
 2646 acquire title to a parcel after the effective date of the
 2647 amendment.

2648 2. Notwithstanding subparagraph 1., an association may
 2649 amend its governing documents to prohibit or regulate rental
 2650 durations that are for terms of less than 6 months and to
 2651 prohibit a parcel owner from renting his or parcel more than
 2652 three times in a calendar year. Such amendments apply to all
 2653 parcel owners.

2654 3. This paragraph does not affect the amendment
 2655 restrictions for associations of 15 or fewer parcel owners as
 2656 provided in s. 720.303(1).

2657 4. For purposes of this paragraph, a change of ownership
 2658 does not occur when a parcel owner conveys the parcel to an
 2659 affiliated entity, when beneficial ownership of the parcel does
 2660 not change, or when an heir becomes a parcel owner. For purposes
 2661 of this paragraph, the term "affiliated entity" means an entity
 2662 that controls, is controlled by, or is under common control with
 2663 the parcel owner or that becomes a parent or successor entity by
 2664 reason of transfer, merger, consolidation, public offering,
 2665 reorganization, dissolution or sale of stock, or transfer of
 2666 membership partnership interests. For a conveyance to be
 2667 recognized as one made to an affiliated entity, the entity must
 2668 furnish the association a document certifying that this

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2669 paragraph applies, as well as providing any organizational
 2670 documents for the parcel owner and the affiliated entity that
 2671 support the representations in the certificate, as requested by
 2672 the association.

2673 (9) ELECTIONS AND BOARD VACANCIES.—

2674 (c) Any election dispute between a member and an
 2675 association must be submitted to ~~mandatory~~ binding arbitration
 2676 with the division or filed with a court of competent
 2677 jurisdiction. Such proceedings that are submitted to binding
 2678 arbitration with the division must be conducted in the manner
 2679 provided by s. 718.1255 and the procedural rules adopted by the
 2680 division. Unless otherwise provided in the bylaws, any vacancy
 2681 occurring on the board before the expiration of a term may be
 2682 filled by an affirmative vote of the majority of the remaining
 2683 directors, even if the remaining directors constitute less than
 2684 a quorum, or by the sole remaining director. In the alternative,
 2685 a board may hold an election to fill the vacancy, in which case
 2686 the election procedures must conform to the requirements of the
 2687 governing documents. Unless otherwise provided in the bylaws, a
 2688 board member appointed or elected under this section is
 2689 appointed for the unexpired term of the seat being filled.
 2690 Filling vacancies created by recall is governed by s.
 2691 720.303(10) and rules adopted by the division.

2692 Section 23. Subsections (1) and (2) of section 720.307,
 2693 Florida Statutes, are amended to read:

2694 720.307 Transition of association control in a community.—

2695 With respect to homeowners' associations:

2696 (1) Members other than the developer are entitled to elect
 2697 at least a majority of the members of the board of directors of

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2698 the homeowners' association when the earlier of the following
 2699 events occurs:

2700 (a) Three months after 90 percent of the parcels in all
 2701 phases of the community that will ultimately be operated by the
 2702 homeowners' association have been conveyed to members other than
 2703 the developer;

2704 (b) Such other percentage of the parcels has been conveyed
 2705 to members, or such other date or event has occurred, as is set
 2706 forth in the governing documents in order to comply with the
 2707 requirements of any governmentally chartered entity with regard
 2708 to the mortgage financing of parcels;

2709 (c) Upon the developer abandoning or deserting its
 2710 responsibility to maintain and complete the amenities or
 2711 infrastructure as disclosed in the governing documents. There is
 2712 a rebuttable presumption that the developer has abandoned and
 2713 deserted the property if the developer has unpaid assessments or
 2714 guaranteed amounts under s. 720.308 for a period of more than 2
 2715 years;

2716 (d) Upon the developer filing a petition seeking protection
 2717 under chapter 7 of the federal Bankruptcy Code;

2718 (e) Upon the developer losing title to the property through
 2719 a foreclosure action or the transfer of a deed in lieu of
 2720 foreclosure, unless the successor owner has accepted an
 2721 assignment of developer rights and responsibilities first
 2722 arising after the date of such assignment; or

2723 (f) Upon a receiver for the developer being appointed by a
 2724 circuit court and not being discharged within 30 days after such
 2725 appointment, unless the court determines within 30 days after
 2726 such appointment that transfer of control would be detrimental

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2727 to the association or its members.

2728

2729 For purposes of this section, the term "members other than the
2730 developer" shall not include builders, contractors, or others
2731 who purchase a parcel for the purpose of constructing
2732 improvements thereon for resale.

2733 (2) Members other than the developer are entitled to elect
2734 at least one member of the board of directors of the homeowners'
2735 association if 50 percent of the parcels in all phases of the
2736 community which will ultimately be operated by the association
2737 have been conveyed to members other than the developer.

2738 Section 24. Subsection (1) of section 720.311, Florida
2739 Statutes, is amended to read:

2740 720.311 Dispute resolution.—

2741 (1) The Legislature finds that alternative dispute
2742 resolution has made progress in reducing court dockets and
2743 trials and in offering a more efficient, cost-effective option
2744 to litigation. The filing of any petition for arbitration or the
2745 serving of a demand for presuit mediation as provided for in
2746 this section shall toll the applicable statute of limitations.
2747 Any recall dispute filed with the department under pursuant to
2748 s. 720.303(10) shall be conducted by the department in
2749 accordance with the provisions of ss. 718.112(2)(j) and 718.1255
2750 and the rules adopted by the division. In addition, the
2751 department shall conduct ~~mandatory~~ binding arbitration of
2752 election disputes between a member and an association in
2753 accordance with pursuant to s. 718.1255 and rules adopted by the
2754 division. ~~Neither~~ Election disputes and ~~nor~~ recall disputes are
2755 not eligible for presuit mediation; these disputes must ~~shall~~ be

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2756 arbitrated by the department or filed in a court of competent
2757 jurisdiction. At the conclusion of an arbitration ~~the~~
2758 proceeding, the department shall charge the parties a fee in an
2759 amount adequate to cover all costs and expenses incurred by the
2760 department in conducting the proceeding. Initially, the
2761 petitioner shall remit a filing fee of at least \$200 to the
2762 department. The fees paid to the department shall become a
2763 recoverable cost in the arbitration proceeding, and the
2764 prevailing party in an arbitration proceeding shall recover its
2765 reasonable costs and attorney ~~attorney's~~ fees in an amount found
2766 reasonable by the arbitrator. The department shall adopt rules
2767 to effectuate the purposes of this section.

2768 Section 25. Subsection (6) is added to section 720.3075,
2769 Florida Statutes, to read:

2770 720.3075 Prohibited clauses in association documents.—

2771 (6) An association may extinguish a discriminatory
2772 restriction as provided in s. 712.065.

2773 Section 26. Section 720.316, Florida Statutes, is amended
2774 to read:

2775 720.316 Association emergency powers.—

2776 (1) To the extent allowed by law, unless specifically
2777 prohibited by the declaration or other recorded governing
2778 documents, and consistent with s. 617.0830, the board of
2779 directors, in response to damage or injury caused by or
2780 anticipated in connection with an emergency, as defined in s.
2781 252.34(4), event for which a state of emergency is declared
2782 pursuant to s. 252.36 in the area encompassed by the
2783 association, may exercise the following powers:

2784 (a) Conduct board meetings, committee meetings, elections,

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2785 or membership meetings, in whole or in part, by telephone, real-
 2786 time videoconferencing, or similar real-time electronic or video
 2787 communication after notice of the meetings and board decisions
 2788 is provided in as practicable a manner as possible, including
 2789 via publication, radio, United States mail, the Internet,
 2790 electronic transmission, public service announcements,
 2791 conspicuous posting on the common area association property, or
 2792 any other means the board deems appropriate under the
 2793 circumstances. Notice of decisions may also be communicated as
 2794 provided in this paragraph.

2795 (b) Cancel and reschedule an association meeting.

2796 (c) Designate assistant officers who are not directors. If
 2797 the executive officer is incapacitated or unavailable, the
 2798 assistant officer has the same authority during the state of
 2799 emergency as the executive officer he or she assists.

2800 (d) Relocate the association's principal office or
 2801 designate an alternative principal office.

2802 (e) Enter into agreements with counties and municipalities
 2803 to assist counties and municipalities with debris removal.

2804 (f) Implement a disaster or an emergency plan before,
 2805 during, or ~~immediately~~ following the event for which a state of
 2806 emergency is declared, which may include, but is not limited to,
 2807 turning on or shutting off elevators; electricity; water, sewer,
 2808 or security systems; or air conditioners for association
 2809 buildings.

2810 (g) Based upon the advice of emergency management officials
 2811 or public health officials, or upon the advice of licensed
 2812 professionals retained by or otherwise available to the board,
 2813 determine any portion of the common areas or facilities

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2814 ~~association property~~ unavailable for entry or occupancy by
 2815 owners or their family members, tenants, guests, agents, or
 2816 invitees to protect their health, safety, or welfare.

2817 (h) Based upon the advice of emergency management officials
 2818 or public health officials or upon the advice of licensed
 2819 professionals retained by or otherwise available to the board,
 2820 determine whether the common areas or facilities association
 2821 ~~property~~ can be safely inhabited, accessed, or occupied.
 2822 However, such determination is not conclusive as to any
 2823 determination of habitability pursuant to the declaration.

2824 (i) Mitigate further damage, injury, or contagion,
 2825 including taking action to contract for the removal of debris
 2826 and to prevent or mitigate the spread of fungus, including mold
 2827 or mildew, by removing and disposing of wet drywall, insulation,
 2828 carpet, cabinetry, or other fixtures on or within the common
 2829 areas or facilities or sanitizing the common areas or facilities
 2830 ~~association property~~.

2831 (j) Notwithstanding a provision to the contrary, and
 2832 regardless of whether such authority does not specifically
 2833 appear in the declaration or other recorded governing documents,
 2834 levy special assessments without a vote of the owners.

2835 (k) Without owners' approval, borrow money and pledge
 2836 association assets as collateral to fund emergency repairs and
 2837 carry out the duties of the association if operating funds are
 2838 insufficient. This paragraph does not limit the general
 2839 authority of the association to borrow money, subject to such
 2840 restrictions contained in the declaration or other recorded
 2841 governing documents.

2842 (2) The authority granted under subsection (1) is limited

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2843 to that time reasonably necessary to protect the health, safety,
2844 and welfare of the association and the parcel owners and their
2845 family members, tenants, guests, agents, or invitees, and to
2846 mitigate further damage, injury, or contagion and make emergency
2847 repairs.

2848 (3) Notwithstanding paragraphs (1) (f)-(i), during a state
2849 of emergency declared by executive order or proclamation of the
2850 Governor pursuant to s. 252.36, an association may not prohibit
2851 parcel owners, tenants, guests, agents, or invitees of a parcel
2852 owner from accessing the common areas and facilities for the
2853 purposes of ingress to and egress from the parcel when access is
2854 necessary in connection with:

2855 (a) The sale, lease, or other transfer of title of a
2856 parcel; or

2857 (b) The habitability of the parcel or for the health and
2858 safety of such person unless a governmental order or
2859 determination, or a public health directive from the Centers for
2860 Disease Control and Prevention, has been issued prohibiting such
2861 access to the parcel. Any such access is subject to reasonable
2862 restrictions adopted by the association.

2863 Section 27. This act shall take effect July 1, 2021.

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 Community Affairs

BILL: CS/SB 630

INTRODUCER: Regulated Industries Committee and Senator Baxley and others

SUBJECT: Community Associations

DATE: March 10, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 630 revises the regulation and governance of condominium, cooperative, and homeowners' associations under chs. 718, 719, and 720, F.S., respectively. The bill authorizes condominium, cooperative, and homeowners' associations to extinguish discriminatory restrictions in recorded title transactions.

For condominium associations, the bill:

- Prohibits a unit owner's insurance policy from including rights of subrogation against the association if the association's policy does not provide subrogation rights against the unit owner;
- Provides for the operation of more than one condominium by a condominium association (multicondominium).
- Reduces the time period an association must maintain official records of bids for work, equipment, or services to be performed from seven years to one year after receipt of the bid;
- Permits associations with 150 or more units to make official records available for inspection through an application that can be downloaded to a mobile device;
- Provides that only a board member's service that occurs on or after July 1, 2018, may be used when calculating a board member's term limit;
- Permits associations to electronically transmit the written notice of a meeting;
- Increases the maximum permissible fee an association may charge for the transfer of a unit from \$100 to \$150, and provides for the adjustment of the fee every five years to an amount equal to the total annual increases in the Consumer Price Index during that period;

- Removes the prohibition against an association employing or contracting with any service provider that is owned or operated by a board member or person who has a financial relationship with a board member or officer;
- Permits unit owners to install a charging station for an electric vehicle or a natural gas fuel vehicle on a parking area exclusively designated for use by the unit owner. The unit owner is required to be responsible for the costs related to the installation, maintenance, and removal of the charging station for an electric vehicle or a natural gas fuel vehicle;
- Provides that a condominium developer may expend escrow funds to satisfy actual costs of construction and development, but exclude other specified costs, such as marketing costs;
- Repeals the requirement that the condominium ombudsman must maintain his or her office in Leon County.

For cooperative associations, the bill:

- Provides that an interest in a cooperative unit is an interest in real property; and
- Permits board or committee members to appear and vote by telephone, real-time video conferencing, or similar real-time electronic or video communication.

For homeowners' associations, the bill:

- Permits an association to adopt, by rule, procedures for posting meeting notices and agendas on a website and emailing members meeting notices and agendas;
- Requires sign-in sheets, voting proxies, ballots, and all other papers related to voting to be maintained as official records;
- Makes confidential any information an association obtains in connection to guests visiting homeowners in a gated community;
- Clarifies the situations in which an association is obligated to create or fund association reserve accounts;
- Provides for the prospective application of an amendment to the governing documents that restricts the right to rent a parcel;
- Provides that a change of ownership does not occur for purposes of applying an amendment restricting rental rights when a parcel owner conveys the parcel to an affiliated entity, when beneficial ownership of the parcel does not change, or when an heir becomes a parcel owner; and
- Revises the conditions under which non-developer members of a homeowners' association are entitled to elect the majority of the board, to consistently distinguish between developer members and non-developer members.

For condominium and cooperative associations, the bill:

- Prohibits an association from requiring members to demonstrate any purpose or state any reason for inspecting official records; and
- Provides a process to resolve disputes by initiating presuit mediation as an alternative to mandatory nonbinding arbitration by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation.

For condominium, cooperative, and homeowners' associations, the bill:

- Provides that recall and election disputes are not eligible for mediation and must be arbitrated by the division or filed in court;

- Provides additional emergency powers to respond to injury and to an anticipated declared state of emergency; and
- Clarifies that payment of a fine is due five days after notice of the fine is provided to the unit owner, tenant, or invitee of the unit owner.

The bill provides an effective date of July 1, 2021.

II. Present Situation:

Condominium

A condominium is a “form of ownership of real property created under ch. 718, F.S.”¹ 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.² For unit owners, membership in the association is an unalienable right and required condition of unit ownership.³ A condominium is created by recording a declaration of the condominium in the public records of the county where the condominium is located.⁴ A declaration is similar to a constitution in that it:

[S]trictly governs the relationships among condominium unit owners and the condominium association. Under the declaration, the Board of the condominium association has broad authority to enact rules for the benefit of the community.⁵

Condominium associations are creatures of statute and private contracts. Under the Florida Condominium Act, associations must be incorporated as a Florida for-profit corporation or a Florida not-for-profit corporation.⁶ Although unit owners are considered shareholders of this corporate entity, like other corporations, a unit owner's role as a shareholder does not implicitly provide them any authority to act on behalf of the association.

A condominium association is administered by a board of directors referred to as a “board of administration.”⁷ The board of administrators 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.⁸ In litigation, an association's board of directors is in charge of directing attorney actions.⁹

¹ Section 718.103(11), F.S.

² *See s.* 718.103, F.S.

³ *Id.*

⁴ Section 718.104(2), F.S.

⁵ *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).

⁶ Section 718.303(3), F.S.

⁷ Section 718.103(4), F.S.

⁸ Section 718.103(2), F.S.

⁹ Section 718.103(30), F.S.

The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business the Professional Regulation has limited regulatory authority over condominiums.¹⁰

Cooperative Associations

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

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

A cooperative differs from a condominium because, in a cooperative, no unit is individually owned. Instead, a cooperative 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.¹¹ 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.¹²

The division has limited regulatory authority over cooperatives, including the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.¹³

Homeowners’ Associations

Chapter 720, F.S., provides statutory recognition to corporations that operate residential communities in Florida as well as procedures for operating homeowners’ associations. These laws protect the rights of association members without unduly impairing the ability of such associations to perform their functions.¹⁴

A “homeowners’ association” is defined as a “Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.”¹⁵ Unless specifically stated to the contrary in the articles of

¹⁰ See s. 718.501, F.S. See *infra*, the *Present Situation* for the proposed revisions to the division’s authority set forth in s. 718.501, F.S.

¹¹ See *Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3rd DCA 2019), *review denied* 2020 WL 3442763 (Fla. 2020).

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

¹³ Section 719.501(1), F.S.

¹⁴ See s. 720.302(1), F.S.

¹⁵ Section 720.301(9), F.S.

incorporation, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations, or by ch. 617, F.S., relating to not-for-profit corporations.¹⁶

Homeowners' associations are administered by a board of directors whose members are elected.¹⁷ The powers and duties of homeowners' associations include the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include a recorded declaration of covenants, bylaws, articles of incorporation, and duly-adopted amendments to these documents.¹⁸ The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.¹⁹

Homeowners' associations mainly differ from condominiums, in the type of property individually owned. Condominium unit owners essentially own airspace within a building, whereas homeowner association members own a parcel of real property or land.

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

The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, F.S., the Legislature finds that homeowners' associations and their individual members will benefit from an expedited alternative process for resolution of election and recall disputes and presuit mediation of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407 F.S., are not intended to impair such contract rights, including, but not limited to, the rights of the developer to complete the community as initially contemplated.

For homeowners' associations, the division's authority is limited to the arbitration of recall election disputes.²⁰

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

Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, provide for the governance of these community

¹⁶ Section 720.302(5), F.S.

¹⁷ See ss. 720.303 and 720.307, F.S.

¹⁸ See ss. 720.301 and 720.303, F.S.

¹⁹ Section 720.303(1), F.S.

²⁰ See s. 720.306(9)(c), F.S.

associations. The chapters delineate requirements for notices of meetings,²¹ recordkeeping requirements, including which records are accessible to the members of the association,²² and financial reporting.²³ Timeshare condominiums are generally governed by ch. 721, F.S., the “Florida Vacation Plan and Timesharing Act.”

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.

III. Effect of Proposed Changes:

Condominium Unit Insurance

Present Situation

A condominium association is required to use its best efforts to maintain insurance for the association, the association property, the common elements, and the condominium property.²⁴ Insurance coverage for the association must insure the condominium property as originally installed and all alterations or additions made to the condominium property.²⁵

Condominium association insurance coverage does not include personal property within a unit or a unit’s limited common elements, floor, wall, ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments. Such property and insurance is the responsibility of the unit owner.²⁶

A condominium unit owner’s insurance policy must conform to s. 627.714, F.S.,²⁷ which requires that an individual unit owner’s residential property insurance policy must state that the coverage afforded by the policy is excess coverage over the amount recoverable under any policy covering the same property.²⁸

An association is not obligated to pay for reconstruction or repairs to an improvement, benefiting a specific unit and installed by a unit owner.²⁹

Alternatively, s. 718.111(11)(j), F.S., provides that any portion of the condominium property that must be insured by the association against property loss under s. 718.111(11)(f), F.S., which is damaged by an insurable event, shall be reconstructed, repaired, or replaced as necessary by the association as a common expense to the association. Under s. 718.111(j)1., F.S., the

²¹ See ss. 718.112(2), 719.106(2)(c), and 720.303(2), F.S., for condominium, cooperative, and homeowners’ associations, respectively.

²² See ss. 718.111(12), 719.104(2), and 720.303(4), F.S., for condominium, cooperative, and homeowners’ associations, respectively.

²³ See ss. 718.111(13), 719.104(4), and 720.303(7), F.S., for condominium, cooperative, and homeowners’ associations, respectively.

²⁴ Section 718.111(11), F.S.

²⁵ Section 718.111(11)(f), F.S.

²⁶ Section 718.111(11)(f)3., F.S.

²⁷ Section 718.111(11)g), F.S.

²⁸ Section 627.714(4), F.S.

²⁹ Section 718.111(11)(n), F.S.

subrogation³⁰ rights of an insurer are not compromised if the unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by an association's insurance proceeds if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees.

Section 718.111(11)(j)3., F.S., provides that an association may reimburse the unit owner without the waiver of any subrogation rights, if:

- The cost of repair or reconstruction is the unit owner's responsibility;
- The association has collected the cost of such repair or reconstruction from the unit owner; and
- The association from insurance proceeds reimburses the unit owner.

Section 718.111(j), F.S., does not provide a condominium unit owner or their insurer a private right of action against another unit owner or their insurer for property damage caused by the latter's intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association.³¹

In 2010, the Legislature repealed a prohibition against an insurance policy issued to an individual unit owner providing rights against the condominium association.³²

Fannie Mae mortgage lending guidelines require that the insurance policy for a condominium project waive the right of subrogation against unit owners.³³

Effect of Proposed Changes

The bill amends s. 627.714(4), F.S., to provide that a condominium unit owner's insurance policy may not provide subrogation rights against the association operating the condominium in which the property is located if the association's insurance policy does not provide a subrogation right against the unit owners.

Multicondominiums

Present Situation

Section 718.103(20), F.S., defines the term "multicondominium" to mean ~~a real-estate development~~ containing two or more condominiums, all of which are operated by the same association.

³⁰ The term "subrogation" is described as a legal right held by insurance carriers to legally pursue a third party that caused an insurance loss to the insured. This is done in order to recover the amount of the claim paid by the insurance carrier to the insured for the loss. See Investopedia.com, *Subrogation*, at <https://www.investopedia.com/terms/s/subrogation.asp> (last visited Feb. 3, 2021).

³¹ See *Universal Property & Casualty Insurance Company v. Loftus*, 276 So.3d 849 (Fla. 4th DCA 2019)

³² Chapter 2010-174, s. 9, Laws of Fla. (amending s. 718.111(1)(g), F.S.)

³³ Fannie Mae, *Selling Guide, Fannie Mae Single Family, Special Requirements for Condo Projects*, p. 903, Dec. 4, 2019, available at <https://www.fanniemae.com/content/guide/sell120419.pdf> (last visited Feb. 16, 2021).

Section 718.405, F.S., provides for the operation of more than one condominium by a condominium association.

Effect of Proposed Changes

The bill amends s. 718.103(20), F.S., to revise the definition of the term “multicondominium” to provide that the property is “real property” instead of “a real estate development.”

The bill creates s. 718.405(5), F.S., to provide that a multicondominium association may adopt a consolidated or combined declaration of condominium if such declaration complies with the requirements for the creation of a condominium, does not merge the condominiums, or change the legal descriptions of the condominium parcels, unless accomplished in accordance with law. The bill provides that this section is intended to clarify existing law and applies to associations existing on July 1, 2021.

Official Records – Condominium, Cooperative, and Homeowners’ Associations

Present Situation

Florida law specifies the official records that condominium, cooperative, and homeowners’ associations must maintain.³⁴ Generally, the official records must be maintained in Florida for at least seven years.³⁵ Certain of these records must be accessible to the members of an association.³⁶ Additionally, certain records are protected or restricted from disclosure to members, such as records protected by attorney-client privilege, personnel records, and personal identifying records of owners.³⁷

Condominium associations with 150 or more units are required to post digital copies of specified documents on their website.³⁸

Effect of Proposed Changes

The bill amends ss. 718.111(12), 718.501, 719.104(2)(c), and 720.303(5), F.S., to revise the official records requirements for condominiums, cooperatives, and homeowners’ associations.

For condominium associations, the bill:

- Reduces the time period bids for work performed and bids for materials, equipment, or services must be maintained by associations to one year after receipt. Under current law, such records must be maintained for seven years.³⁹

³⁴ See ss. 718.111(12), 719.104(2), 720.303(5), F.S., relating to condominium, cooperative, and homeowners’ associations, respectively.

³⁵ See ss. 718.111(12)(b), 719.104(2)(b), and 720.303(5), F.S., relating to condominium, cooperative, and homeowners’ associations, respectively.

³⁶ See ss. 718.111(12)(a), 719.104(2)(a), and 720.303(5), F.S., , relating to condominium, cooperative, and homeowners’ associations, respectively.

³⁷ See ss. 718.111(12)(c), 719.104(2)(c), and 720.303(5), F.S., relating to condominium, cooperative, and homeowners’ associations, respectively.

³⁸ Section 718.111(12)(g), F.S.

³⁹ Sections 719.104(2)(a)9.d. and 720.303(4)(i), F.S., provide an identical provision for cooperative and homeowners’ associations, respectively.

- Permits condominium associations with 150 or more to post digital copies of specified documents on an application that can be downloaded on a mobile device.
- Permits a renter of a condominium to inspect and copy the declaration of condominium. Current law only permits a renter to inspect and copy the association's bylaws and rules.
- Clarifies that a renter only has the right to inspect copies of the declaration of condominium, association bylaws, and rules.

The bill amends s. 718.111(12)(g), F.S., to permit condominium associations managing an association with 150 or more units, which do not contain timeshare units, to make digital copies of specified documents available to members through an application that may be downloaded to a mobile device as an alternative to the requirement posting copies of the documents on a website.

Regarding the official records requirements for condominium and cooperative associations, the bill prohibits condominium and cooperative associations from requiring a unit owner to demonstrate a purpose or state a reason for the inspection.⁴⁰

Regarding homeowners' associations, the bill amends s. 720.303(4), F.S., to:

- Designate as an official record all ballots, sign-in sheets, voting proxies, and all other papers relating to voting by owners in the association's official records.⁴¹ Under the bill, these records must be maintained for one year after the date of the election, vote, or meeting to which the document relates.
- Make confidential any information an association obtains in connection to guests visiting homeowners in a gated community.

Extinguishment of Discriminatory Restrictions

Present Situation

Section 712.065(2), F.S., provides that a discriminatory restriction is not enforceable in this state. All discriminatory restrictions contained in any title transaction recorded in this state are unlawful, are unenforceable, and are declared null and void. Any discriminatory restriction contained in a previously recorded title transaction is extinguished and severed from the recorded title transaction, and the remainder of the title transaction remains enforceable and effective.

Section 712.065(1), F.S., defines the term "discriminatory restriction" to mean: a provision in a title transaction recorded in this state which restricts the ownership, occupancy, or use of any real property in this state by any natural person on the basis of a characteristic that has been held, or is held after September 4, 2020, by the United States Supreme Court or the Florida Supreme Court to be protected against discrimination under the Fourteenth Amendment to the United States Constitution or under s. 2, Art. I of the State Constitution, including race, color, national origin, religion, gender, or physical disability.

⁴⁰ Section 720.303(5)(c), F.S., provides a comparable provision for homeowners' associations.

⁴¹ Sections 718.111(12)(a)12. and 719.104(2)(a)10., F.S., provide an identical provision for condominium and cooperative associations, respectively.

A discriminatory restriction appearing in a covenant or restriction affecting the parcel in a property owners' association⁴² may be removed by an amendment approved by a majority vote of the board of directors of the respective property owners' association or an owners' association in which all owners may voluntarily join, notwithstanding any other requirements for approval of an amendment of the covenant or restriction.⁴³

Effect of Proposed Changes

The bill amends ss. 718.112(1), 719.106(3), and 720.3075, F.S., relating to the bylaws of condominium, cooperative, and homeowners' associations, respectively, to authorize these associations to extinguish a discriminatory restriction in the manner provided under s. 712.065, F.S.

Condominiums Term Limits for Board Members

Present Situation

The terms of all condominium association board members expire at the annual meeting, unless:

- It is a timeshare or nonresidential condominium;
- The staggered term of a board member does not expire until a later annual meeting; or
- All members' terms would otherwise expire but there are no candidates.

Board members may serve terms longer than one year if permitted by the bylaws or articles of incorporation. A board member may not serve more than eight consecutive years 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.⁴⁴

Section 718.112(2)(d)2., F.S., was amended by ch. 2018-96, s. 2, Laws of Fla., to allow board members to serve longer than one year if permitted by the bylaws or article of incorporation, but provided that the board members could not serve more than eight consecutive years. The effective date of the change was July 1, 2018. The division issued a declaratory statement on September 12, 2018, that:

If at the time of the next scheduled election the current board member has served on the association board for eight consecutive years, the board member would be ineligible to serve unless there are fewer eligible candidates than vacant seats on the board or unless that candidate is

⁴² Section 712.01(5), F.S., defines the term "property owners' association" to mean "a homeowners' association as defined in s. 720.301,[F.S.] a corporation or other entity responsible for the operation of property in which the voting membership is made up of the owners of the property or their agents, or a combination thereof, and in which membership is a mandatory condition of property ownership, or an association of parcel owners which is authorized to enforce a community covenant or restriction that is imposed on the parcels."

⁴³ Section 712.065(3), F.S.

⁴⁴ *Id.*

approved by an affirmative vote of unit owners representing two-thirds of all votes cast in the election.⁴⁵

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)2., F.S., to provide that only service on the board of a condominium association that occurs on or after July 1, 2018, may be used when calculating a board member's term limit.

Condominium Meeting Notices

Present Situation

A condominium association must provide written notice for the annual meeting of the unit owners. The notice must include an agenda. Current law does not specify whether the requirement to include an agenda applies to all meetings of unit owners, including the annual meeting. The notice must be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting. The notice must also be posted in a conspicuous place on the condominium property for at least 14 continuous days before the annual meeting. Instead of posting the notice in a conspicuous place, a condominium may repeatedly broadcast the notice and agenda on a closed-circuit cable television system serving the association.⁴⁶

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)3., F.S., to extend the notice and agenda requirements to all meetings of the unit owners.

Condominium Voting Process

Present Situation

At least 60 days before a scheduled election, a condominium association must mail, deliver, or electronically transmit 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 for the unit owner meeting, the association must 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.⁴⁷

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)4.a., F.S., to require the second notice of the election be sent to all unit owners entitled to vote not less than 14 days, or more than 34 days, before the date of the election.

⁴⁵ *In re: Petition for Declaratory Statement, Apollo Condominium Association, Inc.*, DS 2018-035, Division of Florida Condominiums, Timeshares, and Mobile Homes, September 12, 2018.

⁴⁶ Section 718.112(2)(d)3., F.S.

⁴⁷ Section 718.112(2)(d)4., F.S.

Condominium Transfer Fees

Present Situation

Condominium associations may charge unit owners costs or fees in connection with the sale, mortgage, lease, sublease, or other transfer of a unit, if:

- The fee is limited to \$100 or less;
- The fee is authorized in the association's governing documents; and
- The association is required to approve the transfer.⁴⁸

For example, if a unit owner utilizes their property as a vacation rental and has three separate guest leases during a month, the condominium may charge up to \$300 in transfer fees if the above requirements are met under s. 718.112(2)(i), F.S.

Also, condominium associations may require a potential renter to provide the association with a security deposit equivalent to one month of rent. The association must place the security deposit in an escrow account maintained by the association.⁴⁹

Effect of Proposed Changes

The bill amends s. 718.112(2)(i), F.S., to increase the maximum permissible transfer fee from \$100 to \$150. The bill provides that spouses, or a parent or parents and any dependent children, are considered one applicant for transfer purposes. The bill requires that a transfer fee must be adjusted every five years in an amount equal to the total annual increases occurring in the Consumer Price Index during that five-year period. Under the bill, the DBPR must periodically calculate the fees, rounded to the nearest dollar, and publish the adjusted amounts on its website.

Condominium Boards and Conflicts of Interest

Present Situation

Section 718.3027, F.S., 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. Section 718.3027(2), F.S., requires the board of a condominium association to approve a contract for services or other transactions by an affirmative vote of two-thirds of all other directors present.

Section 718.112(2)(p), F.S., also prohibits an association (that is not a timeshare condominium association) from employing or contracting with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer, or a relative within the third degree of consanguinity⁵⁰ by blood or marriage of a board member or officer. This prohibition does not apply to a service provider in which a board

⁴⁸ Section 718.112(2)(i), F.S.

⁴⁹ *Id.*

⁵⁰ 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).

member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer, owns less than 1 percent of the equity shares.

Section 718.112(2)(p), F.S., appears to conflict with ss. 718.3027 and 720.3033, F.S., because those sections permit financial relationships that may create a conflict of interest when the financial interests are disclosed, and the contract or transaction is approved by the board or the members, as appropriate. However, s. 718.112(2)(p), F.S., expressly prohibits such potential conflicts of interest even if the financial interest is disclosed or approved by the board or the members.

Effect of Proposed Changes

The bill repeals s. 718.112(2)(p), F.S., relating to conflicts of interests between officers or directors of a condominium association and service providers. This revision does not prevent certain financial interests from being considered a conflict of interest under s. 718.3027, F.S.

Condominium Alternative Fuel Charging Station

Present Situation

A condominium association may not prohibit a unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limited common element parking area. The electricity charges for the station must be separately metered and payable by the unit owner.⁵¹ Current law does not expressly permit a unit owner to install a natural gas fuel station.

Natural gas fuel is any liquefied petroleum gas product, compressed natural gas product, or a combination of these products used in a motor vehicle.⁵² The term includes all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied petroleum gas, compressed natural gas, or liquefied natural gas.⁵³ However, the term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electricity generation.⁵⁴

Effect of Proposed Changes

The bill amends s. 718.113(8), F.S., to include an exclusively designated parking area as a location where the association may not prohibit a unit owner from installing an electric vehicle charging station.

The bill also amends s. 718.113(8), F.S., to permit a unit owner to install a natural gas fuel station. A unit owner installing a natural gas fuel station is subject to the same requirements as an owner installing an electric vehicle charging station. The unit owner is responsible for complying with all federal, state, or local laws or regulations applicable to the installation, maintenance, or removal of an electric vehicle charging or natural gas charging station. The unit owner, or his or

⁵¹ Section 718.113(8), F.S.

⁵² Section 206.9951(2), F.S.

⁵³ *Id.*

⁵⁴ *Id.*

her successor, who installs a natural gas fuel station, is responsible for the cost for the supply and storage of the natural gas fuel station.

The bill also allows a unit owner to use an embedded meter to separately meter the fuel used on an electric vehicle or natural gas fuel vehicle charging station.

The bill also amends s. 718.121, F.S., to include a natural gas stations in the prohibition against filing a lien against a condominium association for labor or materials related to the installation of an electric vehicle charging station.

Alternative Dispute Resolution

Present Situation

Condominiums

Section 718.1255, F.S., provides an alternative dispute resolution process for certain disputes between unit owners and condominium associations. The division employs full-time arbitrators and may certify private attorneys to conduct mandatory nonbinding arbitration. Section 718.1255, F.S., states that the purpose of mandatory nonbinding arbitration is to provide efficient, equitable, and inexpensive decisions when disputes arise between owners and associations. An arbitrator's final order is not binding unless the parties agree to be bound, or the parties fail to file a petition for a trial de novo in the circuit court within 30 days after the mailing of the arbitrator's final order. A petition for arbitration tolls any applicable statute of limitations for the dispute, and, if there is a trial de novo, an arbitrator's decision is admissible as evidence.⁵⁵

Non-binding arbitration is required for disagreements that involve the authority of the board of directors to require an owner to take any action, or not to take any action, involving that owner's unit or the appurtenance thereto and the authority of the board of directors to alter or add to common areas or elements.⁵⁶ Additionally, disputes pertaining to the board of directors' failure to properly conduct elections, give adequate notice of meetings, properly conduct meetings and provide access to association books and records must also be litigated in non-binding arbitration before Florida law grants unit owners access to the court system.⁵⁷ These types of disputes can be characterized as enforcement actions because they involve enforcing the terms and conditions of the condominium governing documents.

The division does not have jurisdiction to arbitrate the following disputes between a unit owner and an association that involve:⁵⁸

- Title to any unit or common element;
- The interpretation or enforcement of any warranty;
- The levy of a fee or assessment, or the collection of an assessment levied against a party;
- The eviction or another removal of a tenant from a unit;
- Alleged breaches of fiduciary duty by one or more directors; or

⁵⁵ Section 718.1225(4), F.S.

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

- Claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

The filing fee for an arbitration petition is \$50.⁵⁹

As a component of mandatory non-binding arbitration, any party may petition the arbitrator to refer the case to mediation.⁶⁰ The purpose of mediation is to present the parties with an opportunity to resolve the underlying dispute in good faith, and with a minimum expenditure of time and resources.⁶¹ The dispute remains in arbitration, but the parties can select a mediator from a list of paid and volunteer mediators provided by the arbitrator.⁶² The parties must share equally in the cost of the mediation.⁶³ If the mediator declares an impasse after a mediation conference has been held, the arbitration proceeding terminates unless all parties agree in writing to continuing the arbitration proceedings, in which case the arbitrator's decision will be binding or nonbinding as the parties have agreed.⁶⁴

Current law also encourages parties to a condominium dispute to participate in voluntary mediation through a Citizen Dispute Settlement Center as provided in s. 44.201, F.S.

Cooperatives

In cooperative associations, disputes, including recall election disputes, are subject the alternative dispute resolution requirements and procedures applicable to condominiums in s. 718.1255, F.S.⁶⁵

Homeowners' Associations

Section 720.311, F.S., provides an alternative dispute resolution program for certain homeowner association disputes. An aggrieved party in a homeowners' association dispute initiates the mediation proceedings by serving a written petition for mediation to the opposing party. The petition must be in the format provided in s. 720.311, F.S., and must identify the specific nature of the dispute and the basis for the alleged violations. The written offer must include five certified mediators that the aggrieved party believes to be neutral. The serving of the petition tolls the statute of limitations for the dispute. If emergency relief is required, a temporary injunction may be sought in court before the mediation.⁶⁶

The opposing party has 20 days to respond to the petition. If the opposing party fails to respond or refuses to mediate, the aggrieved party may proceed to civil court. If the parties agree to mediation, the mediator must hold the mediation within 90 days after the petition is sent to the opposing parties. The parties share the costs of mediation except for the cost of attorney's fees.

⁵⁹ Section 718.1255(4)(a), F.S.

⁶⁰ Section 718.1255(4)(e), F.S.

⁶¹ Section 718.1255(4)(g), F.S.

⁶² Section 718.1255(4)(e), F.S.

⁶³ Section 718.1255(4)(h), F.S.

⁶⁴ *Id.*

⁶⁵ Sections 719.1255 and 719.106(1)(f), F.S.

⁶⁶ *Id.*

Mediation is confidential, and persons who are not parties to the dispute (other than attorneys or a designated representative for the association) may not attend the mediation conference.⁶⁷

If mediation is not successful in resolving all the disputed issues between the parties, the parties may proceed to civil court or may elect to enter into binding or non-binding arbitration.⁶⁸

Effect of Proposed Changes

The bill amends s. 718.1255(4)(a), F.S., to provide that prior to court litigation, a party to a condominium dispute may either initiate presuit mediation as provided above or may petition the division for nonbinding arbitration. This provision also states that arbitration shall be binding on the parties if all parties agree in a writing filed in arbitration.

The bill also creates s. 718.1255(5), F.S., to require a party to a condominium dispute to initiate either arbitration or presuit mediation following the procedure for the mediation of homeowners' association disputes in s. 720.311, F.S., before beginning court litigation. Under the bill, parties in a condominium dispute may use the mediation process to resolve a dispute without first initiating the arbitration process.

Under the bill, recall and election disputes in condominium, cooperative, and homeowners' associations are not eligible for presuit mediation and must be arbitrated by the division or filed directly with a court of competent jurisdiction.

The bill amends ss. 718.112(2)(k) and 719.106(1)(l), F.S., to require that a condominium association's bylaws provide for mandatory dispute resolution. It deletes the requirement that an association's bylaws must provide for mandatory nonbinding arbitration.

Emergency Powers – Condominiums and Cooperatives

Present Situation

Unless specifically prohibited by the declaration of condominium, the articles, or the bylaws of an association, ss. 718.1265(1), 719.128(1), and 720.316(10), F.S., provide the emergency powers of condominium, cooperative, and homeowners' association boards, respectively, in response to damage for which a state of emergency declared pursuant to s. 252.36, F.S.,⁶⁹ in the locale in which the community association is located. The emergency powers include the authority to give meeting notices by any practical means, including publication, radio, United States mail, the Internet, public service announcements, and conspicuous posting on association property.

The current emergency authority does not apply to a condominium, cooperative, and homeowners' association board's response to injury or to an anticipated declared state of emergency.

⁶⁷ Section 720.311(2)(b), F.S.

⁶⁸ Section 720.311(2)(c), F.S.

⁶⁹ Section 252.36, F.S., provides the Governor's emergency management powers, including the power to issue executive orders and proclamations.

Condominium, cooperative, and homeowners' association boards are also authorized to implement a disaster plan, determine whether any portions of the condominium property are unavailable for entry or occupancy, and to consult with emergency management officials. The associations are also authorized to mitigate damages.

Effect of Proposed Changes

The bill amends ss. 718.1265(1), 719.128(1), and 720.316(10), F.S., to the extent that a condominium, cooperative, and homeowners' association board's emergency authority, respectively, to apply its response to injury and to an anticipated declared state of emergency. The bill also authorizes these boards to conduct board meetings, committee meetings, membership meetings, and elections, in whole or in part, by telephone, real-time videoconferencing, or similar real-time electronic or video communication. The bill also authorizes these associations to give meeting notices by electronic transmission.

The bill also clarifies the term "emergency" to have the same meaning as in s. 252.34(4), F.S., which defines emergency to mean "any occurrence, or threat thereof, whether natural, technological, or manmade, in war or in peace, which results or may result in substantial injury or harm to the population or substantial damage to or loss of property."

The bill authorizes condominium and cooperative associations to consult with public health officials when determining whether any portions of the condominium property are unavailable for entry or occupancy.

The bill creates ss. 718.1265(3), 719.128(3), and 720.306(3), F.S., to provide that condominium, cooperative, or homeowners' associations, respectively, may not during a declared state of emergency prohibit unit owners, tenants, guests, agents, or invitees of a unit owner from accessing the unit and the common elements and limited common elements for the purposes of ingress to and egress from the unit. In addition, these associations may not prohibit access that is necessary for the sale, lease, or other transfer of title of a unit; or the habitability of the unit or for the health and safety of such persons.

However, these associations may deny access based on a governmental order or determination, or a public health directive from the Centers for Disease Control and Prevention prohibiting access to the unit. Any access is subject to reasonable restrictions adopted by the association.

Pre-Closing Sales and Reservation Deposits

Present Situation

Under s. 718.202(3), F.S., if the contract for sale of the condominium unit provides, the developer may withdraw escrow funds in excess of 10 percent of the purchase price from the escrow account for use in the actual construction and development of the condominium property. However, the escrow funds may not be used for salaries, commissions, or expenses of salespersons, or for advertising purposes.

Effect of Proposed Changes

The bill amends s. 718.202(3), F.S., to provide that escrow funds may be used for the actual costs incurred by the developer in construction and development of the condominium property. The bill defines the term “actual costs” to include, but is not limited to, expenditures for demolition, site clearing, permit fees, impact fees, and utility reservation fees, as well as architectural, engineering, and surveying fees that directly relate to construction and development of the condominium property. The bill prohibits the use of the escrow funds for marketing or promotional purposes, loan fees and costs, principal and interest on loans, attorney fees, accounting fees, or insurance costs.

Condominium and Homeowners’ Associations’ Fines

Present Situation

Condominium, cooperative, and homeowners’ associations may levy fines against an owner, occupant, or a guest of an owner for failing to comply with any provision in the association’s declaration, bylaws, or rules. A fine imposed by a condominium or cooperative association may not exceed \$100 per violation, and the total amount of a fine may not exceed \$1,000.⁷⁰ However, a fine imposed by a homeowners’ association may exceed \$1,000 in the aggregate if the association’s governing documents authorize the fine.⁷¹ A fine imposed by a condominium or cooperative may not become a lien against the unit.⁷² A fine by a homeowners’ association of less than \$1,000 may not become a lien against the parcel.⁷³

An association’s board may not impose a fine or suspension unless it gives at least 14 days written notice of the fine or suspension, and an opportunity for a hearing. The hearing must be held before a committee of unit owners who are not board members or residing in a board member’s household. The role of the committee is to determine whether to confirm or reject the fine or suspension.⁷⁴

A fine approved by the committee is due five days after the date of the committee meeting. The condominium or cooperative must provide written notice of any fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or guest of the unit owner.⁷⁵

Effect of Proposed Changes

The bill amends ss. 718.303(3) and 720.305(2), F.S., to provide that a fine imposed by a condominium or homeowners’ association, respectively, is due five days after notice of an approved fine is sent to the unit or parcel owner and if applicable, to any tenant, licensee, or invitee of the owner. Current law provides that payment of the fine is due five days after the committee meeting at which the fine is approved.

⁷⁰ Sections 718.303(3) and 719.303(3), F.S.

⁷¹ Section 720.305(2), F.S.

⁷² Sections 718.303(3) and 719.303(3), F.S.

⁷³ Sections 720.305(2), F.S.

⁷⁴ Sections 718.303(3)(b) and (c), 719.303(3)(b) and (c), and 720.305(2)(b) and (c), F.S.

⁷⁵ *Id.*

The bill also changes the term “occupant” to “tenant.”

Division of Florida Condominiums, Timeshares, and Mobile Homes

Present Situation

The division administers the provisions of ch. 718, for condominium associations. The division may investigate complaints and enforce compliance with ch. 718, F.S., for associations that are still under developer control.⁷⁶ The division also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.⁷⁷ After control of the condominium is transferred from the developer to the unit owners, the division has jurisdiction to investigate complaints related to financial issues, elections, and unit owner access to association records.⁷⁸

Section 718.501(1)(j), F.S., requires the division to provide training and educational programs to condominium association board members and unit owners. The division may review and approve education and training programs offered by providers and is required to maintain a current list of approved programs and providers and make the list available to board members and unit owners in a reasonable and cost-effective manner.

Effect of Proposed Changes

The bill amends s. 718.501, F.S., to expand the division’s authority to include the maintenance of the association’s official records. The division’s current authority is limited to issues related to the unit owner’s access to records.

Condominium Ombudsman

Present Situation

The office of the ombudsman within the division 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. Also, the ombudsman may make recommendations to the division for changes in rules and procedures for the filing, investigation, and resolution of complaints.⁷⁹

The ombudsman also acts as a liaison between the division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.⁸⁰

The ombudsman is required to maintain his or her principal office in Leon County.⁸¹

⁷⁶ Sections 718.501(1), F.S.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Sections 718.5011 and 718.5012, F.S.

⁸⁰ *Id.*

⁸¹ Section 718.5014, F.S.

Effect of Proposed Changes

The bill amends s. 718.5014, F.S., to delete the requirement that the condominium ombudsman maintain his or her principal office in Leon County.

Cooperative Property

Present Situation

A corporation owns the building and land comprising a cooperative. A person who buys into a cooperative does not receive title to a unit or any portion of the cooperative's building or land. Instead, the purchaser receives shares of the cooperative association and leases a unit from the association.

An ownership interest in a corporation or cooperative is an interest in personal property, not real property.⁸² Generally, personal property is any object or right that is not real property, such as automobiles, clothing, or stocks.⁸³ Real property is anything permanent, fixed, and immovable, such as land or a building. At common law, a 99-year leasehold was not considered an interest in real property. However, a long-term leasehold interest is taxed in the same manner as a fee interest, so case law commonly declares long-term leaseholds to be an interest in real property for taxation purposes.⁸⁴

In Florida, a cooperative is treated as real property for some homestead purposes. Although the general definition of a homestead, including for taxation purposes, follows the common-law rule that requires an interest in real property, the Florida Constitution specifically extends the exemption to a cooperative unit.⁸⁵ Florida's homestead laws apply to a cooperative the exemption from forced sale by creditors⁸⁶ and the exemption from ad valorem taxation. However, a cooperative is not subject to Florida's homestead protections on devise and descent.⁸⁷

The Condominium Act in ch. 718, F.S., specifically provides that “[a] condominium parcel created by the declaration is a separate parcel of real property, even though the condominium is created on a leasehold.” Thus, an ownership interest in a condominium is expressly converted by statute into an interest in real property, but there is no corresponding provision in the Cooperative Act.⁸⁸ The Third District Court of Appeal has recognized a need for clarification of this type of ownership interest.⁸⁹ In 2019, the Third District Court of Appeal certified a question of great public importance to the Florida Supreme Court concerning homestead protections for

⁸² *Downey v. Surf Club Apartments, Inc.*, 667 So.2d 414 (Fla. 1st DCA 1996)

⁸³ Am. Jur. 2d Property § 18.

⁸⁴ *Williams v. Jones*, 326 So.2d 425, 433 (Fla. 1975); See generally, The Florida Bar, *Practice Under Florida Probate Code Chapter 19* (9th ed. 2017).

⁸⁵ FLA. CONST. art. VII, s. 6(a) provides: “The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner’s or member’s proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.”

⁸⁶ Sections 222.01, and 222.05, F.S.

⁸⁷ *Southern Walls, Inc. v. Stilwell Corp.*, 810 So. 2d 566, 572 (Fla. 2nd DCA 2002); *Phillips v. Hirshon*, 958 So. 2d 425, 430 (Fla. 3rd DCA 2007); In re *Estate of Wartels*, 357 So.2d 708 (Fla. 1978).

⁸⁸ Section 718.106(1), F.S.

⁸⁹ *Phillips*, 958 So.2d 425; *Levine v. Hirshon*, 980 So.2d 1053 (Fla. 2008)

devise and descent of cooperative property. However, the Florida Supreme Court denied the appeal because the lower court had not declared invalid a state statute or a provision of the State Constitution.⁹⁰

Effect of the Proposed Changes

The bill amends the definition of “unit” in s. 719.103(25), F.S., to provide that an interest in a cooperative unit is an interest in real property.

Cooperative Association Meetings

Present Situation

When a board or committee member of a cooperative association participates in a meeting by telephone conference, that board or committee member’s participation by telephone conference may be counted toward obtaining a quorum and may vote by telephone. A telephone speaker must be used so that the conversation of those board or committee members attending by telephone may be heard by the board or committee members attending in person, as well as by unit owners present at a meeting.⁹¹

Effect of Proposed Changes

The bill amends s. 719.106(1)(b)5., F.S., to provide that a cooperative association board member or committee member who attends a meeting by telephone, real time video conferencing, or similar real-time electronic or video communication counts toward a quorum and may vote as if physically present.⁹²

Governing Documents – Homeowners’ Associations

Present Situation

Section 720.301(8), F.S., defines the term “governing documents” to mean:

- The recorded declaration of covenants for a community and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto;
- The articles of incorporation and bylaws of the homeowners’ association and any duly adopted amendments thereto; and
- Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and duly adopted amendments thereto.

Effect of Proposed Changes

The bill amends s. 720.301(8), to revise the definition of the term “governing documents” to remove rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and duly adopted amendments thereto.

⁹⁰ *Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3rd DCA 2019), *review denied* 2020 WL 3442763 (Fla. 2020).

⁹¹ Section 719.106(1)(b)5., F.S.

⁹² Section 718.112(2)(b)5., F.S., provides a comparable provision for condominium associations.

Homeowners' Associations Electronic Meeting Notices

Present Situation

A homeowners' association is required to notify all board members at least 48 hours before the meeting by posting a meeting notice in a conspicuous place on the association's property. Alternatively, the notice may be mailed, hand-delivered, or electronically transmitted at least seven days before the meeting.⁹³

Meeting notices must be posted 14 days before any meeting where a nonemergency special assessment or an amendment to the rules regarding unit use is to be considered.⁹⁴

Instead of posting or mailing notices, a homeowners' association with more than 100 members may broadcast notices on a closed-circuit cable television system for at least four times every broadcast hour of each day that a posted notice is otherwise required.⁹⁵

Effect of Proposed Changes

The bill amends s. 720.303(2), F.S., to authorize an additional method for homeowners' associations with more than 100 members to provide meeting notices by authorizing the board to adopt, by rule, a procedure for conspicuously posting a meeting notice and agenda on a website serving the association or an application on a mobile device. The rule must:

- Require the association to send an electronic notice to members with a hypertext link to the website where the notice is posted or the mobile device application; and
- Require the notice on the association's website or mobile device application to be posted for at least as long as the physical posting of a meeting notice is required.⁹⁶

Homeowners' Association Developers and Reserve Accounts

Present Situation

Under s. 720.303(6)(a), F.S., homeowners' associations are required to prepare an annual budget that sets out the annual operating expenses and reflects the estimated revenues, expenses, and surplus or deficit associations anticipate for the fiscal year. The annual budget must also set out separately all fees or charges paid for by the association for recreational amenities. The association must provide members with a copy of the annual budget.⁹⁷

In addition to annual operating expenses, the budget may include reserve accounts. The reserve accounts are maintained for capital expenditures and deferred maintenance costs the association is responsible for paying. If reserve accounts are not funded adequately and an association is liable for paying the costs of repair or maintenance of a capital improvement, the deficit may

⁹³ Section 720.303(2)(c), F.S. Sections 718.112(2) and 719.106(1), F.S., provide comparable notice requirements for condominium and cooperative associations.

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ Sections 718.112(2)(c) and 719.106(1)(c), F.S., provide comparable notice requirements for meetings in condominium and cooperative associations, respectively.

⁹⁷ Section 720.303(6)(a), F.S.

result in a special assessment imposed on members.⁹⁸ A statement in conspicuous type must be included in each financial state indicating that budget does not provide for reserve accounts.

During the development of a community to be governed by a homeowners' association, the developer may be obligated to pay operating expenses and association assessments on lots the developer owns when the developer controls the association board. However, under s. 720.308(1)(b), F.S., a developer has the right to avoid paying these expenses and assessments if the developer elects to fund the difference between assessments received from lot owners and the operating expenses incurred that exceed the assessment receivable. This is referred to as deficit funding.

In the 2016 case, *Mackenzie v. Centex Homes*,⁹⁹ Florida's Fifth District Court of Appeal (Fifth DCA) ruled that it was unclear whether s. 720.308(1)(b), F.S., excuses a developer from paying only its share of association operating expenses and assessments or excuses the developer from paying all other contributions including reserve funds. Although the governing documents of an association may specify whether reserve funds are included in operating expenses and assessment, the Fifth DCA found that the developer's governing documents were ambiguous on the matter.

Relying on canons of statutory interpretation, the Fifth DCA ruled that Centex (the developer) was liable for funding the reserve accounts of the association because the developer-controlled association initially established a reserve account and did not defund or waive the reserve accounts according to the procedure outlined in s. 720.303(6), F.S. To comply with s. 720.303(6), F.S., a developer choosing to provide deficit funding to an association, instead of funding reserve accounts, must waive reserve funding at a properly noticed meeting of the homeowners' association and note the absence of reserve funds in a conspicuous location in the financial reports and annual budgets provided to homeowners and prospective buyers.

Effect of Proposed Changes

The bill amends ss. 720.303(6)(c) and (d), F.S., to clarify the conditions in which a developer is obligated to fund the reserve accounts of a homeowners' association.

The bill revises the requirement that the statement that must be included in each financial report if the budget does not fund reserve accounts to also state that the budget does not "fully fund" reserve accounts.

The bill includes the declaration of covenants, articles, or bylaws of an association as one of the basis for the funding of reserve accounts.

The bill also removes language that deems an association to have provided for reserve accounts funds if the developer initially establishes the accounts.

⁹⁸ *Id.* at (b)

⁹⁹ *Mackenzie v. Centex Homes*, 208 So.3d 790 (Fla. 5th DCA 2016).

Homeowners' Associations Governing Document Amendments

Present Situation

Amendment Notices

Section 720.306(1)(b), F.S., requires that, unless otherwise provided in the governing documents or required by law, the governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association. The association is required to provide copies of the amendment to the members within 30 days after recording an amendment to the governing documents. If a copy of the proposed amendment is provided to the members before they vote on the amendment and the proposed amendment is not changed before the vote, the association, in lieu of providing a copy of the amendment, may provide notice to the members that the amendment was adopted.¹⁰⁰

A written notice must also be sent to certain mortgage holders or assignees to obtain consent or joinder for the proposed amendment.¹⁰¹

Notices related to amendments to the governing documents must be mailed or delivered to the address identified as the parcel owner's mailing address on the property appraiser's website for the county in which the parcel is located.¹⁰²

Amendment Affecting Rental Rights

Current law does not prevent a homeowners' association from adopting an amendment to its governing documents to restrict members from renting parcels. If such a provision was adopted by an association, the restriction would apply to all parcel owners regardless of when they obtained title to their property or whether they voted against the restriction. This differs from current law relating to rental restrictions in condominium associations. In a condominium association, a prohibition against the rental of units or that alters the duration of the rental term, or specifies or limits the number of times a unit owner is entitled to rent their unit during a specified period applies only to unit owners who consent to the amendment and unit owners who acquire title to their units after the restrictions' effective date.¹⁰³

Effect of Proposed Changes

Amendment Notices

The bill amends s. 720.306(1)(g), F.S., to require notices related to amendments to the governing documents be mailed or delivered to the address identified as the parcel owner's mailing address in the official records of the association. The bill removes the requirement that the address on the property appraiser's website for the county in which the parcel is located is to be used for notices.

Amendment Affecting Rental Rights

The bill amends s. 720.306(1)(g), F.S., to provide that an amendment to the governing

¹⁰⁰ See s. 720.306(1)(b), F.S. The consent of mortgage holder and assignees is required for any mortgage recorded before July 1, 2013.

¹⁰¹ See s. 720.306(1)(d), F.S.

¹⁰² Section 720.306(1)(g), F.S.

¹⁰³ Section 718.110(13), F.S.

documents, rule, or regulation enacted after July 1, 2021 prohibiting a parcel owner from renting the parcel, altering the authorized duration of a rental term, or specifying or limiting the number of times a parcel owner may rent his or her parcel during a specified term applies only to a parcel owner who acquires title to the parcel after the amendment's effective date or to a parcel owner who consents to the amendment.

The bill creates s. 720.306(1)(h), F.S., to permit an association to adopt an amendment prohibiting or regulating rentals for less than six months or prohibiting rentals more than three times in a calendar year applies to all parcel owners, regardless of when the parcel owner acquired title to their parcel or whether they consented to the amendment.

The bill exempts homeowners' associations with 15 or fewer parcel owners from the provisions in the bill related to an amendment affecting the rental of parcels.¹⁰⁴

The bill also provides that a change of ownership does not occur for purposes of applying an amendment restricting rental rights when a parcel owner conveys the parcel to an affiliated entity, when beneficial ownership of the parcel does not change, or when an heir becomes a parcel owner.

The bill defines "affiliated entity" to mean an entity which controls, is controlled by, or is under common control with the parcel owner or that becomes a parent or successor entity through a transfer, merger, consolidation, public offering, reorganization, dissolution of sale of stock, or transfer of membership partnership interests.

For a conveyance to be recognized as being made to an affiliated entity, the entity must give the homeowners' association a document certifying that the exception applies and any organizational documents for the parcel owner and the affiliated entity supporting the representations in the certificate.

Transition of Homeowners' Association Control

Present Situation

Section 720.307, F.S., details when the parcel owners other than the developer are entitled to elect at least a majority of the members of the board of directors:

- Three months after 90 percent of the parcels that will be operated ultimately by the association have been conveyed to purchasers;
- When such other percentage of the parcels has been conveyed to members, or such other date or event has occurred, as is set forth in the governing documents in order to comply with the requirements of any governmentally chartered entity for the mortgage financing of parcels;
- When the developer has abandoned or deserted his or her responsibility to maintain and complete the amenities or infrastructure disclosed in the governing documents. There is a rebuttable presumption that the developer has abandoned and deserted the property if the developer has unpaid assessments or guaranteed amounts under s. 720.308, F.S., for a period of more than two years;

¹⁰⁴ Section 720.303(1), F.S., provides that an association with 15 or fewer parcel owners may enforce only the requirements of those deed restrictions established prior to the purchase of each parcel upon an affected parcel owner.

- When the developer files a petition seeking protection in bankruptcy under chapter 7 of the federal Bankruptcy Code;
- When the developer loses title to the property either through a foreclosure action or the transfer of a deed in lieu of foreclosure, unless the successor owner has accepted an assignment of developer rights and responsibilities first arising after the date of such assignment; or
- When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members.

Section 720.307(2), F.S., provides that non-developer parcel owners are entitled to elect at least one member of the board of directors when 50 percent of the parcels in all phases of the community have been conveyed to members.

Builders, contractors, or others who purchase a parcel for the purpose of constructing improvements on the parcel for resale are not considered to be members other than the developer.¹⁰⁵

Effect of Proposed Changes

The bill amends s. 720.307, F.S., to revise the conditions under which the non-developer members of a homeowners' association are entitled to elect the majority of the board by adding the term "other than the developer" in order to consistently distinguish between developer members and non-developer members.

Effective Date

The bill provides an effective date of July 1, 2021.

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.

¹⁰⁵ Section 720.307(1), F.S.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill Increases the maximum permissible fee an association may charge for the transfer of a unit from \$100 to \$150, and provides for the adjustment of the fee every five years to an amount equal to the total annual increases in the Consumer Price Index during that period.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The Department of Business and Professional Regulation noted:

Arbitration is an efficient and cost-effective option to mediation and court litigation. When the parties do not both elect arbitration, the first to file with either the [Division of Condominiums, Timeshares, and Mobile Homes] arbitration unit or with circuit court would determine the course of action for both parties. The proposal appears to contradict the legislative findings in s. 718.1255(3)(a), F.S., which provides that the Legislature finds that unit owners are frequently at a disadvantage when litigating against an association as the association is better able to bear the costs and expenses of litigation than a unit owner who must rely their own financial resources.¹⁰⁶

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 627.714, 718.103, 718.111, 718.112, 718.113, 718.117, 718.121, 718.1255, 718.1265, 718.202, 718.303, 718.405, 718.501, 718.5014, 719.103, 719.104, 719.106, 719.128, 720.301, 720.303, 720.305, 720.306, 720.307, 720.311, 720.3075, and 720.316.

¹⁰⁶ Department of Business & Professional Regulation, *2021 Agency Legislative Bill Analysis for SB 630*, at page 8, (Feb. 4, 2021).

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Regulated Industries on February 16, 2021:

The committee substitute removes provisions from the bill:

- Requiring condominium associations to maintain all official records in the manner and format determined by rules of the Florida Division of Condominium, Timeshares, and Mobile Homes.
- Requiring condominium associations provide an itemized list of all records made available for inspection and copying in response to a written request, and requiring that the list be accompanied by a sworn affidavit attesting to the accuracy of the list.
- Expanding the division’s regulatory authority over financial issues and defining the term “financial issues.”
- Authorizing the division to adopt rules to establish requirements for the training and education programs for condominium board members and unit owners.

The committee substitute also:

- Makes confidential any information an association obtains in connection to guests visiting homeowners in a gated community.
- Provides that a change of ownership affecting rental rights does not occur when an heir becomes the parcel owner.
- Revises the conditions under which the non-developer members of a homeowners’ association are entitled to elect the majority of the board by adding the term “other than the developer” in order to consistently distinguish between developer members and non-developer members.

- B. **Amendments:**

None.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16/2021

Meeting Date

SR 856

Bill Number (if applicable)

Topic Infrastructure Preemption

Amendment Barcode (if applicable)

Name Eric Hamilton

Job Title Associate Director

Address 215 South Monroe Street

Phone 850 559 1904

Street

Tallahassee

State

FL

Zip

32301

Email hamilton@api.org

Speaking: For Against Information

Waive Speaking: In Support Against

(The Chair will read this information into the record.)

Representing American Petroleum Institute

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/16/2021

Meeting Date

856

Bill Number (if applicable)

Topic State Preemption of Transportation Energy Infrastructure

Amendment Barcode (if applicable)

Name B.D. Jogerst

Job Title Lobbyist

Address 516 N Adams St

Phone 850-224-7173

Street

Tallahassee

FL

32301

Email bjogerst@aif.com

City

State

Zip

Speaking: For Against Information

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

Representing Associated Industries of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/16/2021

Meeting Date

856

Bill Number (if applicable)

Topic State Preemption of Energy Infrastructure Regulations

Amendment Barcode (if applicable)

Name Christopher Emmanuel

Job Title Policy Director

Address 136 S Bronough Street

Phone

Street

Tallahassee

FL

32301

Email

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing Florida Chamber of Commerce

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

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16/21

Meeting Date

856

Bill Number (if applicable)

Topic

Energy Preemption

Unamended Only

Amendment Barcode (if applicable)

Name

Kim Ross

Job Title

Executive Director

Address

603 N MLK Jr Blvd

Phone

850-888-2565

Street

Tallahassee

FL

32301

Email

admin@rethinkenergyflorida.org

City

State

Zip

Speaking:

For

Against

Information

Waive Speaking:

In Support

Against

(The Chair will read this information into the record.)

Representing

Rethink Energy Action Fund

Appearing at request of Chair:

Yes

No

Lobbyist registered with Legislature:

Yes

No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/16/21
Meeting Date

CS/HB 854
Bill Number (if applicable)

Topic State Preemption of Transportation Energy Infrastructure Amendment Barcode (if applicable)

Name META CALDER

Job Title _____

Address 3740 RAUINE DRIVE
Street

Phone 850-228-5900

TALL FL 32312
City State Zip

Email metaonleons@gmail.com

Speaking: For Against Information

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

Representing League of Women Voters Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16/21
Meeting Date

856
Bill Number (if applicable)

Topic Transportation Energy Infrastructure Amendment Barcode (if applicable)

Name Grace Lovett

Job Title VP Gov. Affairs

Address 227 S. Adams

Phone 850 222 4082

Street

T
City

FL
State

32301
Zip

Email grace@frf.org

Speaking: For Against Information

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

Representing FL Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/16/2021

856

Meeting Date

Bill Number (if applicable)

563193

Topic State Preemption of Transportation Energy Infrastructure Relations

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757

Phone 850-701-3692

Street

Tallahassee

FL

32301

Email rohara@flcities.com

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing Florida League of Cities, Inc.

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

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

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16/21

Meeting Date

SB 856

Bill Number (if applicable)

~~SB~~ 563192

Amendment Barcode (if applicable)

Topic _____

Name JEFF SCALA

Job Title Associate Director of Public Policy

Address 100 S Monroe Street

Street

Tallahassee

City

FL

State

32301

Zip

Phone (850)

Email jscala@PI-countyess.com

Speaking: For Against Information

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

Representing Florida Association of Counties

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

By the Committee on Regulated Industries; and Senator Hutson

580-02581-21

2021856c1

1 A bill to be entitled
 2 An act relating to the state preemption of
 3 transportation energy infrastructure regulation;
 4 creating s. 377.707, F.S.; defining terms; providing
 5 legislative findings; preempting the regulation of
 6 transportation energy infrastructure to the state;
 7 prohibiting a local government from taking specified
 8 actions relating to the regulation of transportation
 9 energy infrastructure; proving exceptions; providing
 10 construction; providing an effective date.

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

14 Section 1. Section 377.707, Florida Statutes, is created to
 15 read:

16 377.707 State preemption of transportation energy
 17 infrastructure regulation.-

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

19 (a) "Fuel" includes, but is not limited to, petroleum fuel,
 20 petroleum products, gasoline, diesel fuel, motor fuel, marine
 21 fuel, aviation fuel, renewable fuel, alternative fuel, natural
 22 gas fuel, hydrogen fuel, and electricity, when such fuel sources
 23 are used for transportation.

24 (b) "Transportation energy infrastructure" means
 25 infrastructure supporting the production, importation, storage,
 26 and distribution of fuel.

27 (2) The Legislature recognizes that affordable, reliable,
 28 and sustainable energy throughout this state is dependent upon
 29 transportation energy infrastructure networks extending beyond

Page 1 of 3

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

580-02581-21

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30 local government boundaries and recognizes the importance of
 31 consumer choice in the energy market.
 32 (3) The regulation of transportation energy infrastructure
 33 is expressly preempted to the state. A local government is
 34 prohibited from doing any of the following:
 35 (a) Adopting or implementing any law, ordinance,
 36 regulation, policy, or resolution that prohibits, restricts, or
 37 requires, or that has the effect of prohibiting, restricting, or
 38 requiring, the construction of new transportation energy
 39 infrastructure or the expansion, upgrading, or repair of
 40 existing transportation energy infrastructure, or imposing any
 41 requirement regulating transportation energy infrastructure that
 42 is more stringent than state law or department rule, except for
 43 local ordinances regulating petroleum storage system
 44 construction, operation, and maintenance which were enacted
 45 pursuant to section 376.317(3)(a).
 46 (b) Amending its comprehensive plan, land use map, zoning
 47 districts, or land development regulations in a manner that
 48 would conflict with an existing transportation energy
 49 infrastructure classification as a permitted and allowable use,
 50 including, but not limited to, an amendment that causes an
 51 existing transportation energy infrastructure to be a
 52 nonconforming use, structure, or development.
 53 (c) Imposing requirements that are more stringent than
 54 state law or rule.
 55 (4) This section does not limit the authority of a local
 56 government to adopt, implement, modify, and enforce:
 57 (a) Applicable federal and state requirements for
 58 transportation energy infrastructure, including safety and

Page 2 of 3

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

580-02581-21

2021856c1

59 building standards; or
60 (b) Local safety and building standards that do not
61 conflict with federal or state safety and security requirements
62 for transportation energy infrastructure.
63 (5) Any existing or future law, ordinance, regulation,
64 policy, or resolution that is contrary to this section is void.
65 Section 2. This act shall take effect July 1, 2021.

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 Community Affairs

BILL: CS/CS/SB 856

INTRODUCER: Community Affairs Committee; Regulated Industries Committee; and Senator Hutson

SUBJECT: State Preemption of Transportation Energy Infrastructure Regulations

DATE: March 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sharon</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 856 centralizes transportation energy infrastructure regulation by expressly preempting transportation energy infrastructure regulation to the state.

The bill defines “fuel retailer” as a fuel station or retail establishment that sells fuel to provide power to vehicles, and “related transportation infrastructure” as underground storage tanks, pipelines, or any related equipment that is necessary to dispense fuel at a fuel retailer.

The bill prohibits local governments from adopting a law, ordinance, regulation, policy, or resolution which:

- Prohibits the siting, development, or redevelopment of a fuel retailer or related transportation infrastructure necessary to provide fuel to a retailer throughout the local government’s jurisdiction;
- Results in the de facto prohibition of a fuel retailer or related transportation throughout the local government’s jurisdiction; or
- Requires a fuel retailer to install or invest in a particular kind of fueling infrastructure, such as electric vehicle charging stations.

The bill takes effect upon becoming a law.

II. Present Situation:

Local Government Authority

The Florida Constitution grants local governments home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹ Those counties operating under a county charter have all powers of local self-government not inconsistent with general law or special law approved by the vote of the electors.² Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.³

In Florida, special districts are separate governmental entities created for a special purpose that have jurisdiction to operate within a limited geographic boundary.⁴ Special districts are created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.⁵ Throughout the state there are over 1,770 active special districts encompassing more than 80 specialized governmental functions.⁶ Types of special districts vary and can include anything from mosquito control districts to gas districts.⁷ In Florida, there are currently four special natural gas districts.⁸

Interlocal Cooperation and the Florida Municipal Power Agency

The Florida Interlocal Cooperation Act of 1969 (act) allows local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage.⁹ The act provides that local governmental entities may jointly exercise their powers by entering into a contract in the form of an interlocal agreement.¹⁰ Under such an agreement, the local governmental units may create a separate legal or administrative entity “to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.”¹¹

In 1978, the Florida Municipal Power Agency (FMPA) was created through a series of interlocal agreements under s. 163.01, F.S., to provide wholesale power supply to municipal electric

¹ FLA. CONST. art. VIII, s. 1(f).

² FLA. CONST. art. VIII, s. 1(g).

³ FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021(1), F.S.

⁴ Section 189.012(6), F.S.

⁵ *Id.*

⁶ *See* Florida Department of Economic Opportunity, *Introduction to Special Districts*, <https://floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program/florida-special-district-handbook-online/introduction-to-special-districts> (last visited Mar. 5, 2021).

⁷ *See* Florida Department of Economic Opportunity, *Official List of Special Districts*, <http://specialdistrictreports.floridajobs.org/webreports/websitelist.aspx> (last visited Mar. 5, 2021).

⁸ *See* Florida Public Service Commission, *Facts & Figures of the Florida Utility Industry*, <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Factsandfigures/April%202020.pdf> (last visited Mar. 5, 2021).

⁹ Section 163.01(2), F.S.

¹⁰ Section 163.01(5), F.S.

¹¹ Section 163.01(2), F.S.

utilities. FMPA is currently owned by 31 municipalities.¹² Through various joint power supply projects,¹³ the FMPA supplies all of the electrical power needs of 13 member utilities and a part of the power needs for seven other member utilities.¹⁴ Through these projects, FMPA members maintain ownership interests in various electrical power plants throughout Florida. FMPA manages the transmission of electrical power over facilities owned by FMPA or its members.¹⁵

Federal Regulation

The Clean Air Act requires U.S. Environmental Protection Agency (EPA) to regulate fuels and fuel additives for use in motor vehicle, motor vehicle engine, if the fuel, fuel additive or any emission products causes or contributes to air or water pollution that may endanger the public health or welfare. The EPA is required to also address emission products of fuel or fuel additives that may impair any emission control devices used on vehicles or engines.¹⁶

The Office of Underground Storage Tanks in the EPA (OUST) regulates underground storage tanks (USTs) All portions of a UST system must be compatible with the fuel being stored. Demonstrations of compatibility must be provided for tank, piping, containment sumps, pumping equipment, release detection equipment, spill equipment, and overfill equipment.¹⁷ The single largest source of energy information available is the Department of Energy's Energy Information Administration (EIA). The EIA publishes extensive reports on natural gas and other energy sources.¹⁸

Domestic natural gas markets are regulated in part by the Federal Energy Regulatory Commission. The commission's chief area of concern is the interstate natural gas market.

¹² Currently, FMPA serves the following municipalities: Alachua, Bartow, Blountstown, Bushnell, Chattahoochee, Clewiston, Fort Meade, Fort Pierce, Gainesville, Green Cove Springs, Havana, Homestead, Jacksonville Beach, Key West, Kissimmee, Lake Worth, Lakeland, Leesburg, Moore Haven, Mount Dora, New Smyrna Beach, Newberry, Ocala, Orlando, Quincy, St. Cloud, Starke, Vero Beach, Wauchula, Williston, and Winter Park. Florida Municipal Power Agency, *Members*, <http://fmpa.com/about/members/> (last visited Mar. 5, 2021).

¹³ Section 361.12, F.S., authorizes any electric utility, or any organization, association, or separate legal entity whose membership consists only of electric utilities, to join with any other such entity to finance, acquire, construct, manage, operate, or own an electric power supply project for the joint generation or transmission of electrical energy, or both. Further, s. 361.13, F.S., authorizes any such entity to purchase capacity or energy, or both, in an agreed upon quantity from any project in which the purchaser has an ownership interest.

¹⁴ See Florida Municipal Power Agency, *Projects*, <https://fmpa.com/power-supply-projects/> (last visited Mar. 5, 2021).

¹⁵ See Florida Municipal Power Agency, *Value of Public Power*, <https://fmpa.com/value-of-public-power/> (last visited Mar. 5, 2021).

¹⁶ See Federal Gasoline Regulations, available at <https://www.epa.gov/gasoline-standards/federal-gasoline-regulations>, (last visited March 10, 2021). Gasoline regulations are under 40 CFR Part 80 ("Regulation of Fuels and Fuel Additives"): subparts A (general provisions, applying to all 40 CFR Part 890 fuels programs), B (controls and prohibitions), C (oxygenated gasoline), D & E (reformulated gasoline), G (detergent gasoline program), H & O (gasoline sulfur) and J & L (gasoline toxics).

¹⁷ Ethanol Code, Standards and Safety, available at https://afdc.energy.gov/fuels/ethanol_codes.html, (last visited March 10, 2021).

¹⁸ Natural Gas Regulation – Other Gas-Related Information Sources, available at <https://www.energy.gov/fe/natural-gas-regulation-other-gas-related-information-sources>, (last visited March 10, 2021). Code of Federal Regulation (CFR) Title 40 Subtitle 1 Subchapter 1 Parts 280-282. The federal UST regulation was updated in October 2015 with section CFR 280.32 to specify additional compatibility requirements for owners and operators who store regulated substances, including gasoline containing greater than 10% ethanol (E10) and diesel containing greater than 20% biodiesel (B20).

Natural gas moves for the most part by pipeline in the United States. The safety of those pipelines is the concern of the Department of Transportation's Office of Pipeline Safety.

Renewable fuels include liquid and gaseous fuels, and electricity derived from renewable feedstock sources.¹⁹

Advanced biofuels (D5) are produced from any type of renewable biomass (sugarcane, biobutanol, bionaphtha) except corn starch ethanol. Required life cycle GHG emissions reduction is at least 50% compared to the petroleum baseline. Biomass-based diesel (D4) includes biodiesel and renewable diesel produced from biomass such as soybean oil, canola oil, waste oil, or animal fats. Required life cycle GHG emissions reduction is at least 50% compared to the diesel baseline. Cellulosic biofuel (D3 or D7) produced from cellulose or hemicellulose of corn stover, wood chips, *Miscanthus*, or biogas. To be eligible for D7 RINs the fuel must be cellulosic diesel. Required life cycle GHG emissions reduction is at least 60% compared to the petroleum baseline. Conventional renewable biofuel (D6) includes ethanol derived from corn starch, or any other qualifying renewable fuel. Required life cycle GHG emissions reduction is at least 20% compared to the average petroleum baseline.²⁰

Local Authority to Regulate Energy Infrastructure

Local Regulation of Oil and Gas Exploration and Production

While cities and counties do not operate oil and gas permitting programs in Florida, some, through their land use regulations or zoning ordinances, require special exceptions for oil and gas activities or limit oil and gas activities to certain zoning classifications.²¹ When authorizing oil and gas exploration and production activities, local governments consider factors such as consistency with their comprehensive plan, injuries to communities or the public welfare, and compliance with zoning ordinances.²²

In certain instances, the Department of Environmental Protection (DEP) may not issue a permit without specified approval. The DEP may not issue permits to drill a gas or oil well:

- Within the corporate limits of a municipality without a resolution approving the permit from the governing authority;²³
- In tidal waters abutting or immediately adjacent to the corporate limits of a municipality or within three miles of such corporate limits extending from the line of mean high tide into such waters without a resolution approving the permit from the governing authority;²⁴ or
- On any improved beach, located outside of an incorporated town or municipality, or at a location in the tidal waters abutting or immediately adjacent to an improved beach, or within three miles of an improved beach extending from the line of mean high tide into such tidal waters without a resolution approving the permit from the county commission.²⁵

¹⁹ Renewable Fuel, available at <https://www.sciencedirect.com/topics/engineering/renewable-fuel>, (last visited March 10, 2021).

²⁰ *Id.*

²¹ See, e.g., Lee County's Land Development Code §§ 34-1651 and 34-145(c).

²² *Id.*

²³ Section 377.24(5), F.S.

²⁴ Section 377.24(6), F.S.

²⁵ Section 377.24(7), F.S.

If the proposed oil or gas well is on lands owned by the Board of Trustees of the Internal Improvement Trust Fund, it may not grant a lease for gas, oil, or mineral rights:

- Within the corporate limits of a municipality without a resolution approving the lease from the governing authority;²⁶
- In tidal waters abutting or immediately adjacent to the corporate limits of a municipality or within 3 miles of such corporate limits extending from the line of mean high tide into such waters without a resolution approving the lease from the governing authority;²⁷
- On any improved beach, located outside of an incorporated town or municipality, or at a location in the tidal waters abutting or immediately adjacent to an improved beach, or within 3 miles of an improved beach extending from the line of mean high tide into such tidal waters without a resolution approving the lease from the county commission;²⁸ or
- In Florida's territorial waters in the Gulf of Mexico or Atlantic Ocean.²⁹

Six municipalities (Estero, Bonita Springs, Coconut Creek, Cape Coral, Dade, and Zephyrhills) and thirteen counties (Alachua, Bay, Brevard, Broward, Citrus, Indian River, Martin, Miami-Dade, Osceola, Pinellas, St. Lucie, Volusia, Wakulla, and Walton) have banned one or more forms of well stimulation techniques, commonly referred to as "fracking," by ordinance.³⁰

Additionally, many other counties and cities have passed resolutions supporting various types of bans and moratoriums relating to fracking.³¹

State Regulation of Energy Infrastructure

Florida Department of Environmental Protection

The DEP possesses the authority to issue permits:

- For drilling, exploring, or production of oil, gas, or other petroleum products that are to be extracted from below the surface of the land, including submerged land, only through the well hole drilled for oil, gas, and other petroleum products.³²

²⁶ Section 253.61(1)(a), F.S.

²⁷ Section 253.61(1)(b), F.S.

²⁸ Section 253.61(1)(c), F.S.

²⁹ Section 253.61(1)(d), F.S.

³⁰ See Village of Estero, Ordinance No. 2015-19; Bonita Spring's Land Development Code, Chapter 4, Article VI, Division 15, Section 4-1380; Coconut Creek's Land Development Code, Article IV, Section 13-1000; City of Cape Coral, Ordinance §3.23; City of Dade, Ordinance No. 2016-08; City of Zephyrhills, Ordinance No. 1310-16; Alachua County's Code of Ordinances, §77.13.5; Bay County's Land Development Regulation, §311; Brevard County's Code of Ordinances, §46-375; Citrus County's Code of Ordinances, §66-133; Indian River County's Code of Ordinances, §317.03; Osceola County's Land Development Code, §4.12.3; Broward County's Code of Ordinances, §27-193; Martin County's Code of Ordinances, §67.441; Miami-Dade County's Code of Ordinances, §33-437; Pinellas County's Code of Ordinances, §58-489; St. Lucie County's Code of Ordinances, Policy 6.1.5.7; Volusia County's Code of Ordinances, §50-42; Wakulla County's Code of Ordinances, §6-34; Walton County's Code of Ordinances, §9-156.

³¹ See Food & Water Watch, *Local Regulations Against Fracking*, <https://www.foodandwaterwatch.org/insight/local-resolutions-against-fracking> (last visited Mar. 5, 2021) (listing of local governments nationwide that passed resolutions against fracking).

³² Section 377.242(1)(a), F.S.

- To explore for and extract minerals that are subject to extraction from the land by means other than through a well hole.³³
- To establish natural gas storage facilities or construct wells for the injection and recovery of any natural gas for storage in natural gas storage reservoirs.³⁴

However, DEP may not permit drilling for, or production of, oil, gas, or other petroleum products within:

- Florida's territorial waters in the gulf of Mexico or Atlantic Ocean;³⁵
- In bays or estuaries;³⁶
- Within one mile of coastline;³⁷
- Within one mile of seaward boundary of any local, state, or federal park or aquatic or wildlife preserve;³⁸ and
- Within one mile inland from the shoreline of the Gulf of Mexico, the Atlantic Ocean, or any bay or estuary or within 1 mile of any freshwater lake, river, or stream unless the department is satisfied that the natural resources of such bodies of water and shore areas of the state will be adequately protected in the event of accident or blowout.³⁹

The DEP monitors and inspects drilling operations, producing wells, or injecting wells.⁴⁰ Each permit issued by DEP must contain an agreement that the permit holder will not prevent inspection by division personnel at any time.⁴¹

The DEP is vested with the authority to adopt rules and issue orders that must “ensure that all precautions are taken to prevent the spillage of oil or any other pollutant in all phases of the drilling for, and extracting of, oil, gas, or other petroleum products, or during the injection of gas into and recovery of gas from a natural gas storage reservoir.”⁴²

The DEP's Oil and Gas Program (program) oversees permitting for oil and gas production in the state.⁴³ The program regulates the conservation of oil and gas resources, drilling of wells, health and human safety, and environmental protection.⁴⁴ The program is governed by part 1 of ch. 377, F.S. and Florida Administrative Code Rules 62C-25 through 62C-30.⁴⁵

³³ Section 377.242(2), F.S.

³⁴ Section 377.242(3), F.S.

³⁵ Sections 377.24(9) and 377.242(1)(a)5., F.S.

³⁶ Section 377.242(1)(a)1., F.S.

³⁷ Section 377.242(1)(a)2., F.S.

³⁸ Section 377.242(1)(a)3., F.S.

³⁹ Section 377.242(1)(a)4., F.S.

⁴⁰ Section 377.22(2)(g), F.S.

⁴¹ Section 377.242, F.S.

⁴² Section 377.22(2), F.S. *See also* ss. 377.22(2)(a)-(y), F.S., (listing additional, but not all, purposes of rules and orders issued by DEP).

⁴³ Florida Department of Environmental Protection, *Oil and Gas Program*, <https://floridadep.gov/water/oil-gas> (last visited Mar. 5, 2021).

⁴⁴ *Id.*

⁴⁵ The Oil and Gas Program is governed by part 1 of ch. 377, F.S., and Fla. Admin. Code R. 62C-25 through 62C-30.

Well Stimulation and Fracking

Well stimulation refers to any action taken by a well operator to increase the inherent productivity of an oil or gas well.⁴⁶ Common examples of well stimulation treatments are hydraulic fracturing, commonly referred to as “fracking,” and acid fracturing.⁴⁷ Both hydraulic fracturing and acid fracturing involve the pressurized injection of fluids and chemicals to create fractures within a rock formation.⁴⁸ The fractures then allow for more oil and gas to escape the rock formation and migrate up the well.⁴⁹

The DEP’s rules currently require an operator to notify the DEP before beginning any workover operation on an oil or gas well.⁵⁰ A workover is defined as “an operation involving a deepening, plug back, repair, cement squeeze, perforation, hydraulic fracturing, acidizing, or other chemical treatment which is performed in a production, disposal, or injection well in order to restore, sustain, or increase production, disposal, or injection rates.”⁵¹

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.⁵² The role of the PSC is to ensure that Florida’s consumers receive some of their most essential services – electric, natural gas, telephone, water, and wastewater – in a safe, affordable, and reliable manner.⁵³ In doing so, the PSC exercises regulatory authority over utilities in one or more of three key areas: rate base/economic regulation; competitive market oversight; and monitoring of safety, reliability, and service issues.⁵⁴ The PSC monitors the safety and reliability of the electric power grid⁵⁵ and may order the addition or repair of infrastructure as necessary.⁵⁶ Further, the PSC reviews application to determine the need for certain new electrical power plants⁵⁷ and certain large transmission lines as part of the DEP’s siting process.⁵⁸

In 2020, the PSC regulated

- 5 investor-owned electric utilities;
- 8 investor-owned natural gas utilities; and
- 147 investor-owned water and/or wastewater utilities.⁵⁹

⁴⁶ Keith B. Hall, *Recent Developments in Hydraulic Fracturing Regulation and Litigation*, 29 J. LAND USE & ENVTL. L. 29, 22 (2013).

⁴⁷ *Id.* at 1-2.

⁴⁸ *Id.*

⁴⁹ *Id.* at 2.

⁵⁰ Fla. Admin. Code R. 62C-29.006(1).

⁵¹ Fla. Admin. Code R. 62C-25.002(61).

⁵² Section 350.001 F.S.

⁵³ See Florida Public Service Commission, *The PSC’s Role*, <http://www.psc.state.fl.us> (last visited Mar. 5, 2021).

⁵⁴ *Id.*

⁵⁵ Section 366.04(5) and (6), F.S.

⁵⁶ Section 366.05(1) and (8), F.S.

⁵⁷ Section 403.519, F.S.

⁵⁸ Section 403.537, F.S.

⁵⁹ Florida Public Service Commission, *Annual Report*, (2020) available at <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf> (last visited Mar. 5, 2021).

The PSC does not fully regulate publicly owned municipal or cooperative electric utilities.⁶⁰ However, it does have jurisdiction over 35 municipally owned electric systems and 18 rural electric cooperatives with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.⁶¹ Additionally, the PSC has jurisdiction over 27 municipally owned natural gas utilities and four gas districts with regard to territorial boundaries, safety, and safety authority over all electric and natural gas systems operating in the state.⁶²

Florida Department of Agriculture and Consumer Services

The Florida Department of Agriculture and Consumer Services (DACS) is responsible for the administration of a number of programs relating to energy infrastructure and houses the Office of Energy.⁶³ Moreover, the DACS is responsible for the administration of a number of programs relating to energy infrastructure, including the Renewable Energy and Energy-Efficient Technologies Grants Program,⁶⁴ the Energy Efficiency and Conservation Clearinghouse,⁶⁵ the Florida Green Government Grants Act,⁶⁶ the Natural Gas Fuel Fleet Vehicle Rebate Program.⁶⁷ Additionally DACS has as the statutory authority to allocate federal energy conservation bonds⁶⁸ and to post information on its website relating to alternative fueling stations or electric vehicle charging stations that are available for public use.⁶⁹

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies, it precludes a local government from exercising authority in that particular area.⁷⁰

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *Id.*

⁶³ See s. 377.805, F.S.

⁶⁴ Section 377.804, F.S. (establishing within DACS the Renewable Energy and Energy-Efficient Technologies Grants Program “to provide renewable energy matching grants for demonstration, commercialization, research, and development projects relating to renewable energy technologies . . .”).

⁶⁵ Section 377.805, F.S., (requiring the development of a clearinghouse of “information regarding cost savings associated with various energy efficiency and conservation measures” by the Office of Energy in consultation with the Public Service Commission, the Florida Building Commission, and the Florida Energy Systems Consortium).

⁶⁶ Section 377.808, F.S., (directing DACS to use appropriated funds to award grants that assist local governments and school districts with development and implementation of programs aimed at achieving green standards).

⁶⁷ Section 377.810, F.S., (establishing the program within DACS to help reduce transportation costs and encourage freight mobility investments contributing to the state’s economic growth).

⁶⁸ Section 37.816, F.S.

⁶⁹ Section 377.815, F.S.

⁷⁰ See James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, Fla. B.J. 92 (June 2009) available at <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited Mar. 5, 2021).

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.⁷¹ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.⁷² In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.⁷³

In cases determining the validity of ordinances enacted in the face of state preemption, the effect has been to find such ordinances null and void.⁷⁴ In one case, the court stated that implied preemption “is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.”⁷⁵ Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.⁷⁶ Implied preemption is found where the local legislation would present the danger of conflict with the state’s pervasive regulatory scheme.⁷⁷

III. Effect of Proposed Changes:

The bill creates s. 377.707, F.S., relating to state preemption of fuel retailers and related transportation infrastructure.

The bill defines “fuel retailer” as a fuel station or retail establishment that sells fuel to provide power to vehicles, and “related transportation infrastructure” as underground storage tanks, pipelines, or any related equipment that is necessary to dispense fuel at a fuel retailer.

The bill prohibits local governments⁷⁸ from adopting a law, ordinance, regulation, policy, or resolution which:

- Prohibits the siting, development, or redevelopment of a fuel retailer or related transportation infrastructure necessary to provide fuel to a retailer throughout the local government’s jurisdiction;
- Results in the de facto prohibition of a fuel retailer or related transportation throughout the local government’s jurisdiction; or
- Requires a fuel retailer to install or invest in a particular kind of fueling infrastructure, such as electric vehicle charging stations.

⁷¹ See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

⁷² *Mulligan*, 934 So. 2d at 1243.

⁷³ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010). Examples of activities “expressly preempted to the state” include: operator use of commercial mobile radio services and electronic communications devices in motor vehicles, s. 316.0075, F.S.; regulation of the use of cameras for enforcing provisions of the Florida Uniform Traffic Control Law, s. 316.0076, F.S.; and, the adoption of standards and fines related to specified subject areas under the purview of the Department of Agriculture and Consumer Services, s. 570.07, F.S.

⁷⁴ See, e.g., *Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).

⁷⁵ *Phantom of Clearwater, Inc.*, 894 So. 2d at 1019.

⁷⁶ *Id.*

⁷⁷ *Sarasota Alliance for Fair Elections, Inc.*, 28 So. 3d at 886.

⁷⁸ Enumerated in the bill as a municipality, county, special district, or political subdivision.

The bill provides for clarification that it does not preempt local governments from adopting and implementing requirements not otherwise inconsistent with general law related to the siting, development, or redevelopment of fuel retailers or related transportation infrastructure so long as such requirement does not result in a de facto prohibition of fuel retailers or related transportation infrastructure within the entirety of the jurisdictional boundaries of the local government.

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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

Indeterminate.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 377.707 of the Florida Statutes.

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

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

CS/CS by Community Affairs on March 16, 2021:

The committee substitute incorporates an alternative framework to preempt local governments from regulating fuel retailers and related transportation infrastructure. The effect of the committee substitute is substantially similar to the first committee substitute.

The committee substitute:

- Defines the terms “fuel retailer” and “related transportation infrastructure.”
- Provides that a local government may not adopt an ordinance, regulation, policy, or resolution that prohibits the siting, development, or redevelopment of a fuel retailer or necessary related transportation infrastructure.
- Prohibits a local government from requiring a fuel retailer to install or invest in a particular kind of fueling infrastructure, such as electric vehicle charging stations.
- Clarifies that the bill does not preempt local governments from adopting and implementing requirements not otherwise inconsistent with general law.

CS by Regulated Industries on March 9, 2021:

The committee substitute:

- Narrows the scope of the bill to transportation energy infrastructure.
- Moves the legislative findings from a preamble to a subsection within s. 377.707, F.S., and expands the findings to include the importance of consumer choice in the energy market.
- Deletes the definition of energy infrastructure.
- Defines “fuel,” as including petroleum fuel, petroleum products, gasoline, diesel fuel, motor fuel, marine fuel, aviation fuel, renewable fuel, alternative fuel, natural gas fuel, hydrogen fuel, and electricity, when such fuel sources are used for transportation.
- Defines “transportation energy infrastructure” to mean infrastructure supporting the production, importation, storage, and distribution of fuel.
- Preempts the regulation of transportation energy infrastructure to the state.
- Prohibits local governments from adopting laws that prohibit, restrict, or require the construction of new transportation energy infrastructure or the expansion, upgrading, or repair of existing transportation energy infrastructure.
- Prohibits local governments from imposing requirements regulating transportation energy infrastructure that are more stringent than state law or rule, with the exception

of local ordinances regulating petroleum storage system construction, operation, and maintenance, pursuant to s. 376.317(3)(a), F.S.

- Prohibits local governments from amending comprehensive plans, land use maps, zoning districts, or land development regulations in a way that would render existing transportation energy infrastructure to be nonconforming.

B. Amendments:

None.

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



563192

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 377.707, Florida Statutes, is created to
read:

377.707 Express preemption of fuel retailers and related
transportation infrastructure.—

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

(a) "Fuel retailer" means a fuel station or retail



563192

11 establishment that sells fuel to provide power to vehicles.

12 (b) "Related transportation infrastructure" means
13 underground storage tanks, pipelines, or any related equipment
14 that is necessary to dispense fuel at a fuel retailer.

15 (2) A municipality, county, special district, or political
16 subdivision may not do any of the following:

17 (a) Adopt a law, an ordinance, a regulation, a policy, or a
18 resolution that prohibits the siting, development, or
19 redevelopment of a fuel retailer or the related transportation
20 infrastructure that is necessary to provide fuel to a fuel
21 retailer within the entirety of the jurisdictional boundary of
22 the municipality, county, special district, or political
23 subdivision.

24 (b) Adopt or apply a law, an ordinance, a regulation, a
25 policy, or a resolution that results in the de facto prohibition
26 of a fuel retailer or the related transportation infrastructure
27 that is necessary to provide fuel to a fuel retailer within the
28 entirety of the jurisdictional boundary of a municipality,
29 county, special district, or political subdivision.

30 (c) Require a fuel retailer to install or invest in a
31 particular kind of fueling infrastructure, including, but not
32 limited to, electric vehicle charging stations.

33
34 This section does not preempt a municipality, county, special
35 district, or political subdivision from adopting and
36 implementing a law, an ordinance, a regulation, a policy, or a
37 resolution that is not otherwise inconsistent with general law
38 relating to the siting, development, or redevelopment of fuel
39 retailers or related transportation infrastructure necessary for



563192

40 them to provide fuel, if such law, ordinance, regulation,
41 policy, or resolution does not result in a de facto prohibition
42 of fuel retailers or related transportation infrastructure
43 necessary to provide fuel to fuel retailers from being sited,
44 developed, or redeveloped within the entirety of the
45 jurisdictional boundaries of the municipality, county, special
46 district, or political subdivision.

47 Section 2. This act shall take effect July 1, 2021.

48
49 ===== T I T L E A M E N D M E N T =====

50 And the title is amended as follows:

51 Delete everything before the enacting clause
52 and insert:

53 A bill to be entitled
54 An act relating to the express preemption of fuel
55 retailers and related transportation infrastructure;
56 defining terms; prohibiting a municipality, county,
57 special district, or political subdivision from taking
58 certain actions to prohibit the siting, development,
59 or redevelopment of fuel retailers and the related
60 transportation infrastructure and from requiring fuel
61 retailers to install or invest in a particular fueling
62 infrastructure; providing construction; providing an
63 effective date.



423736

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Hutson) recommended the following:

- 1 **Senate Amendment to Amendment (563192)**
- 2
- 3 Delete line 47
- 4 and insert:
- 5 Section 2. This act shall take effect upon becoming a law.

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/16/2021

1128

Meeting Date

Bill Number (if applicable)

Topic Preemption on Restriction of Utility Services

Amendment Barcode (if applicable)

Name B.D. Jogerst

Job Title Lobbyist

Address 516 N Adams St

Phone 850-224-7173

Street

Tallahassee

FL

32301

Email bjogerst@aif.com

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing Associated Industries of Florida

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

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

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3-16-21

Meeting Date

1128

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Rusty Patton

Job Title CEO

Address 2600 Central Pkwy

Phone 567-1073

Street

Tally FL 32317

Email rpatton@fhba.com

City

State

Zip

Speaking: For Against Information

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

Representing FLORIDA HOME BUILDERS ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16/21

Meeting Date

1128

Bill Number (if applicable)

Topic Preemption ~~of~~ on Restriction of Utility Svcs.

Amendment Barcode (if applicable)

Name Samantha Padgett

Job Title General Counsel

Address 230 S. Adams St.

Phone 224-2250

Street

Tallahassee

FL

32301

Email spadgett@frla.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Restaurant & Lodging Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/14/21
Meeting Date

1128
Bill Number (if applicable)

Topic Utility Services

Amendment Barcode (if applicable)

Name Grace Lovett

Job Title V.P. Gov. Affairs

Address 227 S. Adams St.

Phone 850 222 4082

T FL 32301
City State Zip

Email grace@frf.org

Speaking: For Against Information

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

Representing FL Retail Federation

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

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

3-16-21

Meeting Date

1128

Bill Number (if applicable)

Topic Preemption of Utility Services

Amendment Barcode (if applicable)

Name Jessica Lewis

Job Title Lobbyist

Address 200 College Ave

Phone 910-607-2311

Street

Tallahassee FL

Email jolivia.lewis@gmail.com

City

State

Zip

Speaking: [] For [] Against [] Information

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

Representing Floridians Against Fracking

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

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

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16/21

Meeting Date

1128

Bill Number (if applicable)

Topic Energy Perception

Amendment Barcode (if applicable)

Name Kim Ross

Job Title Executive Director

Address 503 N MLK Jr Blvd

Phone 850-888-2565

Street

Tallahassee

City

FL

State

32301

Zip

Email admin@rethinkenergyflorida.org

Speaking: For Against Information

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

Representing Rethink Energy Act of Fund

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/16/21 Meeting Date

CS/SB 1128 Bill Number (if applicable)

Topic Prescription or Restriction of Utility Services

Amendment Barcode (if applicable)

Name META CALDER

Job Title

Address 3740 RAUINE DR

Phone 850-228-5900

Street

TALL

FL

32312

Email meta.calder@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing League of Women Voters

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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Duplicate

THE FLORIDA SENATE
APPEARANCE RECORD

3/16/21 9:00 A2

Meeting Date

1128

Bill Number (if applicable)

Topic Preemption on Restriction of Utility Services

Amendment Barcode (if applicable)

Name David Cullen

Job Title _____

Address 1934 Shelby Court

Phone 941-323-2404

Street

Tallahassee

FL

32308

Email cullenasea@gmail.com

City

State

Zip

Speaking: For Against Information

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

Representing Sierra Club Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/16/2021

Meeting Date

1128

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Dale Calhoun

Job Title Executive Director

Address 201 S Monroe St Unit A

Phone 8506810496

Street

Tallahassee

FL

32301

Email dale.calhoun@floridagas.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Natural Gas Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

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THE FLORIDA SENATE

APPEARANCE RECORD

3/16/2021

Meeting Date

1128

Bill Number (if applicable)

Topic Preemption on Restriction of Utility Services

Amendment Barcode (if applicable)

Name Jonathan Webber

Job Title Deputy Director

Address 1700 N. Monroe St. #11-286

Phone 954-593-4449

Street

Tallahassee

FL

32303

Email jwebber@fcvoters.org

City

State

Zip

Speaking: For Against Information

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

Representing Florida Conservation Voters

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/16/21

Meeting Date

1128

Bill Number (if applicable)

Topic Energy Preemption

Amendment Barcode (if applicable)

Name Kim Ross

Job Title Executive Director

Address 603 N MLK Jr Blvd

Phone 850-888-2565

Street

Tallahassee

FL

32301

City

State

Zip

Email admin@rethinkenergyflorida.org

Speaking: For Against Information

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

Representing Rethink Energy Action Fund

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

(unpaid)

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16/21
Meeting Date

1128
Bill Number (if applicable)

Topic Preemption on Restriction of Utility

Amendment Barcode (if applicable)

Name Ida V. Eskamani

Job Title _____

Address _____
Street

Phone _____

City _____ State _____ Zip _____

Email _____

Speaking: For Against Information

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

Representing Florida Rising

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE

APPEARANCE RECORD

03/16/21

Meeting Date

1128

Bill Number (if applicable)

786448

Topic Preemption on Restriction of Utility Services

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757

Phone 850-701-3692

Street

Tallahassee

FL

32302

Email rohara@flcities.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida League of Cities

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

By the Committee on Regulated Industries; and Senator Hutson

580-02583-21

20211128c1

1 A bill to be entitled
 2 An act relating to preemption on restriction of
 3 utility services; creating s. 366.032, F.S.;
 4 prohibiting municipalities, counties, special
 5 districts, or other political subdivisions from
 6 enacting or enforcing provisions or taking actions
 7 that restrict or prohibit the types or fuel sources of
 8 energy production which may be used, delivered,
 9 converted, or supplied to customers by specified
 10 entities; providing for preemption; providing for
 11 retroactive application; providing an effective date.
 12

13 Be It Enacted by the Legislature of the State of Florida:
 14

15 Section 1. Section 366.032, Florida Statutes, is created to
 16 read:

17 366.032 Preemption on utility service restrictions and
 18 prohibitions; retroactive applicability.-

19 (1) A municipality, a county, a special district, or
 20 another political subdivision of the state may not enact or
 21 enforce a resolution, an ordinance, a rule, a code, or a policy
 22 or take any action that restricts or prohibits, or that has the
 23 effect of restricting or prohibiting, the types or the fuel
 24 sources of energy production which may be used, delivered,
 25 converted, or supplied by a public utility as defined in this
 26 chapter, a municipal electric utility, a natural gas utility as
 27 defined in s. 366.04(3)(c), a natural gas transmission company
 28 as defined in s. 368.103, or a category I liquefied petroleum
 29 gas dealer or a category II liquefied petroleum gas dispenser as

Page 1 of 2

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

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30 defined in chapter 527 to customers that such entities are
 31 authorized to serve.
 32 (2) Any municipality, county, special district, or
 33 political subdivision charter, resolution, ordinance, rule,
 34 code, policy, or action that is preempted by this section and
 35 that existed before or on July 1, 2021, is void.
 36 Section 2. This act shall take effect July 1, 2021.

Page 2 of 2

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

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 Community Affairs

BILL: CS/CS/SB 1128

INTRODUCER: Community Affairs Committee; Regulated Industries Committee; and Senator Hutson

SUBJECT: Preemption on Restriction of Utility Services

DATE: March 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sharon</u>	<u>Imhof</u>	<u>RI</u>	<u>Fav/CS</u>
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1128 prohibits municipalities, counties, special districts, or other political subdivisions from enacting or enforcing a resolution, ordinance, rule, code, or policy that restricts or prohibits the types or the fuel sources of energy production used, delivered, converted, or supplied to customers by a public, electric, or natural gas utility, natural gas transmission company, certain entities created pursuant to an interlocal agreement, category I liquefied petroleum gas dealer, a category II liquefied petroleum gas dispenser, or a category III liquefied petroleum gas cylinder exchange operator.

The bill does not expand or alter the jurisdiction of the Public Service Commission over public or electric utilities.

The bill voids any resolutions, ordinances, rules, codes, policies, or actions by any municipality, county, special district, or political subdivision charter, existing on or before the bill's effective date, which are preempted by this bill.

The bill is effective July 1, 2021.

II. Present Situation:

Local Government Authority

The Florida Constitution grants local governments broad home rule authority. Specifically, non-charter county governments may exercise those powers of self-government that are provided by general or special law.¹ Those counties operating under a county charter have all powers of local self-government not inconsistent with general law or special law approved by the vote of the electors.² Likewise, municipalities have those governmental, corporate, and proprietary powers that enable them to conduct municipal government, perform their functions and provide services, and exercise any power for municipal purposes, except as otherwise provided by law.³

In Florida, special districts are separate governmental entities created for a special purpose that have jurisdiction to operate within a limited geographic boundary.⁴ Special districts are created by general law, special act, local ordinance, or by rule of the Governor and Cabinet.⁵ Throughout the state there are over 1,770 active special districts encompassing more than 80 specialized governmental functions.⁶

Interlocal Cooperation and the Florida Municipal Power Agency

The Florida Interlocal Cooperation Act of 1969 (Act) allows local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage.⁷ The Act provides that local governmental entities may jointly exercise their powers by entering into a contract in the form of an interlocal agreement.⁸ Under such an agreement, the local governmental units may create a separate legal or administrative entity “to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities.”⁹

In 1978, the Florida Municipal Power Agency (FMPA) was created through a series of interlocal agreements under s. 163.01, F.S., to provide wholesale power supply to municipal electric utilities. FMPA is currently owned by 31 municipalities.¹⁰ Through various joint power supply

¹ FLA. CONST. art. VIII, s. 1(f).

² FLA. CONST. art. VIII, s. 1(g).

³ FLA. CONST. art. VIII, s. 2(b). *See also* s. 166.021(1), F.S.

⁴ Section 189.012(6), F.S.

⁵ *Id.*

⁶ *See* Florida Department of Economic Opportunity, *Introduction to Special Districts*, <https://floridajobs.org/community-planning-and-development/special-districts/special-district-accountability-program/florida-special-district-handbook-online/introduction-to-special-districts> (last visited Mar. 5, 2021).

⁷ Section 163.01(2), F.S.

⁸ Section 163.01(5), F.S.

⁹ Section 163.01(2), F.S.

¹⁰ Currently, FMPA serves the following municipalities: Alachua, Bartow, Blountstown, Bushnell, Chattahoochee, Clewiston, Fort Meade, Fort Pierce, Gainesville, Green Cove Springs, Havana, Homestead, Jacksonville Beach, Key West, Kissimmee, Lake Worth, Lakeland, Leesburg, Moore Haven, Mount Dora, New Smyrna Beach, Newberry, Ocala, Orlando, Quincy, St. Cloud, Starke, Vero Beach, Wauchula, Williston, and Winter Park. Florida Municipal Power Agency, *Members*, <http://fmpa.com/about/members/> (last visited Mar. 5, 2021).

projects,¹¹ the FMPA supplies all of the electrical power needs of 13 member utilities and a part of the power needs for seven other member utilities.¹² Through these projects, FMPA members maintain ownership interests in various electrical power plants throughout Florida. FMPA manages the transmission of electrical power over facilities owned by FMPA or its members.¹³

Preemption

Local governments have broad authority to legislate on any matter that is not inconsistent with federal or state law. A local government enactment may be inconsistent with state law if (1) the Legislature has preempted a particular subject area or (2) the local enactment conflicts with a state statute. Where state preemption applies, it precludes a local government from exercising authority in that particular area.¹⁴

Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹⁵ Express preemption of a field by the Legislature must be accomplished by clear language stating that intent.¹⁶ In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.¹⁷

In cases determining the validity of ordinances in violation of state preemption, the effect has been to find such ordinances null and void.¹⁸ In one case, the court stated that implied preemption “is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.”¹⁹ Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area, and strong public policy reasons exist for finding preemption.²⁰ Implied preemption is found where

¹¹ Section 361.12, F.S., authorizes any electric utility, or any organization, association, or separate legal entity whose membership consists only of electric utilities, to join with any other such entity to finance, acquire, construct, manage, operate, or own an electric power supply project for the joint generation or transmission of electrical energy, or both. Further, s. 361.13, F.S., authorizes any such entity to purchase capacity or energy, or both, in an agreed upon quantity from any project in which the purchaser has an ownership interest.

¹² See Florida Municipal Power Agency, *Projects*, <https://fmpa.com/power-supply-projects/> (last visited Mar. 5, 2021).

¹³ See Florida Municipal Power Agency, *Value of Public Power*, <https://fmpa.com/value-of-public-power/> (last visited Mar. 5, 2021).

¹⁴ See James R. Wolf and Sarah Harley Bolinder, *The Effectiveness of Home Rule: A Preemption and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009) available at <https://www.floridabar.org/the-florida-bar-journal/the-effectiveness-of-home-rule-a-preemption-and-conflict-analysis/> (last visited Mar. 5, 2021).

¹⁵ See *City of Hollywood v. Mulligan*, 934 So. 2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So. 3d 309 (Fla. 2008).

¹⁶ *Mulligan*, 934 So. 2d at 1243.

¹⁷ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So. 3d 880, 886 (Fla. 2010). Examples of activities “expressly preempted to the state” include: operator use of commercial mobile radio services and electronic communications devices in motor vehicles, s. 316.0075, F.S.; regulation of the use of cameras for enforcing provisions of the Florida Uniform Traffic Control Law, s. 316.0076, F.S.; and, the adoption of standards and fines related to specified subject areas under the purview of the Department of Agriculture and Consumer Services, s. 570.07, F.S.

¹⁸ See, e.g., *Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami*, 812 So. 2d 504 (Fla. 3d DCA 2002).

¹⁹ *Phantom of Clearwater, Inc.*, 894 So. 2d at 1019.

²⁰ *Id.*

the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.²¹

Florida Public Service Commission

The Florida Public Service Commission (PSC) is an arm of the legislative branch of government.²² The role of the PSC is to ensure that Florida's consumers receive utility services, including electric, natural gas, telephone, water, and wastewater, in a safe, affordable, and reliable manner.²³ In order to do so, the PSC exercises authority over public utilities in one or more of the following areas: (1) Rate or economic regulation; (2) Market competition oversight; and/or (3) Monitoring of safety, reliability, and service issues.²⁴ The PSC monitors the safety and reliability of the electric power grid²⁵ and may order the addition or repair of infrastructure as necessary.²⁶ Further, the PSC reviews applications to determine the need for certain new electrical power plants²⁷ and certain large transmission lines as part of the Department of Environmental Protection's siting process.²⁸

The PSC does not fully regulate publicly owned municipal electric utilities.²⁹ However, it does have jurisdiction over municipally owned electric systems with regard to rate structure, territorial boundaries, bulk power supply operations, and planning.³⁰ Additionally, the PSC has jurisdiction over 27 municipally owned natural gas utilities and four gas districts with regard to territorial boundaries, safety, and safety authority over all electric and natural gas systems operating in the state.³¹

A public utility includes any person or legal entity supplying electricity or gas, including natural, manufactured, or similar gaseous substance, to or for the public within the state.³² Notably, courts have ruled that the sale of electricity to even a single customer makes the provider a "public utility" subjecting them to the PSC's regulatory jurisdiction, under s. 366.02(1), F.S.³³ The PSC's jurisdiction over public utilities is exclusive and superior to all other boards, agencies, political subdivisions, municipalities, towns, villages, or counties, and in cases of conflict the PSC is to prevail.³⁴

²¹ *Sarasota Alliance for Fair Elections, Inc.*, 28 So. 3d at 886.

²² Section 350.001 F.S.

²³ See Florida Public Service Commission, *The PSC's Role*, <http://www.psc.state.fl.us> (last visited Mar. 5, 2021).

²⁴ *Id.*

²⁵ Sections 366.04(5) and (6), F.S.

²⁶ Sections 366.05(1) and (8), F.S.

²⁷ Section 403.519, F.S.

²⁸ Section 403.537, F.S.

²⁹ Florida Public Service Commission, *2020 FPSC Annual Report*, available at <http://www.psc.state.fl.us/Files/PDF/Publications/Reports/General/Annualreports/2020.pdf> (last visited Mar. 5, 2021).

³⁰ *Id.*

³¹ *Id.*

³² Section 366.02(1), F.S.

³³ *Florida Public Service Com'n v. Bryson*, 569 So. 2d 1253, 1255 (Fla. 1990) (finding that even a property management company is a public utility within the PSC's regulatory jurisdiction); *PW Ventures, Inc. v. Nichols*, 533 So. 2d 281, 284 (Fla. 1988) (finding that "to the public," as used in ch. 366, F.S., means "to any member of the public," rather than "to the general public").

³⁴ Section 366.04 (1), F.S.

Investor-Owned Electric Utilities Companies

There are five investor-owned electric utility companies in Florida: Florida Power & Light Company, Duke Energy Florida, Tampa Electric Company, Gulf Power Company, and Florida Public Utilities Corporation.³⁵ Investor-owned electric utility rates and revenues are regulated by the Florida Public Service Commission.³⁶ Accordingly, these utilities must file periodic earnings reports, either monthly, quarterly, or semi-annually, depending upon each company's size. These more frequent company filings allow the PSC to monitor earnings levels on an ongoing basis and adjust customer rates quickly if a company appears to be overearning.³⁷

Municipally Owned Electric Utilities

A municipal electric utility is an electric utility system owned or operated by a municipality engaged in serving residential, commercial or industrial customers, usually within the boundaries of the municipality.³⁸ Municipally owned utility rates and revenues are regulated by their city commission.³⁹ As noted above, the PSC does have limited jurisdiction over municipally owned electric utilities.⁴⁰ In total there are 34 municipal electric companies in Florida.⁴¹ Most municipal electric utilities are represented by the Florida Municipal Electric Association which serves over three million Floridians.⁴²

Natural Gas Utilities

Florida's natural gas network is comprised of four interstate pipelines and two intrastate pipelines.⁴³ The two intrastate pipelines, falling within the definition of a "natural gas transmission company," pursuant to s. 368.103(4), F.S., are Peninsular Pipeline Company, Inc. and SeaCoast Gas Transmission LLC.⁴⁴ Florida's natural gas network supplies natural gas to five investor-owned natural gas utilities, 27 municipal natural gas utilities, and four special gas districts.⁴⁵

Pursuant to ch. 366, F.S., the PSC has regulatory authority over the investor-owned natural gas utilities in all aspects of operations, including safety; authority over municipally-owned natural gas utilities that is limited to safety and territorial boundary disputes; and authority over special gas districts that is limited to safety and territorial boundary disputes.⁴⁶

³⁵ *Id.*

³⁶ Florida Department of Agriculture and Consumer Services, *Electric Utilities*, <https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Electric-Utilities> (last visited Mar. 5, 2021).

³⁷ FPSC, *2020 Annual Report*, *supra* at n. 29.

³⁸ FDACS, *Electric Utilities*, *supra* at n. 36.

³⁹ *Id.*

⁴⁰ FPSC, *2020 Annual Report*, *supra* at n. 29.

⁴¹ FDACS, *Electric Utilities*, *supra* at n. 36.

⁴² Florida Municipal Electric Association, *About FMEA*, <https://www.publicpower.com/about-us> (last visited Mar. 5, 2021).

⁴³ Florida Department of Agriculture and Consumer Services, *Natural Gas Utilities*, <https://www.fdacs.gov/Energy/Florida-Energy-Clearinghouse/Natural-Gas-Utilities> (last visited Mar. 5, 2021).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ FPSC, *2020 Annual Report*, *supra* at n. 29.

Florida Department of Agriculture and Consumer Services

The Florida Department of Agriculture and Consumer Services (DACS) is responsible for the administration of a number of programs relating to energy infrastructure and houses the Office of Energy.⁴⁷ The DACS is also responsible for licensing individuals and businesses that sell, transport, dispense or store liquefied petroleum (LP) gas and that manufacture, install, service or repair LP gas containers, systems or appliances.⁴⁸ The FDACS inspects facilities where LP gas is sold or stored and investigates accidents involving LP gas or equipment.⁴⁹

A Category I LP Gas Dealer is any person selling any LP gas to consumers for industrial, commercial, or domestic use, leasing appliances and equipment for LP gas, or installing or servicing any equipment used for LP gas.⁵⁰ A Category II LP Gas Dispenser is any person operating an LP gas dispensing unit for serving liquid product to consumers and includes sales of appliances and equipment.⁵¹ A Category III LP Gas Cylinder Exchange Operator is any person operating a storage facility used for the purpose of storing filled propane cylinders of not more than 43.5 pounds propane capacity or 104 pounds water capacity, while awaiting sale to the consumer, or a facility used for the storage of empty or filled containers which have been offered for exchange.⁵²

Sustainable Energy

Public Utility Regulatory Policies Act (PURPA)

In 1978, the federal government enacted the Public Utility Regulatory Policies Act (PURPA),⁵³ which required promotion of energy efficiency and use of renewables.⁵⁴ The act required utilities to purchase power from “qualifying facilities,” which fall into two categories: qualifying small power production facilities and qualifying cogeneration facilities.⁵⁵ The PURPA directed the Federal Energy Regulatory Commission to implement the provisions, which in turn, directed the states to implement the provisions. In response, the Florida Legislature created s. 366.051, F.S., directing the utilities to purchase power from the cogenerators or small power producers and defining “full avoided costs.”

Florida Energy Efficiency and Conservation Act

Under the Florida Energy Efficiency and Conservation Act (FEECA),⁵⁶ enacted in 1980, the Legislature directed the PSC to develop and adopt programs for increasing energy efficiency and conservation, intending, in part, that solar energy and renewable energy sources be encouraged.⁵⁷

⁴⁷ See s. 377.805, F.S.

⁴⁸ See ch. 527, F.S.; Florida Department of Agriculture and Consumer Services, *Liquefied Petroleum Gas Licenses*, <https://www.fdacs.gov/Business-Services/LP-Gas-Licenses> (last visited Mar. 10, 2021).

⁴⁹ *Id.*

⁵⁰ Section 527.01(6), F.S. See also, FDACS, *Liquefied Petroleum Gas Licenses*, *supra* at n. 48.

⁵¹ Section 527.01(7), F.S. See also, FDACS, *Liquefied Petroleum Gas Licenses*, *supra* at n. 48.

⁵² Section 527.01(8), F.S. See also, FDACS, *Liquefied Petroleum Gas Licenses*, *supra* at n. 48.

⁵³ 16 U.S.C. ch. 46 § 2601 et seq.

⁵⁴ Federal Energy Regulatory Commission, *PURPA Qualifying Facilities*, <https://www.ferc.gov/qf> (last visited Mar. 5, 2021).

⁵⁵ *Id.*

⁵⁶ Sections 366.80-366.85, F.S.

⁵⁷ Section 366.81, F.S.

The Legislature's goal is to advance the conservation of expensive resources, such as petroleum fuels in order to reduce and control electric consumption.⁵⁸

Renewable Energy

In 2005, the Legislature created s. 366.91, F.S., to address renewable energy. This section requires utilities to continuously offer a purchase contract to renewable energy producers for a minimum of ten years.⁵⁹ It also includes municipal electric utilities and rural electric cooperatives whose annual sales are greater than 2,000 gigawatt hours.⁶⁰

In 2006, the Legislature created s. 366.92, F.S., relating to renewable energy policy, to authorize the PSC to adopt appropriate goals for increasing the use of existing, expanded, and new Florida renewable resources.

Renewable Portfolio Standards and Goals

Renewable portfolio standards (RPS) are policies, either voluntary or formal, designed to increase the use of renewable energy sources for electricity generation.⁶¹ RPS policies that a specified percentage of the electricity sold by utilities comes from renewable resources.⁶² Currently, there is not a national RPS in place.⁶³ However, most states have enacted their own RPS programs. Over the past year, state governments nationwide have been revising their RPS policies, requiring that a specified percentage of electricity sold come from renewable sources.⁶⁴

In 2007, Florida Governor Crist signed a series of three executive orders initiating Florida's energy policy and declaring Florida's commitment to be a leader in establishing energy security and reducing greenhouse gases:

- Executive Order 07-126; Establishing Climate Change Leadership by Example: Immediate Actions to Reduce Greenhouse Gas Emissions from Florida State Government.⁶⁵
- Executive Order 07-127; Establishing Immediate Actions to Reduce Greenhouse Gas Emissions within Florida.⁶⁶

⁵⁸ *Id.*

⁵⁹ Section 366.91, F.S.

⁶⁰ Section 366.91(4), F.S.

⁶¹ U.S. Energy Information Administration, *Renewable Energy Explained: Portfolio Standards*, [https://www.eia.gov/energyexplained/renewable-sources/portfolio-standards.php#:~:text=Renewable%20portfolio%20standards%20\(RPS\)%2C,energy%20sources%20for%20electricity%20generation.&text=However%2C%20most%20states%20have%20enacted%20their%20own%20RPS%20programs](https://www.eia.gov/energyexplained/renewable-sources/portfolio-standards.php#:~:text=Renewable%20portfolio%20standards%20(RPS)%2C,energy%20sources%20for%20electricity%20generation.&text=However%2C%20most%20states%20have%20enacted%20their%20own%20RPS%20programs). (last visited Mar. 5, 2021).

⁶² National Conference of State Legislatures, *State Renewable Portfolio Standards and Goals*, <https://www.ncsl.org/research/energy/renewable-portfolio-standards.aspx> (last visited Mar. 5, 2021)

⁶³ USEIA, *Renewable Energy Explained: Portfolio Standards*, *supra* at n. 60.

⁶⁴ *Id.*

⁶⁵ Fla. Exec. Order No. 07-126, available at <http://www.fsec.ucf.edu/en/media/enews/2007/pdf/07-126-actions.pdf> (last visited Mar. 5, 2021).

⁶⁶ Fla. Exec. Order No. 07-127, available at <http://www.fsec.ucf.edu/en/media/enews/2007/pdf/07-127-emissions.pdf> (last visited Mar. 5, 2021).

- Executive Order 07-128; Florida Governor’s Action Team on Energy and Climate Change.⁶⁷

In Executive Order 07-127, the Governor requested the PSC initiate rulemaking to require that utilities produce at least 20 percent of their electricity from renewable sources with a strong focus on solar and wind energy. In September 2007, the PSC began holding workshops to study the issue of renewable portfolio standards.

Currently, Florida is one of only 12 states that does not have either a formal renewable energy portfolio or a voluntary renewable energy portfolio.⁶⁸

III. Effect of Proposed Changes:

The bill creates s. 366.032, F.S., to preempt municipalities, counties, special districts, or other political subdivisions from restricting utility service choice, irrespective of fuel source. The bill prohibits these entities from enacting or enforcing any resolutions, ordinances, rules, codes, or policies that restrict or prohibit the types or fuel sources of energy production which may be used, delivered, converted, or supplied by:

- A public, electric, or natural gas utility as defined in ch. 366, F.S.;
- A natural gas transmission company;
- AN entity created pursuant to interlocal agreement that generates, sells, or transmits electrical energy;
- A Category I liquefied petroleum gas dealer;
- A Category II liquefied petroleum gas dispenser; or
- A Category III liquefied petroleum gas cylinder exchange operator.

The bill does not expand or alter the jurisdiction of the Public Service Commission over public utilities.

The bill voids any resolutions, ordinances, rules, codes, policies, or actions by any municipality, county, special district, or political subdivision charter, existing on or before the bill’s effective date, which are preempted by this bill.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

⁶⁷ See Sellers, Lawrence E. & Curtin, Lawrence N., *Holland & Knight Newsletter: Florida Addresses Greenhouse Gas Issues* <https://www.hklaw.com/en/insights/publications/2007/09/florida-addresses-greenhouse-gas-issues> (last visited Mar. 5, 2021).

⁶⁸ NCSL, *State Renewable Portfolio Standards and Goals*, *supra* at n. 62.

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 may have an indeterminate effect on the private utilities sector as it voids any restrictions or prohibitions imposed by local governments on the types or the fuel sources of energy production which a utility may use, deliver, convert, or supply to its customers.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 366.032 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS by Community Affairs on March 16, 2021:

The committee substitute adds to the list of utility providers contemplated by the bill, an entity formed pursuant to an interlocal agreement (s. 163.01, F.S.) that generates, sells, or transmits electrical energy and a Category III liquefied petroleum gas cylinder exchange operator as defined in s. 527.01, F.S. The committee substitute further clarifies that the bill does not expand or alter the jurisdiction of the Public Service Commission over public or electric utilities.

CS by Regulated Industries Committee on March 9, 2021:

The committee substitute prohibits municipalities, counties, special districts, or other political subdivisions from enacting or enforcing a resolution, ordinance, rule, code, or policy that restricts or prohibits the types or the fuel sources of energy production used, delivered, converted, or supplied to customers by a public utility, municipal electric utility, natural gas utility, natural gas transmission company, a category I liquefied petroleum gas dealer, or a category II liquefied petroleum gas dispenser.

- B. **Amendments:**

None.



786448

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Hutson) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 366.032, Florida Statutes, is created to
read:

366.032 Preemption over utility service restrictions.-

(1) A municipality, county, special district, or other
political subdivision of the state may not enact or enforce a
resolution, ordinance, rule, code, policy, or take any action



786448

11 that restricts or prohibits or has the effect of restricting or
12 prohibiting the types or fuel sources of energy production which
13 may be used, delivered, converted, or supplied by the following
14 entities to customers that such entities are authorized to
15 serve:

16 (a) A public utility or an electric utility as defined in
17 this chapter;

18 (b) An entity formed under s. 163.01 that generates, sells,
19 or transmits electrical energy;

20 (c) A natural gas utility as defined in s. 366.04(3)(c);

21 (d) A natural gas transmission company as defined in s.
22 368.103; or

23 (e) A Category I liquefied petroleum gas dealer or Category
24 II liquefied petroleum gas dispenser or Category III liquefied
25 petroleum gas cylinder exchange operator as defined in s.
26 527.01.

27 (2) This section does not expand or alter the jurisdiction
28 of the commission over public utilities or electric utilities.

29 Section 2. Any municipality, county, special district, or
30 political subdivision charter, resolution, ordinance, rule,
31 code, policy, or action that is preempted by this act that
32 existed before or on July 1, 2021, is void.

33 Section 3. This act shall take effect July 1, 2021.

34
35 ===== T I T L E A M E N D M E N T =====

36 And the title is amended as follows:

37 Delete everything before the enacting clause
38 and insert:

39 A bill to be entitled



786448

40 An act relating to preemption over restriction of
41 utility services; creating s. 366.032, F.S.;
42 prohibiting municipalities, counties, special
43 districts, or other political subdivisions from
44 restricting or prohibiting the types or fuel sources
45 of energy production used, delivered, converted, or
46 supplied by certain entities to customers; providing
47 construction; voiding existing specified documents and
48 policies that are preempted by this act; providing an
49 effective date.

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/16/21
Meeting Date

916
Bill Number (if applicable)

Topic Residential Home Protection

Amendment Barcode (if applicable)

Name Jim Spratt

Job Title _____

Address 119 S Monroe St
Street

Phone 850-228-1296

TALLAHASSEE FL 32301
City State Zip

Email Jim@magnoliastrategies.com

Speaking: For Against Information

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

Representing Florida Chapter of the International Society of Arboriculture

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/15/21

Meeting Date

916

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Diana Ferguson

Job Title Attorney

Address 119 South Monroe Street

Phone 850-681-6788

Street

Tall

FL

32301

Email dferguson@rutledge-ecenia.com

City

State

Zip

Speaking: For Against Information

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

Representing American Society of Landscape Architects - Florida Chapter

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

YOU MUST PRINT AND DELIVER THIS FORM TO THE ASSIGNED TESTIMONY ROOM

THE FLORIDA SENATE

APPEARANCE RECORD

3/16/2021

Meeting Date

916

Bill Number (if applicable)

Topic Residential Home Protection

Amendment Barcode (if applicable)

Name Rebecca O'Hara

Job Title Deputy General Counsel

Address PO Box 1757

Phone 850-701-3692

Street

Tallahassee

FL

32301

Email rohara@flcities.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida League of Cities, Inc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

By Senator Brodeur

9-00968A-21

2021916__

A bill to be entitled

An act relating to residential home protection; amending s. 163.045, F.S.; defining terms; prohibiting local governments from requiring a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on a residential property if the property owner possesses certain documentation; providing that a tree poses an unacceptable risk if removal is the only means of practically mitigating its risk below moderate as defined by specified standards; providing an effective date.

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

Section 1. Section 163.045, Florida Statutes, is amended to read:

163.045 Tree pruning, trimming, or removal on residential property.—

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

(a) “Documentation” means an onsite assessment performed by an arborist certified by the International Society of Arboriculture (ISA) or a Florida licensed landscape architect in accordance with tree risk assessment processes and guidelines established by the ISA, the American National Standards Institute (ANSI), or the International Organization for Standardization and signed by the certified arborist or licensed landscape architect.

(b) “Residential property” means an existing single-family,

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

9-00968A-21

2021916__

detached building located on an existing lot of record, actively used for single-family residential purposes, and which is either an existing conforming use or a legally recognized nonconforming use in accordance with the local jurisdiction’s applicable land development regulations.

(2) A local government may not require a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on a residential property if the property owner possesses ~~obtains~~ documentation from an arborist certified by the ISA International Society of Arboriculture or a Florida licensed landscape architect that the tree poses an unacceptable risk if removal is the only means of practically mitigating its risk below moderate, as defined by the ANSI A300 (Part 9)–2017 tree risk assessment standards, using a 2-year timeframe.

(3) ~~(2)~~ A local government may not require a property owner to replant a tree that was pruned, trimmed, or removed in accordance with this section.

(4) ~~(3)~~ This section does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to ss. 403.9321–403.9333.

Section 2. This act shall take effect July 1, 2021.

Page 2 of 2

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

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 Community Affairs

BILL: SB 916

INTRODUCER: Senator Brodeur

SUBJECT: Residential Home Protection

DATE: March 10, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Paglialonga</u>	<u>Ryon</u>	<u>CA</u>	<u>Favorable</u>
2.	_____	_____	<u>JU</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

Section 163.045, F.S., dictates that local governments may not require a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on residential property if the property owner obtains documentation from an arborist certified by the International Society of Arboriculture, or a Florida licensed landscape architect, that the tree presents a danger to persons or property.

SB 916 amends this section of law to define "documentation" as tree risk assessment processes and guidelines established by the International Society of Arboriculture (ISA), the American National Standards Institute (ANSI), or the International Organization for Standardization and signed by the certified arborist or licensed landscape architect. The bill also defines "residential property" as an existing single-family detached building located on an existing lot of record, actively used for single-family residential purposes, and which is either an existing conforming use or a legally recognized nonconforming use following the local jurisdiction's applicable land development regulations.

The bill requires a property owner to possess documentation that a tree poses an *unacceptable risk* to persons or property instead of a *present danger* before engaging in tree pruning, trimming, or removal. The bill states that a tree poses an unacceptable risk if removal is the only means of practically mitigating its risk below moderate, as defined by the ANSI A300 (Part 9)—2017 tree risk assessment standards, using a 2-year timeframe.

The bill takes effect on July 1, 2021.

II. Present Situation:

Home Rule Powers and Preemption

The Florida Constitution

The Florida Constitution establishes and describes the duties, powers, structure, function, and limitations of government in Florida. Article VIII, section 1 of the Florida Constitution, endows counties and municipalities the power of self-government or home rule power. Under the home rule power, local governments have broad authority to exercise the state's sovereign police powers and legislate on any matter that is not inconsistent with the federal and state constitution and laws.

Counties

A county without a charter has such power of self-government as provided by general or special law and may enact county ordinances not inconsistent with general law.¹ Counties operating under county charters have all the powers of local self-government not inconsistent with general law or with special law approved by a vote of the electors.² General law authorizes counties "the power to carry on county government"³ and to "perform any other acts not inconsistent with law, which acts are in the common interest of the people of the county, and exercise all powers and privileges not specifically prohibited by law."⁴

Municipalities

Municipalities may be established or abolished, and their charters amended by general or special law. Municipalities have governmental, corporate, and proprietary powers to conduct municipal government, perform municipal functions, and render municipal services. They may exercise any of these powers for municipal purposes except as otherwise provided by law.⁵ Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,⁶ acknowledges these constitutional grants of police powers and better defines municipal powers of self-government.⁷ Chapter 166, F.S., provides municipalities with broad home rule powers to act in a manner not inconsistent with the Florida Constitution, general and special law, and a charter for the county in which the municipality is located.⁸

¹ FLA. CONST. art. VIII, s. 1(f).

² *Id.* at (g).

³ Section 125.01(1), F.S.

⁴ *Id.* at (w).

⁵ FLA. CONST. art. VIII, s. 2.

⁶ Section 166.011, F.S.

⁷ Florida House of Representatives, Publications, *The Local Government Formation Manual 2017-2018*, p. 16, available at: <http://www.myfloridahouse.gov/Sections/Documents/loadoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2017&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf>. (last visited Mar. 3, 2021).

⁸ Section 166.021(4), F.S.

State Preemption

Although local governments have broad home rule powers, the state legislature may preempt this self-government power and preclude local governments from exercising legislative authority in particular areas of law.⁹ Florida law recognizes two types of preemption: express and implied.

Express preemption requires a specific legislative statement; it cannot be implied or inferred.¹⁰ In cases where the Legislature expressly preempts an area or forbids local governments from certain actions, there is no problem with ascertaining what the Legislature intended.¹¹ On the other hand, implied preemption is found where the local legislation would present the danger of conflicting with the state's pervasive regulatory scheme.¹² Preemption of a local government enactment is implied only where the legislative scheme is so pervasive as to evidence an intent to preempt the particular area to the state, and there are strong public policy reasons for doing so.¹³ In cases determining the validity of ordinances enacted in the face of express and implied state preemption, the effect has been to find such ordinances null, void, and unenforceable.¹⁴

Community Planning

State police powers are derived from the Tenth Amendment to the U.S. Constitution, which affords states all rights and powers "not delegated to the United States."¹⁵ Under this provision, states have police powers to establish and enforce laws protecting the public's welfare, safety, and health.¹⁶ These police powers are granted to counties and municipalities by the state and provide the authority to enact comprehensive zoning plans to layout zones or districts where potential real property uses may be forbidden or restricted.¹⁷

Today, s. 163.3167, F.S. of the Community Planning Act¹⁸ statutorily requires incorporated municipalities and counties to prepare and maintain a comprehensive plan to set out the regulations and policies governing land within a community. Comprehensive plans address both physical elements of land and buildings and the land uses permitted therein.

Local comprehensive plans are required to address many concepts, including strategies for the orderly and balanced future land development of the area and procedures for monitoring and

⁹ Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).

¹⁰ See *City of Hollywood v. Mulligan*, 934 So.2d 1238, 1243 (Fla. 2006); *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011, 1018 (Fla. 2d DCA 2005), approved in *Phantom of Brevard, Inc. v. Brevard County*, 3 So.3d 309 (Fla. 2008).

¹¹ *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).

¹² See *GLA & Assocs., Inc. v. City of Boca Raton*, 855 So. 2d 278, 282 (Fla. 4th DCA 2003).

¹³ *Id.*

¹⁴ *Thomas v. State*, 614 So.2d 468, 470 (Fla.1993); *Hillsborough County v. Fla. Rest. Ass'n*, 603 So.2d 587, 591 (Fla. 2d DCA 1992) ("If [a county] has enacted such an inconsistent ordinance, the ordinance must be declared null and void.")

¹⁵ U.S. CONST. amend. X.

¹⁶ "The States thus can and do perform many of the vital functions of modern government—punishing street crime, running public schools, and zoning property for development, to name but a few—even though the Constitution's text does not authorize any government to do so. Our cases refer to this general power of governing, possessed by the States but not by the Federal Government, as the police power." See *NFIB v. Sebelius*, 567 U.S. 519, 535-536 (2012).

¹⁷ *Village of Belle Terre v. Boraas*, 416 U.S. 1, 94 S. Ct. 1536 (1974)

¹⁸ See ch. 163, part II, F.S.

evaluating the plan's implementation.¹⁹ Along with optional elements,²⁰ plans must include the following nine elements:

- Capital improvements;²¹
- Future land use plan;
- Intergovernmental coordination;
- Conservation;
- Transportation;
- Sanitary sewer, solid waste, drainage, potable water and aquifer recharge;
- Recreation and open space;
- Housing; and
- Coastal management (for coastal local governments).²²

All local government land development regulations must be consistent with the local comprehensive plan.²³

Local Tree Pruning, Trimming, and Removal Regulations Before 2019

Florida counties and municipalities have the home rule power to enact ordinances related to vegetation management. These ordinances regulate how private property owners manage vegetation on their private property. Vegetation management ordinances address various aspects of land use, including the species used in a given area.

Before 2019, many local governments utilized vegetation management ordinances that required a property owner to receive a permit or pay a fee before pruning, trimming, or removing a tree from their private property. These ordinances also occasionally protected individual trees because they are considered an important community resource.

For example, in Broward County, removing any historical tree²⁴ without first obtaining approval from the Board of County Commissioners was prohibited. Broward County also outlawed removing any tree without first obtaining a tree removal license from the Environmental Protection and Growth Management Department.²⁵ Furthermore, municipalities within Broward County enforced their tree preservation regulations in addition to Broward County's tree regulations.²⁶ However, the county administrator had the authority to suspend county tree regulations during emergency conditions caused by hurricanes or other natural disasters.²⁷

¹⁹ S. 163.3177(1), F.S.

²⁰ S. 163.3177(1)(a), F.S.

²¹ S. 163.3177(3)(a), F.S. The capital improvements element must be reviewed by the local government on an annual basis.

²² S. 163.3177(6)(a)-(g), F.S.

²³ S. 163.3194(1)(b), F.S.

²⁴ Ch. 27, art. XIV, s. 404, Broward County Code of Ordinances (2018), defines a “historical tree” as a particular tree or group of trees, which has historical value because of its unique relationship to the history of the region, state, nation or world as designated by the Board of County Commissioners.

²⁵ *Id.* at s. 405. Nuisance trees are exempt from the prohibitions in the tree preservation ordinances. *Id.* at 406. A “nuisance tree” is defined to be one of 10 identified trees including the *Schinus terebinthifolius* (Brazilian pepper tree/Florida holly). *Id.* at 404.

²⁶ *Id.* at s. 407. Municipalities may regulate exclusively within their jurisdictions upon certification by Broward County with some exceptions.

²⁷ *Id.* at 406.

Similarly, Orange County required a permit or authorization to remove a protected tree²⁸ unless an exception applied. The law did not restrict tree trimming or maintenance but encouraged property owners to practice proper trimming habits that avoided the need for "severe" trimming of any tree.²⁹ Municipalities within Orange County were also allowed to provide tree regulations within their jurisdictions.³⁰

Section 163.045, F.S. – Tree Pruning, Trimming, or Removal on Residential Property

During the 2019 legislative session, the Legislature created s. 163.045, F.S., which preempts local governments from requiring "a notice, application, approval, permit, fee, or mitigation for the pruning, trimming, or removal of a tree on residential property if the property owner obtains documentation from an arborist certified by the International Society of Arboriculture or a Florida licensed landscape architect that the tree presents a danger to persons or property." This section of the law also provides that a local government may not require a property owner to replant a tree that was pruned, trimmed, or removed in accordance with this section.³¹ Notwithstanding, the provisions of s. 163.045, F.S., do not apply to the exercise of authority for mangrove protection pursuant to ss. 403.9321-403.9333.³²

The subject matter of s. 163.045, F.S., has been the subject of litigation on several occasions since its enactment. Courts have grappled with the statute's express language and whether local governments maintain some residual authority to regulate tree management on private property.³³

Tree Risk Assessment Standards

In 2017, the International Society of Arboriculture (ISA) and the American National Standard Institute (ANSI) produced the first national standards to address tree risk assessment. The ANSI standards represent the industry criteria for performing tree care operations. The standards can be used for general familiarity with professional requirements and preparation of tree care contract

²⁸ Protected trees are native trees in certain zones and include Red maple, Red buckeye, and Pignut hickory trees. *See* Ch. 15, Art. VIII, ss. 283 and 301(e), Orange County Code of Ordinances (2018).

²⁹ Ch. 15, Art. VIII, s. 278, Orange County Code of Ordinances (2018).

³⁰ *Id.*

³¹ Section 163.045(2), F.S.

³² *Id.* at (3). Florida has three native species of mangrove trees growing along its coastline, which can be harmed or killed if not trimmed properly. The "1996 Mangrove Trimming and Preservation Act" (Act) requires the Department of Environment Protection (DEP) to regulate the trimming and alteration of mangroves statewide, except where DEP has delegated its authority to local governments that meet certain requirements and request such delegation. The Act prohibits mangrove trimming or alteration without a permit issued by DEP or a delegated local government, unless the trimming or alteration falls within certain exceptions. *See* Florida Department of Environmental Protection, *Mangrove Trimming Guidelines for Homeowners*, "Introduction," 4, available at https://floridadep.gov/sites/default/files/Mangrove-Homeowner-Guide-sm_0.pdf (last visited Mar. 10, 2021).

³³ *See Vickery v. City of Pensacola*, 2020 WL 1190558, No. 1D19-4344 (Fla. 1st DCA 2020)(Appellate Brief, file Feb. 5, 2020) (Appealing from a Circuit Court of Escambia County injunction on the removal of a tree); *see also Schuh v. City of St. Petersburg*, 2019 WL 10784582, No. 18-007493-CI. (Fla.Cir.Ct. 6th Jud.Cir., Pinellas County)(Plaintiffs alleged that before altering their landscape in any way—including pruning, trimming, or removing trees—the City requires notification, an application, and approval in violation of s. 163.045, F.S.).

specifications. These standards are published in Part 9 of the ANSI A300 Standards.³⁴ The stated purpose of Part 9, Tree Risk Assessment, is to provide performance standards for the practice of tree risk assessment and to guide the development of written specifications, best practices, training materials, regulations, and other performance measures.³⁵

Under Part 9 of the ANSI A300 Standards, the tree risk assessor shall inspect the tree, analyze the tree, site, target, and information, and analyze the risk level posed by the tree. The level of risk that is determined shall be reported to the client. A written tree risk assessment report should include, but is not limited to:³⁶

- The objective of the assessment;
- The date of inspection;
- Identification of the assessor(s) and their qualifications;
- Identification and location of the specified tree(s);
- Part(s) of the tree assessed;
- A description of the methodology used;
- Time frame for the assessment;
- Tree risk assessment data;
- Risk rating for the tree or tree part(s);
- Recommendations for Risk mitigation options and/or recommendations;
- Recommendation for additional assessment(s), when appropriate;
- The residual risk following for any recommended mitigation;
- Recommendations for monitoring and follow-up; and,
- A statement of the limitations of the inspection and assessment methods methodology.

Part 9 of the ANSI A300 Standards also provides that the assessment should give recommendations to mitigate risk by means other than tree removal and contain an advisory that not all risks associated with trees can be eliminated. Monitoring, mitigation, and future maintenance recommendations should be made based on the objective, targets, current level of risk, mitigation recommendation, and residual risk.³⁷

As a complementary component to Part 9 of the ANSI A300 Standards, the ISA provides a Basic Tree Risk Assessment Form. This form utilizes tree risk assessment standards to provide a risk rating matrix. The risk rating matrix considers the likelihood of tree failure and the consequences of the failure to project a low, moderate, high, or extreme indicator.³⁸

³⁴ See ISA, ANSI A300 Tree Risk Assessment Standard- Part 9 (2017), available at: <https://www.isa-arbor.com/store/product/133/> (last visited Mar. 19, 2021).

³⁵ ISA, ANSI A300 Tree Risk Assessment Standard- Part 9 (2017).

³⁶ *Id.*

³⁷ *Id.*

³⁸ ISA, *Basic Tree Risk Assessment Form*, available at: http://manoa.hawaii.edu/landscaping/documents/ISA_Tree_Risk_Assess.pdf (last visited Mar. 10, 2021).

III. Effect of Proposed Changes:

The bill amends s. 163.045, F.S., to provide a specific definition of "documentation." Under the bill, the documentation a property owner must possess prior to tree pruning, trimming, or removal is an onsite assessment performed by an arborist certified by the International Society of Arboriculture (ISA) or a Florida licensed landscape architect in accordance with tree risk assessment processes and guidelines established by the ISA, the American National Standards Institute (ANSI), or the International Organization for Standardization and signed by the certified arborist or licensed landscape architect.

The bill also provides a specific definition of "residential property." Under this definition, the protections provided by 163.045, F.S., would only apply to an existing single-family, detached building located on an existing lot of record, actively used for single-family residential purposes, and which is either an existing conforming use or a legally recognized nonconforming use under the local jurisdiction's applicable land development regulations.

Before a residential property owner may prune, trim, or remove a tree, the bill requires certified arborists and licensed landscape architects to certify that a tree poses an unacceptable risk to persons or property instead of presenting a danger to persons or property. The bill states that a tree poses an unacceptable risk to persons or property if removal is the only means of practically mitigating the risk below moderate, as defined by the ANSI A300 (Part 9)—2017 tree risk assessment standards, using a 2-year timeframe.

The bill takes effect July 1, 2021.

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 identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 163.045 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.

THE FLORIDA SENATE

APPEARANCE RECORD

3.16.21

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

1256

Meeting Date

Bill Number (if applicable)

Topic Homestead Exemption for Seniors 65+

Amendment Barcode (if applicable)

Name Albert Balido (BAH-LEE-DO)

Job Title _____

Address 201 W Park Ave Ste 110

Phone 850 251 3410

Street

Palm

City

FL

State

32301

Zip

Email _____

Speaking: For Against Information

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

Representing Florida Association of Property Appraisers

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

By Senator Polsky

29-01710-21

20211256__

A bill to be entitled

An act relating to homestead exemption for seniors 65 and older; amending s. 196.075, F.S.; revising provisions to require certain taxpayers to submit a claim for homestead exemption only one time if certain conditions are met; requiring the property appraiser to provide specified information related to income limitations on an annual basis; providing sanctions for taxpayers who received homestead exemptions but were not entitled to such exemptions; providing an effective date.

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

Section 1. Paragraph (d) of subsection (4) and subsection (5) of section 196.075, Florida Statutes, are amended to read:
196.075 Additional homestead exemption for persons 65 and older.—

(4) An ordinance granting an additional homestead exemption as authorized by this section must meet the following requirements:

(d) It must require that a taxpayer claiming the exemption for the first time annually submit to the property appraiser, not later than March 1, a sworn statement of household income on a form prescribed by the Department of Revenue.

(5) The department must require by rule that the filing of the statement be supported by copies of any federal income tax returns for the prior year, any wage and earnings statements (W-2 forms), any request for an extension of time to file returns,

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and any other documents it finds necessary, for each member of the household, to be submitted for inspection by the property appraiser. The taxpayer's sworn statement shall attest to the accuracy of the documents and grant permission to allow review of the documents if requested by the property appraiser. Submission of supporting documentation is not required for ~~the renewal of~~ an exemption under this section unless the property appraiser requests such documentation. Once the documents have been inspected by the property appraiser, they shall be returned to the taxpayer or otherwise destroyed. Annually, the property appraiser shall notify each taxpayer of the adjusted income limitation set forth in subsection (3). The taxpayer must notify the property appraiser by March 1 if his or her household income exceeds the most recent adjusted income limitation. If a taxpayer fails to notify the property appraiser and the property appraiser determines that for any year within the most recent 10 years the taxpayer was not entitled to receive such exemption, the taxpayer shall be subject to the taxes exempted as a result of such failure plus 15 percent interest per annum and a penalty of 50 percent of the taxes exempted. The property appraiser may conduct ~~is authorized to generate~~ random audits of the taxpayers' sworn statements to ensure the accuracy of the household income reported. If ~~se~~ selected for audit, a taxpayer shall execute Internal Revenue Service Form 8821 or 4506, which authorizes the Internal Revenue Service to release tax information to the property appraiser's office. All reviews conducted in accordance with this section shall be completed on or before June 1. The property appraiser may not grant ~~or renew~~ the exemption if the required documentation requested is not

Page 2 of 3

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59 provided.

60 Section 2. This act shall take effect July 1, 2021.

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 Community Affairs

BILL: CS/SB 1256

INTRODUCER: Community Affairs Committee and Senator Polsky

SUBJECT: Homestead Exemption for Seniors 65 and Older

DATE: March 17, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hackett	Ryon	CA	Fav/CS
2.	_____	_____	FT	_____
3.	_____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1256 alters the process by which a senior verifies his or her income for purposes of receiving certain income-based homestead property tax exemptions. Current law authorizes local governments to enact ordinances granting additional homestead exemptions for low-income seniors over the age of 65. The bill removes the requirement that a qualifying senior annually submit a sworn statement of his or her income to the property appraiser, and instead establishes a process by which the senior must notify a property appraiser upon a change in income that may disqualify him or her for the exemption.

Specifically, the bill requires that an ordinance enacted by a local government authorizing an additional homestead exemption for low-income seniors must require the taxpayer to submit a sworn statement of household income when claiming the exemption for the first time only, rather than annually. The property appraiser must annually notify each taxpayer claiming the exemption of the adjusted income limitation for that year. The taxpayer must then notify the property appraiser if his or her income exceeds such income limitation.

The bill takes effect July 1, 2021.

II. Present Situation:

General Overview of Property Taxation

The ad valorem tax or “property tax” is an annual tax levied by counties, municipalities, school districts, and some special districts. The tax is based on the taxable value of property as of January 1 of each year.¹ The property appraiser annually determines the assessed or “just value”² of property within the taxing authority and then applies relevant exclusions, assessment limitations, and exemptions to determine the property’s “taxable value.”³ Tax bills are mailed in November of each year based on the previous January 1 valuation and payment is due by March 31.

The Florida Constitution prohibits the state from levying ad valorem taxes⁴ and limits the Legislature’s authority to provide for property valuations at less than just value, unless expressly authorized.⁵

The just valuation standard generally requires the property appraiser to consider the highest and best use of property;⁶ however, the Florida Constitution authorizes certain types of property to be valued based on their current use (classified use assessments), which often result in lower assessments. Properties that receive classified use treatment in Florida include: agricultural land, land producing high water recharge to Florida’s aquifers, and land used exclusively for noncommercial recreational purposes;⁷ land used for conservation purposes;⁸ historic properties when authorized by the county or municipality;⁹ and certain working waterfront property.¹⁰

Property Tax Exemptions for Homesteads

Statewide Homestead Exemption

Every person having legal and equitable title to real estate and who maintains a permanent residence on the real estate (homestead property) is eligible for a \$25,000 tax exemption applicable to all ad valorem tax levies, including levies by school districts.¹¹ An additional

¹ Both real property and tangible personal property are subject to tax. Section 192.001(12), F.S., defines “real property” as land, buildings, fixtures, and all other improvements to land. Section 192.001(11)(d), F.S., defines “tangible personal property” as all goods, chattels, and other articles of value capable of manual possession and whose chief value is intrinsic to the article itself.

² Property must be valued at “just value” for purposes of property taxation, unless the Florida Constitution provides otherwise. FLA. CONST. art VII, s. 4. Just value has been interpreted by the courts to mean the fair market value that a willing buyer would pay a willing seller for the property in an arm’s-length transaction. *See Walter v. Shuler*, 176 So. 2d 81 (Fla. 1965); *Deltona Corp. v. Bailey*, 336 So. 2d 1163 (Fla. 1976); *Southern Bell Tel. & Tel. Co. v. Dade County*, 275 So. 2d 4 (Fla. 1973).

³ *See* s. 192.001(2) and (16), F.S.

⁴ FLA. CONST. art. VII, s. 1(a).

⁵ *See* FLA. CONST. art. VII, s. 4.

⁶ Section 193.011(2), F.S.

⁷ FLA. CONST. art. VII, s. 4(a).

⁸ FLA. CONST. art. VII, s. 4(b).

⁹ FLA. CONST. art. VII, s. 4(e).

¹⁰ FLA. CONST. art. VII, s. 4(j).

¹¹ FLA. CONST. art VII, s. 6(a) and s. 196.031, F.S.

\$25,000 exemption applies to homestead property value between \$50,000 and \$75,000.¹² This exemption does not apply to ad valorem taxes levied by school districts.

Additional Homestead Exemptions for Qualified Senior Citizens

The Florida Constitution authorizes the Legislature to allow counties and municipalities to grant additional homestead property tax exemptions for persons aged 65 years or over whose household income does not exceed \$20,000 (low-income seniors).¹³ That income limitation is adjusted each year according to changes in the consumer price index. The 2020 household income threshold for these exemptions is \$31,100.¹⁴ Qualifying seniors must hold legal or equitable title to the real estate and maintain thereon their permanent residence.

Section 196.075, F.S., implements those constitutional amendments approved by voters in 1999 and 2012 allowing local governments to grant low-income seniors these additional homestead exemptions. The first additional homestead exemption so authorized,¹⁵ approved by voters in 1999, is an additional homestead exemption not exceeding \$50,000 in home value for any low-income senior. The second additional homestead exemption,¹⁶ approved by voters in 2012, exempts the entire assessed value of a low-income senior's homestead with a just value less than \$250,000 if he or she has maintained that homestead for not less than 25 years.¹⁷ A county or municipality may choose to instate one or both of these additional homestead exemptions by passing an ordinance subject to certain statutory requirements.

Requirements for Ordinances Granting Additional Homestead Exemptions

An ordinance granting an additional homestead exemption for low-income seniors as authorized by s. 196.075, F.S., must follow certain statutory requirements. The ordinance must be adopted under the typical procedures for adoption of a nonemergency ordinance.¹⁸ Additionally, an ordinance granting a full exemption for homestead property valued less than \$250,000 must be approved by a super majority vote (majority plus one) of the members of the governing body.¹⁹ An ordinance must specify that the exemption applies only to taxes levied by the governmental entity granting the exemption,²⁰ and specify the amount of the exemption, not to exceed the limits provided in statute.²¹ Finally, an ordinance granting an additional homestead exemption must require the taxpayer claiming the exemption to submit to the property appraiser a sworn statement of household income each year.²²

¹² Section 196.031(1)(b), F.S.

¹³ FLA. CONST. Art. VII, s. 6(d)(1) and (2).

¹⁴ Florida Department of Revenue, *Florida Property Tax Valuation and Income Limitation Rates*, available at <https://floridarevenue.com/property/Documents/AdditionalHomesteadExemptions.pdf> (last visited March 10, 2021).

¹⁵ Implementing FLA. CONST. art. VII, s. 6(d)(1).

¹⁶ Implementing FLA. CONST. art. VII, s. 6(d)(2).

¹⁷ Taxpayers who initially receive the exemption in a later year if the just value of their homestead exceeds \$250,000.

¹⁸ Section 196.075(4)(a), F.S.

¹⁹ *Id.*

²⁰ Section 196.075(4)(b), F.S.

²¹ Section 196.075(4)(c), F.S.

²² Section 196.075(4)(d), F.S.

Requirements for Sworn Statements of Household Income

The Department of Revenue (department) is required by statute to regulate the annual statement of household income. The statement must be supported by copies of federal income tax returns for the prior year, W-2 forms, any request for an extension of time to file such statement, and any other document the department finds necessary.²³ The taxpayer's sworn statement must attest to the accuracy of such documents and agree to their inspection by the property appraiser.²⁴ Supporting documents are not required, unless requested, for a renewal of an existing exemption.²⁵ The property appraiser is authorized to randomly audit such statements.²⁶

Penalties for Failure to Notify and Tax Liens

Under s. 196.075, F.S., if the property appraiser determines that for any year within the last ten years the taxpayer received an exemption for which they were not entitled, the taxpayer shall be subject to the taxes exempted as a result of such failure and a penalty of 50 percent of the taxes exempted plus 15 percent interest per annum. If such penalty is not paid in 30 days, the property appraiser must record a notice of tax lien against any property in the county owned by that person, or property in other counties if that person no longer owns property in the appraiser's county.

This penalty, its valuation and lien provision, is equivalent to the penalty associated with receiving a general homestead exemption to which a taxpayer was not entitled.²⁷

III. Effect of Proposed Changes:

The bill amends s. 196.075, F.S., to require that an ordinance enacted by a local government authorizing an additional homestead exemption for low-income seniors must require the taxpayer to submit a sworn statement of household income only when initially claiming the exemption, rather than annually.

The bill provides that the property appraiser must annually notify each taxpayer claiming an income-based senior homestead exemption of the adjusted income limitation for that year. The taxpayer must then notify the property appraiser by May 1 of that year if his or her household income exceeds such income limitation.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

²³ Section 196.075(5), F.S.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ Section 193.155(10), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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

The Revenue Estimating Conference determined that the bill will have an indeterminate positive or negative impact on local government revenue.

B. Private Sector Impact:

The bill amends the process by which a senior verifies his or her income for purposes of receiving certain income-based homestead property tax exemptions, in order to reduce the burden of submitting sworn statements annually. As is the case with current law, a senior may be subject to penalties for receiving a homestead exemption for which he or she is not eligible; such penalties are not changed by the bill.

C. Government Sector Impact:

Property appraisers may see insignificant expenses as a result of implementing the new notification procedures required in the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 196.075 of the Florida Statutes.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Community Affairs on March 16, 2021:

The committee substitute:

- Deletes a provision in current law regarding the submission of supporting documentation when renewing a homestead exemption for low-income seniors.
- Moves the date by which a taxpayer must notify the property appraiser that their income has exceeded the income limitation from March 1 to May 1, annually.
- Removes duplicate reference to penalties for a taxpayer receiving an additional homestead exemption to which he or she is not entitled. With the amendment, taxpayers are still subject to such penalties under s. 196.075(9), F.S.

- B. **Amendments:**

None.



953670

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
03/17/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Baxley) recommended the following:

Senate Amendment (with title amendment)

Delete lines 43 - 49
and insert:
exceeds the most recent adjusted income limitation. The property
appraiser may

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

And the title is amended as follows:

Delete lines 8 - 10



953670

11 and insert:

12 limitations on an annual basis; providing an



630516

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/17/2021	.	
	.	
	.	
	.	

The Committee on Community Affairs (Polsky) recommended the following:

Senate Amendment (with title amendment)

Delete lines 35 - 49

and insert:

~~Submission of supporting documentation is not required for the renewal of an exemption under this section unless the property appraiser requests such documentation.~~ Once the documents have been inspected by the property appraiser, they shall be returned to the taxpayer or otherwise destroyed. Annually, the property appraiser shall notify each taxpayer of the adjusted income



630516

11 limitation set forth in subsection (3). The taxpayer must notify
12 the property appraiser by May 1 if his or her household income
13 exceeds the most recent adjusted income limitation. The property
14 appraiser may

15

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

17 And the title is amended as follows:

18 Delete lines 8 - 10

19 and insert:

20 limitations on an annual basis; providing an

CourtSmart Tag Report

Room: SB 37

Case No.:

Type:

Caption: Community Affairs Committee Judge:

Started: 3/16/2021 9:00:27 AM

Ends: 3/16/2021 11:34:03 AM

Length: 02:33:37

9:00:26 AM Meeting has come to order
9:00:30 AM Roll call
9:00:39 AM Quorum present
9:00:50 AM Pledge of Allegiance
9:00:51 AM Chair Bradly speaking
9:01:51 AM Take up tab 2 SB 628
9:01:58 AM Senator Rouson explains bill
9:03:35 AM Questions on bill?
9:03:54 AM Appearance forms?
9:04:00 AM Jeffrey Sharkey, City of St. Petersburg speaking in support
9:04:22 AM Taylor Patrick Biell, City of St. Petersburg waives in support
9:04:33 AM Debate on bill?
9:04:37 AM Senator Cruz with debate
9:05:09 AM Senator Rouson waives close
9:05:16 AM Roll call on SB 628
9:05:18 AM SB 628 is reported favorably
9:05:33 AM Take up tab 6 SB 1606
9:05:49 AM Senator Rodriguez explains bill
9:06:19 AM Questions on bill?
9:06:24 AM Senator Polsky with question
9:06:51 AM Senator Rodriguez responds
9:07:20 AM Senator Polsky with follow up
9:07:33 AM Senator Rodriguez with response
9:07:55 AM Senator Polsky with follow up question
9:08:28 AM Senator Rodriguez with response
9:09:57 AM Senator Polsky with follow up
9:10:06 AM Senator Rodriguez with response
9:10:10 AM Senator Powell with question
9:10:19 AM Senator Rodriguez with response
9:11:06 AM Senator Powell with follow up
9:11:39 AM Senator Rodriguez with response
9:12:44 AM Senator Powell with follow up question
9:13:04 AM Senator Rodriguez with response to follow up question
9:13:40 AM Senator Powell with follow up
9:14:06 AM Senator Rodriguez with response
9:15:15 AM Senator Powell with question
9:15:33 AM Senator Rodriguez with response
9:15:49 AM Senator Hutson with question
9:16:01 AM Senator Rodriguez with response to Senator Hutson
9:16:18 AM Senator Garcia with question
9:17:11 AM Appearance forms
9:17:40 AM No appearance forms
9:17:42 AM Debate
9:17:47 AM Senator Baxley with debate
9:18:42 AM Senator Polsky with debate
9:22:41 AM Senator Garcia with debate
9:23:53 AM Senator Cruz with debate
9:25:28 AM Senator Powell with debate
9:27:15 AM Senator Hutson with debate
9:28:35 AM Senator Rodriguez closes on bill
9:29:44 AM Roll call on SB 1606
9:29:54 AM SB 1606 is reported favorably

9:30:16 AM Take up tab 7 CS/SB 1624
9:30:22 AM Senator Albritton explains bill
9:32:08 AM Temporarily postpone CS/SB 1624
9:32:32 AM Take up tab 1 CS/SB 284
9:32:44 AM Senator Perry explains bill
9:33:25 AM Senator Perry explains amendment barcode 353158
9:33:56 AM Questions on amendment, none
9:34:07 AM Tara Taggart, Florida League of Cities waives in support
9:34:32 AM Take up amendment to the amendment barcode 538092
9:34:46 AM Senator Powell explains amendment
9:35:24 AM Questions, none
9:35:30 AM Appearance forms
9:35:32 AM Haley Busch, 1000 Friends of Florida waives in support
9:35:40 AM Angela Drzewiecki, City of Orlando waives in support
9:35:46 AM Jeffrey Sharkey, City of St. Petersburg waives in support
9:36:07 AM Debate on amendment, none
9:36:14 AM Senator Perry closes on amendment
9:36:47 AM Senator Powell withdraws amendment
9:36:59 AM Amendment barcode 538092 withdrawn
9:37:08 AM Amendment barcode 166978
9:37:20 AM Senator Powell explains amendment 166978
9:38:18 AM Questions on amendment
9:38:23 AM Appearance forms
9:38:26 AM Jeffrey Sharkey, City of St. Petersburg waives in support
9:38:37 AM Debate, none
9:38:41 AM Senator Perry with comment
9:38:49 AM Senator Powell withdraws amendment barcode 166978
9:39:08 AM Amendment barcode 166978 withdrawn
9:39:14 AM Questions on amendment as not amended
9:39:25 AM Senator Powell with questions
9:40:10 AM Senator Perry with response
9:41:02 AM Senator Powell with follow up
9:41:44 AM Senator Perry with response
9:42:12 AM Senator Perry with response
9:42:34 AM Senator Powell with question
9:43:05 AM Senator Perry with response
9:44:17 AM Senator Powell follow up
9:44:28 AM Senator Perry with response
9:45:15 AM Senator Powell with response
9:45:56 AM Appearance forms, none
9:46:17 AM Debate on amendment, none
9:46:24 AM Senator Perry Waives close
9:46:39 AM Amendment barcode 353158 is adopted
9:46:45 AM Back on bill
9:46:48 AM Questions
9:46:55 AM Appearance forms
9:46:58 AM Edward Briggs, Highland Homes waives in support
9:47:01 AM Haley Busch, 1000 Friends of Florida waives against
9:47:07 AM Meta Calder, League of women Voters Florida waives against
9:47:21 AM Debate on bill?
9:47:27 AM Senator Powell with debate
9:47:58 AM Senator Perry closes on bill
9:48:27 AM Roll call CS/SB 284
9:48:37 AM CS/SB 284 reported favorably
9:48:58 AM Back on tab 7 CS/SB 1624 by Senator Albritton
9:49:12 AM Senator Albritton already explained bill
9:49:20 AM Take up amendment barcode 665086
9:49:26 AM Senator Hooper explains amendment
9:49:41 AM Amendment barcode 665086 withdrawn by Senator Hooper
9:50:10 AM Questions on bill
9:50:14 AM Appearance forms
9:50:18 AM Justin Thames, Florida Institute of CPAs speaking against

9:51:00 AM Chris Lyon, Florida Association of Special Districts/ Florida Mosquito Control Association speaking for information

9:53:49 AM Debate on bill

9:53:58 AM Senator Albritton close on bill

9:54:02 AM Roll call on CS/SB 1624

9:54:11 AM CS/SB 1624 is reported favorably

9:54:26 AM Take up tab 8 SB 1884 by Senator Rodrigues

9:54:40 AM Senator Rodrigues explains bill

9:57:10 AM Questions on bill

9:58:12 AM Senator Rodrigues with response

9:58:48 AM Senator Cruz follow up

9:59:10 AM Senator Polsky with question

9:59:37 AM Senator Rodrigues with response

10:00:42 AM Senator Polsky follow up

10:00:55 AM Senator Rodrigues with response to follow up

10:01:13 AM Senator Polsky with follow up

10:02:08 AM Senator Rodrigues with response

10:02:20 AM Senator Polsky with follow up question

10:02:59 AM Senator Rodrigues responds to follow up

10:04:06 AM Senator Polsky with follow up

10:05:06 AM Senator Rodrigues with response

10:05:35 AM Senator Polsky with follow up

10:06:37 AM Senator Rodrigues with response

10:06:57 AM Appearance forms

10:07:09 AM Ida Eskamani, Florida Rising waiving against

10:07:15 AM Marion Hammer, NRA and unified sportsmen of Florida waives in support

10:07:23 AM Gaby Loewenstrin, Moms Demand Action, FL Chapter waives against

10:07:30 AM Barbra Devane, FL NOW waiving against

10:07:42 AM Debate on bill

10:07:46 AM Senator Polsky with debate

10:09:13 AM Senator Baxley with debate

10:09:50 AM Senator Rodrigues closes on bill

10:10:28 AM Roll call on SB 1884

10:10:56 AM SB 1884 is reported favorably

10:11:13 AM Take up tab 3 CS/SB 758

10:11:24 AM Senator Diaz explains bill

10:12:35 AM Questions on bill, none

10:12:43 AM Take up amendment barcode 741906

10:12:59 AM Senator Diaz explains amendment

10:13:10 AM Questions for amendment

10:13:17 AM Appearance forms, none

10:13:22 AM Debate, none

10:13:28 AM Senator Diaz waives close

10:13:32 AM Amendment barcode 741906 is adopted

10:13:39 AM Questions on bill as amended

10:13:44 AM Appearance form

10:13:49 AM Diego Echeverri, Americans For Prosperity waives in support

10:14:03 AM Debate, none

10:14:09 AM Senator Diaz waive close

10:14:13 AM Roll call on CS/SB 758

10:14:22 AM CS/SB 758 is reported favorably

10:14:42 AM Take up tab 4 CS/SB 1924

10:14:48 AM Senator Diaz explains bill

10:15:08 AM Amendment barcode 870038 is introduced

10:15:27 AM Amendment barcode 870038 is explained by Senator Diaz

10:17:23 AM Questions on amendment

10:17:30 AM Senator Polsky with question

10:17:39 AM Senator Diaz with response

10:18:32 AM Senator Polsky with follow up

10:19:20 AM Senator Diaz with response to follow up

10:19:44 AM Senator Polsky with question

10:20:30 AM Senator Diaz with response

10:20:53 AM Appearance forms? None
10:21:53 AM Debate on amendment
10:22:00 AM Senator Diaz waives close
10:22:06 AM Amendment barcode 870038 is adopted
10:22:29 AM Amendment barcode 741906 withdrawn
10:22:41 AM Questions on bill as amended
10:22:49 AM Senator Powell with question
10:22:56 AM Senator Diaz with response
10:23:10 AM Senator Powell with follow up
10:23:31 AM Senator Diaz with response to follow up
10:23:56 AM Senator Powell with question
10:24:25 AM Senator Diaz with response to question
10:25:33 AM Appearance form
10:26:32 AM Scott Dudley, Florida League of Cities, waives against
10:26:35 AM Ida Eskamani, Florida Rising waives against
10:26:43 AM Tonnette Graham, Florida Association of Counties waives against
10:27:57 AM Debate on bill
10:28:03 AM Senator Baxley with debate
10:31:10 AM Senator Polsky with debate
10:35:26 AM Senator Diaz closes on bill
10:37:07 AM Roll call on CS/SB 1924
10:37:28 AM CA/AB 1924 is reported favorably
10:37:40 AM Take up tab 10 CS/SB 856
10:37:47 AM Senator Hutson explains bill
10:37:56 AM Senator Hutson explains amendment barcode 563192
10:38:44 AM Amendment 563192 is explained by Senator Hutson
10:39:27 AM Questions on amendment, none
10:39:34 AM Appearance forms, none
10:39:49 AM Debate, none
10:39:54 AM Senator Hutson waive close
10:39:58 AM Amendment to the amendment is adopted
10:40:07 AM Back on amendment as amended
10:40:13 AM Questions
10:40:16 AM Senator Powell with question
10:41:00 AM Senator Hutson with response
10:41:18 AM Senator Powell with follow up
10:42:18 AM Senator Hutson with response to follow up
10:43:20 AM Senator Powell with follow up
10:44:09 AM Senator Hutson with response to follow up
10:44:42 AM Senator Polsky with question
10:45:24 AM Senator Hutson with response
10:45:30 AM Senator Polsky with follow up
10:46:26 AM Senator Hutson with response
10:46:51 AM Senator Cruz with question
10:47:39 AM Senator Hutson with response
10:49:29 AM Senator Powell for clarity
10:50:33 AM Senator Hutson with response
10:51:23 AM Appearance form
10:51:50 AM Jeff Scala, Florida Association of Counties speaking in support
10:52:37 AM Rebecca O'Hara, Florida League of Cities, Inc. waives in support
10:52:52 AM Debate on amendment as amended
10:53:00 AM Senator Hutson waive close
10:53:03 AM Amendment barcode 423736 is adopted
10:53:09 AM Back on bill as amended
10:53:12 AM Questions, none
10:53:18 AM Appearance form
10:53:20 AM Grace Lovett, FL Retail Federation waives in support
10:53:26 AM Meta Calder, League of Women Votes Florida waives against
10:53:35 AM Kim Ross, Rethink Energy Action Fund speaking
10:54:30 AM Christopher Emmanuel, Florida Chamber of Commerce waives in support
10:54:39 AM B.D. Jogerst, Associated Industries of Florida waives in support
10:54:48 AM Eric Hamilton, American Petroleum Institute waives in support

10:55:01 AM Debate on bill as amended
10:55:08 AM Senator Hutson closes on bill
10:55:16 AM Roll call CS/SB 856
10:55:28 AM CS/SB 856 is reported favorably
10:55:51 AM Tab 11 CS/SB 1128
10:55:59 AM Take up amendment barcode 786448
10:56:10 AM Senator Hutson explains amendment barcode 786448
10:57:08 AM Questions on amendment
10:57:13 AM Senator Cruz with question
10:57:35 AM Senator Hutson responds
10:58:07 AM Senator Cruz with follow up
10:58:33 AM Senator Hutson with response to follow up
10:59:32 AM Senator Cruz follow up
11:00:35 AM Senator Hutson with response to follow up
11:01:42 AM Senator Polsky with question
11:01:55 AM Senator Hutson with response
11:02:06 AM Senator Polsky with follow up
11:02:37 AM Senator Hutson with response
11:03:06 AM Senator Hooper with question
11:03:53 AM Senator Hutson with response
11:04:10 AM Appearance form
11:04:22 AM Rebecca O'Hara, Florida League of Cities waives in support
11:04:40 AM Debate on amendment
11:04:48 AM Senator Hutson waives close
11:04:54 AM Amendment barcode 786448 is adopted
11:04:59 AM Back on bill as amended
11:05:03 AM Questions on bill: None
11:05:07 AM Appearance form
11:05:11 AM Ida Eskamani, Florida Rising speaking against
11:07:31 AM Kim Ross, Rethink Energy Action Fund speaking against
11:09:12 AM Dale Calhoun, Florida Natural Gas Association speaking in favor
11:09:39 AM Jonathan Webber, Florida Conservation Voters speaking against
11:11:29 AM David Cullen, Sierra Club Florida speaking against
11:13:44 AM Meta Calder, League of Women Voters waiving against
11:13:53 AM Jessica Lewis, Floridians against Fracking waiving against
11:13:57 AM Grace Lovett, FL Retail Federation waiving in support
11:14:02 AM Samantha Padgett, Florida Restaurant and Lodging Association waiving in support
11:14:06 AM Rusty Payton, Florida Home Builders Association waives in support
11:14:11 AM B.D. Jogerst, Associated Industries of Florida waiving in support
11:14:31 AM Debate on bill as amended
11:14:39 AM Senator Hutson closes on bill
11:15:25 AM Roll call on CS/SB 1128
11:15:46 AM CS/SB 1128 is reported favorably
11:16:03 AM Take up tab 5 SB 1068
11:16:13 AM Senator Taddeo explains bill
11:17:59 AM Temporarily postpone bill
11:19:04 AM Take up tab 9 CS/SB 630
11:19:12 AM Senator Baxley explains CS/SB 630
11:21:21 AM Questions on the bill, none
11:21:28 AM Appearance forms
11:21:34 AM Chief Ray Colburn, Florida Fire Chiefs' Association speaking for information
11:22:45 AM Mark Anderson, Chief Executive Officers of Management Companies waives in support
11:22:57 AM Travis Moore, Community Association Institute and First Service Residential waive in support
11:23:09 AM William Sklar, Florida Homebuilders Association waives in support
11:23:14 AM Maro Panedes, On Top of the World Communities waives in support
11:23:21 AM Rusty Payton, Florida Home Builders Association waives in support
11:23:25 AM Mathew Mercier, CB12 Insurance Services waives in support
11:23:32 AM Pete Dunbar, Real Property Probate and Trust Law Section Florida Bar waives in support
11:23:39 AM Laura Pearce, Florida Association of Insurance Agents waives in support
11:23:54 AM Debate on bill
11:24:00 AM Senator Baxley waives close
11:24:07 AM Roll call CS/SB 630

11:24:15 AM CS/SB 630 is reported favorably
11:24:26 AM Take up tab 12 SB 916
11:24:34 AM Senator Brodeur explains bill
11:26:29 AM Questions on bill
11:26:33 AM Senator Hutson with question
11:26:40 AM Senator Brodeur with response
11:26:58 AM Appearance form
11:27:05 AM Diana Ferguson, American Society of Landscape Architects- Florida Chapter waives in support
11:27:13 AM Rebecca O'Hara, Florida League of Cities, Inc. waives in support
11:27:17 AM Jim Spratt, Florida Chapter of the International Society of Arboriculture waives in support
11:27:29 AM Debate on bill
11:27:35 AM Senator Cruz in debate
11:28:12 AM Senator Brodeur closes on bill
11:28:31 AM Roll call on SB 916
11:28:39 AM SB916 is reported favorably
11:28:50 AM Take up tab 13 SB 1256
11:28:57 AM Senator Polsky explains bill
11:29:40 AM Amendment barcode 630516 is explained
11:30:34 AM Questions on amendment, none
11:30:44 AM Appearance forms, none
11:30:52 AM Debate, none
11:30:57 AM Senator Polsky waive close
11:30:59 AM Amendment barcode 630516 is adopted
11:31:15 AM Amendment barcode 953670 by Senator Baxley
11:31:47 AM Amendment barcode 953670 is withdrawn
11:32:05 AM Back on bill
11:32:08 AM Questions
11:32:14 AM Appearance forms
11:32:24 AM Albert Balida, Florida Association of Property Appraisers speaking for information
11:32:43 AM Debate on bill, none
11:32:59 AM Senator Polsky waives close
11:33:06 AM Roll call
11:33:13 AM SB 1256 is reported favorably
11:33:26 AM Senator Baxley to be recorded on CS/SB 284 and CS/SB 1624
11:33:43 AM Motion adopted
11:33:48 AM Senator Brodeur moves to adjourn
11:33:53 AM Meeting is adjourn