Tab 1	**CS/SB 900** by **GO, Flores**; (Similar to H 00695) Firefighters					
455586	A	S		CA, Flores	Delete L.23 - 24:	02/12 10:16 AM
Tab 2	**SB 574** by **Steube**; (Compare to CS/H 00521) Tree and Timber Trimming, Removal, and Harvesting					
~~132156~~	D	S	WD	CA, Steube	Delete everything after	02/12 07:59 AM
~~267270~~	AA	S	WD	CA, Rodriguez	Delete L.5 - 70.	02/12 08:12 AM
542450	D	S		CA, Steube	Delete everything after	02/12 10:16 AM
Tab 3	**CS/SB 1576** by **AG, Steube (CO-INTRODUCERS) Perry**; (Similar to CS/H 00473) Animal Welfare					
772418	A	S		CA, Steube	Delete L.277:	02/12 10:17 AM
Tab 4	**SB 1504** by **Rouson**; (Similar to CS/H 01383) Tax Deed Sales					
533970	D	S		CA, Rouson	Delete everything after	02/12 10:17 AM
Tab 5	**CS/SB 1282** by **BI, Taddeo**; (Similar to CS/CS/H 01011) Residential Property Insurance					
Tab 6	**CS/SB 1274** by **RI, Passidomo (CO-INTRODUCERS) Mayfield**; (Similar to CS/CS/H 00841) Community Associations					
Tab 7	**CS/SB 1304** by **BI, Young**; (Compare to CS/H 01033) Bicycle Sharing					
Tab 8	**CS/SB 1308** by **EP, Perry**; (Identical to CS/H 01149) Environmental Regulation					
~~200016~~	A	S	WD	CA, Perry	Delete L.120 - 167:	02/07 02:49 PM
~~520250~~	AA	S	WD	CA, Perry	Delete L.24 - 44:	02/07 02:49 PM
207382	A	S		CA, Perry	Delete L.120 - 236:	02/12 10:18 AM
~~979634~~	A	S	WD	CA, Perry	Delete L.173 - 174:	02/07 02:49 PM
~~605428~~	A	S	WD	CA, Perry	Delete L.233 - 236:	02/07 02:50 PM
657036	A	S		CA, Perry	btw L.631 - 632:	02/12 10:17 AM

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

COMMUNITY AFFAIRS
Senator Lee, Chair
Senator Bean, Vice Chair

MEETING DATE: Tuesday, February 13, 2018
TIME: 10:00 a.m.—12:00 noon
PLACE: 301 Senate Office Building

MEMBERS: Senator Lee, Chair; Senator Bean, Vice Chair; Senators Brandes, Campbell, Perry, Rodriguez, and Simmons

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**CS/SB 900** Governmental Oversight and Accountability / Flores (Similar H 695)	Firefighters; Granting certain benefits to a firefighter upon receiving a diagnosis of cancer if certain conditions are met; requiring an employer to make certain disability payments to a firefighter in the event of a total and permanent disability; providing for death benefits to a firefighter's beneficiary if a firefighter died as a result of cancer or cancer treatments; specifying that any costs associated with benefits granted by the act are to be borne by the employer, etc. GO 01/30/2018 Fav/CS CA 02/13/2018 AGG AP	
2	**SB 574** Steube (Compare CS/H 521)	Tree and Timber Trimming, Removal, and Harvesting; Preempting to the state the regulation of the trimming, removal, or harvesting of trees and timber on private property; prohibiting local governments from prohibiting the burial of vegetative debris on certain properties, etc. CA 02/06/2018 Not Considered CA 02/13/2018 EP RC	
3	**CS/SB 1576** Agriculture / Steube (Similar CS/H 473, Compare H 823, S 952)	Animal Welfare ; Requiring specified entities that take receivership of lost or stray dogs or cats to adopt written policies and procedures to ensure that every reasonable effort is made to quickly and reliably return owned animals to their owners; authorizing a court to prohibit certain offenders from owning or having custody or control over animals; revising the ranking of offenses on the offense severity ranking chart of the Criminal Punishment Code, etc. AG 02/01/2018 Fav/CS CA 02/13/2018 CJ RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
4	**SB 1504** Rouson (Similar CS/H 1383)	Tax Deed Sales; Requiring certain tax certificateholders applying for a tax deed to pay certain costs required to bring the property to sale; requiring a clerk of the court, upon receiving the tax deed application file from the tax collector, to record a specified notice in the official records; revising requirements and procedures for the holding, payment, disbursement, and distribution by the clerk of certain excess proceeds from a tax deed sale, etc. CA 02/13/2018 AFT AP	
5	**CS/SB 1282** Banking and Insurance / Taddeo (Similar CS/CS/H 1011)	Residential Property Insurance; Revising a mandatory homeowner's insurance policy disclosure regarding the absence of law and ordinance and flood insurance coverage; requiring insurers issuing such policies to include the disclosure with the policy documents upon the initial issuance of the policy and each renewal, etc. BI 01/30/2018 Fav/CS CA 02/13/2018 RC	
6	**CS/SB 1274** Regulated Industries / Passidomo (Similar CS/CS/H 841, Compare S 1530)	Community Associations; Deleting a provision prohibiting an association from hiring an attorney who represents the management company of the association; revising the list of documents that the association is required to post online; revising voting requirements relating to alterations and additions to certain common elements or association property; revising cooperative association recordkeeping requirements; prohibiting a board member from voting via e-mail, etc. RI 01/30/2018 Fav/CS CA 02/13/2018 RC	
7	**CS/SB 1304** Banking and Insurance / Young (Compare CS/H 1033)	Bicycle Sharing; Authorizing a bicycle sharing company to allow a minor to operate a bicycle reserved by a user if accompanied by a user; providing insurance requirements for a bicycle sharing company; authorizing a local governmental entity to annually require a bicycle sharing company to provide proof of insurance; authorizing a local governmental entity to issue a bicycle sharing company certain fines and fees and to impose other penalties under certain circumstances, etc. BI 02/06/2018 Fav/CS CA 02/13/2018 RC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
8	**CS/SB 1308** Environmental Preservation and Conservation / Perry (Identical CS/H 1149)	Environmental Regulation; Revising the required provisions of the water resource implementation rule; requiring the Department of Environmental Protection and the water management districts to develop and enter into a memorandum of agreement providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit; requiring counties and municipalities to address contamination of recyclable material in specified contracts; prohibiting counties and municipalities from requiring the collection or transport of contaminated recyclable material by residential recycling collectors, etc. EP 01/22/2018 Fav/CS CA 02/06/2018 Not Considered CA 02/13/2018 AP	

Other Related Meeting Documents

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL:	CS/SB 900
INTRODUCER:	Governmental Oversight and Accountability Committee and Senator Flores
SUBJECT:	Firefighters
DATE:	February 12, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Caldwell	Caldwell	GO	**Fav/CS**
2.	Present	Yeatman	CA	**Pre-meeting**
3.			AGG	
4.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 900 entitles firefighters to certain benefits upon a diagnosis of cancer, as an alternative to pursuing worker's compensation claims. Specifically, firefighters are entitled to cancer treatment, at no cost to the firefighter, and a one-time cash payout of $25,000, upon the firefighter's initial diagnosis of cancer. In order to be entitled to such benefits, the firefighter must:

- Have been employed by his or her employer for at least 5 continuous years;
- Not have used tobacco products for at least the preceding 5 years; and
- Have not been employed in any other position in the preceding 5 years which is proven to create a higher risk for cancer.

Employers must provide coverage within an employer-sponsored health plan or through a group health insurance trust fund. The firefighter may not be required to contribute toward any deductible, co-payment, or coinsurance amount for the treatment of cancer.

II. Present Situation:

According to the Department of Financial Services (DFS), Florida law does not provide benefits to firefighters who receive a diagnosis or treatment of cancer.[1] However, there is a statutory

[1] Department of Financial Services, Agency bill analysis, Nov. 29, 2017, p. 1.

provision relating to employment-related accidents and injuries of first responders. Benefits may be available upon a showing by a preponderance of the evidence that exposure to a specific toxic substance, at the levels to which the first responder was exposed, can cause the injury or disease sustained by the employee and that the exposure arose out of employment.[2]

The incidence of cancer among firefighters appears to be higher on average than other occupations. Firefighters work in inherently dangerous situations on a daily basis. They are exposed to many different carcinogens, either inhaled or absorbed through the skin both on the scene and in the firehouse. Studies have been conducted at the state, national, and international level resulting in the identification of cancers found to be common among firefighters.[3] This information has been used to train and educate firefighters to reduce exposure to carcinogens resulting from firefighting activities.

In 2010, the National Institute for Occupational Safety and Health (NIOSH) initiated a study to evaluate the cancer risk of firefighters.[4] The study served to identify whether firefighters are at a higher risk of developing cancer related to exposure on the job. Researchers studied death related to cancer as well as specific types of cancers involved. Researchers took into consideration the types and number of fire runs, use of protective equipment, and diesel exhaust controls. The study spanned 4 years and the sample size included over 30,000 career firefighters serving in Chicago, Philadelphia, and San Francisco between 1950 and 2010. This was the largest study of firefighters ever completed.[5]

According to the 2010 study, firefighters have a 9 percent higher risk of being diagnosed with cancer and a 14 percent higher risk of dying from cancer than the general population in the United States. The cancers mostly responsible for this higher risk were respiratory (lung, mesothelioma), gastrointestinal (oral cavity, esophageal, large intestine) and kidney.[6]

III. Effect of Proposed Changes:

The bill creates a new section within Chapter 112, F.S., which addresses employees. The bill defines the term:

- "Employer" to mean a state board, commission, department, division, bureau or agency, or a county, municipality, or other political subdivision of the state; and
- "Firefighter" to mean an individual employed as a full-time firefighter within the fire department or public safety department of an employer whose primary responsibility is the prevention and extinguishing of fires; the protection of life and property; and the

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[2] Section 112.1815(2)(a), F.S.

[3] Occupation and Cancer, American Cancer Society, https://www.cancer.org/content/dam/cancer-org/cancer-control/en/booklets-flyers/occupation-and-cancer-fact-sheet.pdf; 15 Jobs That Put You at a Higher Risk of Cancer, https://www.cheatsheet.com/money-career/jobs-put-higher-cancer-risk.html/?a=viewall; Cancer Facts and Figures, American Cancer Society, https://www.cancer.org/research/cancer-facts-statistics/all-cancer-facts-figures.html; Exposure–response relationships for select cancer and non-cancer health outcomes in a cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950–2009), https://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-(2015).pdf.

[4] A copy of the study is on file with the Senate Committee on Governmental Oversight and Accountability. *See* also, Exposure–response relationships for select cancer and non-cancer health outcomes in a cohort of US firefighters from San Francisco, Chicago and Philadelphia (1950–2009), https://www.cdc.gov/niosh/firefighters/pdfs/Daniels-et-al-(2015).pdf.

[5] http://www.modernfirefighter.com/cancer-the-unseen-firefighter-killer/ (last visited January 25, 2018).

[6] *Supra*, note 1.

enforcement of municipal, county, and state fire prevention codes and laws pertaining to the prevention and control of fires.

The bill provides that upon a diagnosis of cancer, a firefighter is entitled to certain benefits, as an alternative to pursuing workers' compensation benefits under chapter 440, F.S., if the firefighter has been employed by his or her employer for at least 5 continuous years, has not used tobacco products for at least the preceding 5 years, and has not been employed in any other position in the preceding 5 years which is proven to create a higher risk for cancer. The benefits are:

- Cancer treatment, at no cost to the firefighter, covered within an employer-sponsored health plan or through a group health insurance trust fund, or a rider added to such policy. The firefighter may not be required to contribute toward any deductible, co-payment, or coinsurance amount for the treatment of cancer. The employer may timely reimburse the firefighter for out-of-pocket deductible, copayment, or coinsurance costs incurred by the firefighter.
- A one-time cash payout of $25,000, upon the firefighter's initial diagnosis of cancer.

The benefits must be made available by a former employer of a firefighter for 10 years following the date that the firefighter terminates employment, so long as the firefighter has otherwise met the employment criteria when he or she terminated employment and was not subsequently employed as a firefighter following that date. A firefighter's cancer diagnosis must be considered an injury or illness incurred in the line of duty by the employer for purposes of determining leave time and employee retention policies.

If the firefighter participates in an employer-sponsored retirement plan:

- The retirement plan must consider the firefighter totally and permanently disabled if he or she is prevented from rendering useful and effective service as a firefighter and is likely to remain disabled continuously and permanently due to the diagnosis of cancer or circumstances arising out of the treatment of cancer.
- The retirement plan must consider the firefighter to have died in the line of duty if he or she dies as a result of cancer or circumstances arising out of the treatment of cancer.

If the firefighter does not participate in an employer-sponsored retirement plan:

- The employer must provide a disability retirement plan that provides the firefighter with at least 42 percent of his or her annual salary, at no cost to the firefighter, until the firefighter's death. This will serve as coverage for total and permanent disabilities attributable to the diagnosis of cancer arising out of the treatment of cancer.
- The employer must provide a death benefit to the firefighter's beneficiary, at no cost to the firefighter or his or her beneficiary, totaling at least 42 percent of the firefighter's most recent annual salary for at least 10 years following the firefighter's death as a result of cancer or circumstances arising out of the treatment of cancer.

A firefighter who dies as a result of cancer or circumstances arising out of the treatment of cancer is considered to have died while engaged in the performance of his or her firefighter

duties under s. 112.191(2)(a), F.S., and all of the benefits arising out of such death are available to the deceased firefighter's beneficiary.[7]

The costs of purchasing the insurance policy or providing benefits through a self-funded system must be borne solely by the employer that employs firefighters. Furthermore, the costs of the insurance policy or benefits provided through a self-funded system may not be funded by individual firefighters, by any group health insurance trust fund funded partially or wholly by firefighters, or by any self-insured trust fund that provides health insurance coverage which is funded partially or wholly by firefighters.

The Division of State Fire Marshal within the Department of Financial services must adopt rules to establish employer cancer prevention best practices as it relates to personal protective equipment, decontamination, fire suppression apparatus, and fire stations.

The bill contains a legislative finding that determines and declares that this act fulfills an important state interest.

The act takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (a) of s. 18, Art. VII of the Florida Constitution requires any general law that would require the expenditure of money to be passed by a two-thirds vote of the membership of each house of the Legislature. However, there is an exception from the mandates provision if the legislature has determined that the law fulfills an important state interest, and the expenditure is required to comply with a law that applies to all persons similarly situated.

This bill includes legislative findings that the bill fulfills an important state interest (see bill section 2), and the bill appears to apply to all persons similarly situated (those employers participating in the Florida Retirement System), including state agencies, school boards, universities, community colleges, counties, and municipalities. If no exemptions or exceptions apply, the bill may require a two-thirds vote of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

[7] Section 112.191(2)(a), F.S., provides that a firefighter who is accidentally killed or receives accidental bodily injury which subsequently results in the loss of the firefighter's life while engaged in the performance of his or her firefighter duties is entitled to a sum of $50,000. However, such killing must not be the result of suicide and such bodily injury may not be intentionally self-inflicted.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Firefighters will receive the benefits of cancer insurance and will not be required to pay the associated premiums.

C. Government Sector Impact:

Employers of firefighters will incur costs to pay the insurance premiums or bear the self-insurance costs as required by the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

On lines 67-73, the bill states that "the employer must provide a disability retirement plan…until the firefighter's death as coverage for total and permanent disability *attributable to the diagnosis of cancer arising out of the treatment of cancer*." The current phrasing is unclear, and the sponsor may want to consider amending the language to match the phrasing in lines 65-66, if it better reflects her intent, i.e., "…*due to the diagnosis of cancer or circumstances arising out of the treatment of cancer*."

VIII. Statutes Affected:

This bill creates section 112.1816 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.)

CS by Governmental Oversight and Accountability on January 30, 2018:

- Revises the benefits to which firefighters are entitled upon a diagnosis of cancer to provide that the benefits are an alternative to pursuing workers' compensation benefits under chapter 440.
- Changes the entitlement benefit from a group health insurance or self-insurance policy to the benefit of cancer treatment that is covered within an employer-sponsored health plan or through a group health insurance trust fund.

- Allows an employer to timely reimburse the firefighter for out-of-pocket deductible, copayment or coinsurance costs incurred by the firefighter for treatment authorized by the bill.
- Limits the cash payout of $25,000 to one-time, and upon the firefighter's initial diagnosis of cancer.
- Requires that employers make the authorized benefits available for 10 years after the date its former firefighter employee terminates employment so long as the firefighter otherwise met the criteria (5 years continuous employment, no tobacco product use, not employed in other high risk for cancer occupation) specified when he or she terminated employment and was not subsequently employed as a firefighter following that date.
- Limits to purposes of determining leave time and employee retention policies (rather than policies and the provision of benefits), the requirement that the cancer diagnosis must be considered an injury or illness incurred in the line of duty by the employer.
- If the firefighter does not participate in an employer-sponsored retirement plan:
  - Requires total and permanent disabilities attributable to the diagnosis of cancer arising out of the treatment of cancer in order for the employer to provide a disability retirement plan that provides the firefighter with at least 42 percent of his or her annual salary until the firefighter's death.
  - Requires the employer to provide a death benefit to the firefighter's beneficiary, totaling at least 42 percent of the firefighter's most recent annual salary for at least 10 years following the firefighter's death as a result of the cancer or circumstances arising out of the treatment of cancer.
- Specifies that the Division of State Fire Marshal must adopt rules to "establish employer cancer prevention best practices as it relates to personal protective equipment, decontamination, fire suppression apparatus, and fire stations" rather than "best practices."

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment

Delete lines 23 - 24
and insert:
(a) "Cancer" includes:
1. Bladder cancer.
2. Brain cancer.
3. Breast cancer.
4. Cervical cancer.
5. Colon cancer.


455586

6. Esophageal cancer.
7. Kidney cancer.
8. Large intestinal cancer.
9. Lung cancer.
10. Malignant melanoma.
11. Mesothelioma.
12. Multiple myeloma.
13. Non-Hodgkin's lymphoma.
14. Oral cavity and pharynx cancer.
15. Ovarian cancer.
16. Prostate cancer.
17. Rectal cancer.
18. Skin cancer.
19. Stomach cancer.
20. Testicular cancer.
21. Thyroid cancer.

(b) "Employer" has the same meaning as in s. 112.191.

(c) "Firefighter" means an individual employed as a full-

By the Committee on Governmental Oversight and Accountability; and Senator Flores

585-02618-18 2018900c1

A bill to be entitled

An act relating to firefighters; creating s. 112.1816, F.S.; providing definitions; granting certain benefits to a firefighter upon receiving a diagnosis of cancer if certain conditions are met; requiring an employer to make certain disability payments to a firefighter in the event of a total and permanent disability; providing for death benefits to a firefighter's beneficiary if a firefighter died as a result of cancer or cancer treatments; specifying that any costs associated with benefits granted by the act are to be borne by the employer; requiring the Division of State Fire Marshal to adopt certain rules; providing a declaration of important state interest; providing an effective date.

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

Section 1. Section 112.1816, Florida Statutes, is created to read:

112.1816 Firefighters; cancer diagnosis.—

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

(a) "Employer" has the same meaning as in s. 112.191.

(b) "Firefighter" means an individual employed as a full-time firefighter within the fire department or public safety department of an employer whose primary responsibility is the prevention and extinguishing of fires; the protection of life and property; and the enforcement of municipal, county, and state fire prevention codes and laws pertaining to the

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prevention and control of fires.

(2) Upon a diagnosis of cancer, a firefighter is entitled to the following benefits, as an alternative to pursuing workers' compensation benefits under chapter 440, if the firefighter has been employed by his or her employer for at least 5 continuous years, has not used tobacco products for at least the preceding 5 years, and has not been employed in any other position in the preceding 5 years which is proven to create a higher risk for any cancer:

(a) Cancer treatment, at no cost to the firefighter, covered within an employer-sponsored health plan or through a group health insurance trust fund. The health plan, trust fund, or insurance policy, or a rider added to such policy, may not require the firefighter to contribute toward any deductible, copayment, or coinsurance amount for the treatment of cancer. The employer may timely reimburse the firefighter for out-of-pocket deductible, copayment, or coinsurance costs incurred by the firefighter in complying with this paragraph.

(b) A one-time cash payout of $25,000, upon the firefighter's initial diagnosis of cancer.

The benefits specified in paragraphs (a) and (b) must be made available by a former employer of a firefighter for 10 years following the date that the firefighter terminates employment, so long as the firefighter otherwise met the criteria specified in this subsection when he or she terminated employment and was not subsequently employed as a firefighter following that date. For purposes of determining leave time and employee retention policies, a firefighter's cancer diagnosis must be considered an

injury or illness incurred in the line of duty by the employer.

(3)(a) If the firefighter participates in an employer-sponsored retirement plan, the retirement plan must consider the firefighter totally and permanently disabled if he or she is prevented from rendering useful and effective service as a firefighter and is likely to remain disabled continuously and permanently due to the diagnosis of cancer or circumstances arising out of the treatment of cancer.

(b) If the firefighter does not participate in an employer-sponsored retirement plan, the employer must provide a disability retirement plan that provides the firefighter with at least 42 percent of his or her annual salary, at no cost to the firefighter, until the firefighter's death as coverage for total and permanent disabilities attributable to the diagnosis of cancer arising out of the treatment of cancer.

(4)(a) If the firefighter participated in an employer-sponsored retirement plan, the retirement plan must consider the firefighter to have died in the line of duty if he or she dies as a result of cancer or circumstances arising out of the treatment of cancer.

(b) If the firefighter did not participate in an employer-sponsored retirement plan, the employer must provide a death benefit to the firefighter's beneficiary, at no cost to the firefighter or his or her beneficiary, totaling at least 42 percent of the firefighter's most recent annual salary for at least 10 years following the firefighter's death as a result of cancer or circumstances arising out of the treatment of cancer.

(c) Firefighters who die as a result of cancer or circumstances arising out of the treatment of cancer are

considered to have died in the manner as described in s. 112.191(2)(a) and all of the benefits arising out of such death are available to the deceased firefighter's beneficiary.

(5) The costs of purchasing an insurance policy that provides the cancer benefits contained in this section, or the costs of providing such benefits through a self-funded system, must be borne solely by the employer that employs firefighters and may not be funded by individual firefighters, by any group health insurance trust fund funded partially or wholly by firefighters, or by any self-insured trust fund that provides health insurance coverage which is funded partially or wholly by firefighters.

(6) The Division of State Fire Marshal within the Department of Financial Services shall adopt rules to establish employer cancer prevention best practices as it relates to personal protective equipment, decontamination, fire suppression apparatus, and fire stations.

Section 2. The Legislature determines and declares that this act fulfills an important state interest.

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

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 574
INTRODUCER:	Senator Steube
SUBJECT:	Tree and Timber Trimming, Removal, and Harvesting
DATE:	February 5, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	**Pre-meeting**
2.			EP	
3.			RC	

I. Summary:

SB 574 preempts to the state the regulation of trimming, removal, or harvesting of trees and timber on private property. The bill prohibits municipalities, counties and other political subdivisions of the state from prohibiting or restricting a landowner from trimming, removing or harvesting trees located on the landowner's property, requiring mitigation for the removal of trees, or prohibiting the burial of trees and vegetative debris on properties larger than 2.5 acres.

II. Present Situation:

Currently, in Florida there are 67 counties and 413 municipalities.[1] Local governments often have tree ordinances that specify the species that must be used in a given area depending on the land use. Some local governments require a permit prior to trimming certain trees. Local governments may also afford certain trees protection because they are considered an important community resource. The terms used to describe such trees may include heritage, historic, landmark, legacy, special interest, significant, or specimen trees.

For example, in Broward County the removal of any historical tree[2] without first obtaining approval from the Board of County Commissioners is prohibited, as is the removal of any tree without first obtaining a tree removal license from the Environmental Protection and Growth Management Department.[3] Furthermore, municipalities within Broward County are authorized to

[1] *See* ch. 7, F.S.; *The Local Government Formation Manual 2017-2018*, Appx. B, at http://myfloridahouse.gov/Sections/Documents/loaddoc.aspx?PublicationType=Committees&CommitteeId=2911&Session=2018&DocumentType=General Publications&FileName=2017-2018 Local Government Formation Manual Final Pub.pdf (last accessed 1/24/2018).

[2] Broward County Code of Ordinances, Ch. 27, Art. XIV, s. 404 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.

[3] *Id*. at s. 405

adopt and enforce their own tree preservation regulations in addition to Broward County's regulation of trees.[4]

Home Rule

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.[5] Those counties operating under a county charter have all powers of self-government not inconsistent with general law or special law approved by the vote of the electors.[6] 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.[7]

The Florida Statutes enumerate the powers and duties of all county governments, unless preempted on a particular subject by general or special law.[8] Those powers include the provision of fire protection, ambulance services, parks and recreation, libraries, museums and other cultural facilities, waste and sewage collection and disposal, and water and alternative water supplies.[9] Article VIII, Section 2 of the State Constitution and s. 166.021, F.S., grant municipalities broad home rule powers.

Mangrove Trimming

In 1996, the Florida Legislature enacted the 1996 Mangrove Trimming and Preservation Act (MTPA).[10] This law regulates the trimming and alteration of mangroves statewide, with the exception of the Delegated Local Governments of Broward, Hillsborough, Miami-Dade, and Pinellas Counties, the City of Sanibel, and the Town of Jupiter Island. [11]

The heights to which a mangrove tree may be trimmed will depend upon the provisions of the MTPA as well as the species and condition of the tree. Projects that involve alterations, and trimming projects that exceed the allowances of the exemptions and general permits, may be authorized through individual permits in s. 403.9328, F.S. Trimming may be authorized in an Environmental Resource Permit (ERP) along with other ERP activities for the same property. Mangrove impacts associated with and located within the footprint of an ERP authorized activity do not require a separate authorization under the MTPA.[12]

[4] *Id* at s. 407
[5] FLA. CONST. art VIII, s. 1(f).
[6] FLA. CONST. art VIII, s. 1(g).
[7] FLA. CONST. art VIII, s. 2(b). See also s. 166.021(1), F.S.
[8] Section 125.01, F.S.
[9] *Id.*
[10] Sections 403.9321-403.9333, F.S.
[11] Florida Department of Environmental Protection, *Mangrove Trimming Guidelines for Homeowners*, available at https://floridadep.gov/sites/default/files/Mangrove-Homeowner-Guide-sm_0.pdf (last visited Feb. 2, 2018).
[12] *Id*.

III. Effect of Proposed Changes:

The bill creates s. 589.37, F.S., to preempt to the state the regulation of trimming, removal, or harvesting of trees and timber on private property. The bill also prohibits municipalities, counties, and other political subdivisions of the state from:

- Prohibiting or restricting a private landowner from trimming, removing, or harvesting trees or timber located on the landowner's property.
- Requiring mitigation for the removal or harvesting of trees or timber from private property.
- Prohibiting the burial of trees or other vegetative debris on properties larger than 2.5 acres.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Property owners would save costs associated with permit fees to trim or cut down trees, and with costs associated with burial of vegetative debris.

C. Government Sector Impact:

Local governments may see a decline in money collected in connection to fines or fees associated with the various tree ordinances in effect.

VI. Technical Deficiencies:

None.

VII. Related Issues:

It is unclear whether the preemption of regulation of trimming, removal, or harvesting of trees and timber on private property would supersede or have effect on the MPTA and its procedures.

VIII. Statutes Affected:

This bill creates section 589.37 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.

132156

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/12/2018	.	
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The Committee on Community Affairs (Steube) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 163.3209, Florida Statutes, is amended to read:

163.3209 Electric transmission and distribution line right-of-way maintenance.—After a right-of-way for any electric transmission or distribution line has been established and constructed, no local government shall require or apply any

132156

permits or other approvals or code provisions for or related to vegetation maintenance and tree pruning or trimming within the established right-of-way. The term "vegetation maintenance and tree pruning or trimming" means the mowing of vegetation within the right-of-way, removal of trees or brush within the right-of-way, and selective removal of tree branches that extend within the right-of-way. The provisions of this section do not include the removal of trees outside the right-of-way, which may be allowed in compliance with applicable local ordinances. Prior to conducting scheduled routine vegetation maintenance and tree pruning or trimming activities within an established right-of-way, the utility shall provide the official designated by the local government with a minimum of 5 business days' advance notice. Such advance notice is not required for vegetation maintenance and tree pruning or trimming required to restore electric service or to avoid an imminent vegetation-caused outage or when performed at the request of the property owner adjacent to the right-of-way, provided that the owner has approval of the local government, if needed. Upon the request of the local government, the electric utility shall meet with the local government to discuss and submit the utility's vegetation maintenance plan, including the utility's trimming specifications and maintenance practices. Vegetation maintenance and tree pruning or trimming conducted by utilities shall conform to ANSI A300 (Part I)—2001 pruning standards and ANSI Z133.1-2000 Pruning, Repairing, Maintaining, and Removing Trees, and Cutting Brush—Safety Requirements. Vegetation maintenance and tree pruning or trimming conducted by utilities must be supervised by qualified electric utility personnel or licensed

contractors trained to conduct vegetation maintenance and tree trimming or pruning consistent with this section or by Certified Arborists certified by the Certification Program of the International Society of Arboriculture. A local government shall not adopt an ordinance or land development regulation that requires the planting of a tree or other vegetation that will achieve a height greater than 14 feet in an established electric utility right-of-way or intrude from the side closer than the clearance distance specified in Table 2 of ANSI Z133.1-2000 for lines affected by the North American Electric Reliability Council Standard, FAC 003.1 requirement R1.2. This section does not supersede or nullify the terms of specific franchise agreements between an electric utility and a local government and shall not be construed to limit a local government's franchising authority. ~~This section does not supersede local government ordinances or regulations governing planting, pruning, trimming, or removal of specimen trees or historical trees, as defined in a local government's ordinances or regulations, or trees within designated canopied protection areas. This section shall not apply if a local government develops, with input from the utility, and the local government adopts, a written plan specifically for vegetation maintenance, tree pruning, tree removal, and tree trimming by the utility within the local government's established rights-of-way and the plan is not inconsistent with the minimum requirements of the National Electrical Safety Code as adopted by the Public Service Commission; provided, however, such a plan shall not require the planting of a tree or other vegetation that will achieve a height greater than 14 feet in an established electric right-of-~~

132156

~~way~~. Vegetation maintenance costs are ~~shall be~~ considered recoverable costs.

Section 2. Section 589.37, Florida Statutes, is created to read:

589.37 Regulation of tree, timber, and vegetation trimming and removal performed by certain governmental entities prohibited.—

(1) The Legislature finds that uncontrolled growth of trees or vegetation within rights-of-way owned or managed by the state, water management districts, water control districts, neighborhood improvement districts, independent special districts, or community development districts interferes with the operation and maintenance of flood protection and drainage infrastructure, including, but not limited to, canals, which are critical to the protection of the health, safety, and general welfare of the public.

(2) Where the state or a water management district, a water control district created under chapter 298, a neighborhood improvement district created under chapter 163, an independent special district, or a community development district created under chapter 190, has a duty to maintain any rights-of-way, a municipality, county, or other political subdivision of the state may not prohibit, restrict, or condition, or require a permit, fee, or mitigation for, the trimming or removal of trees, timber, or vegetation.

(3) This section does not prohibit the licensing and regulation by municipalities or counties of persons engaged in tree, timber, or vegetation trimming or removal.

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

132156

98
99 ========== T I T L E A M E N D M E N T ==========
100 And the title is amended as follows:
101 Delete everything before the enacting clause
102 and insert:
103 A bill to be entitled
104 An act relating to tree, timber, and vegetation
105 trimming and removal; amending s. 163.3209, F.S.;
106 revising applicability of a provision relating to
107 vegetation maintenance and tree pruning or trimming
108 within an established electric transmission and
109 distribution line right-of-way; creating s. 589.37,
110 F.S.; providing legislative findings; prohibiting the
111 regulation of tree, timber, and vegetation trimming
112 and removal performed by certain governmental entities
113 under certain circumstances; providing applicability;
114 providing an effective date.

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/12/2018	.	
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	.	
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The Committee on Community Affairs (Rodriguez) recommended the following:

Senate Amendment to Amendment (132156) (with title amendment)

Delete lines 5 - 70.

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

And the title is amended as follows:

Delete lines 105 - 109

and insert:

trimming and removal; creating s. 589.37,

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Section 163.3209, Florida Statutes, is amended to read:

163.3209 Electric transmission and distribution line right-of-way maintenance.—

(1) The Legislature finds that the uncontrolled growth of trees and vegetation within electric transmission and

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distribution rights-of-way may compromise the function of electric facilities, leading to extended electrical outages and adversely impacting public health and safety.

(2) After a right-of-way for any electric transmission or distribution line has been established and constructed, a ~~no~~ local government may not ~~shall~~ require or apply any permits or other approvals or code provisions for or related to vegetation maintenance and tree pruning or trimming within the established right-of-way. The term "vegetation maintenance and tree pruning or trimming" means the mowing of vegetation within the right-of-way, removal of trees or brush within the right-of-way, and selective removal of tree branches that extend within the right-of-way. The requirements ~~provisions~~ of this section do not apply to ~~include~~ the removal of trees outside the right-of-way, which may be allowed in compliance with applicable local vegetation plans, ordinances, or practices. However, if an electric utility provides written notice to a local government that its local vegetation management plan, ordinances, or practices may adversely impact electric reliability by allowing trees or other vegetation to be planted where, at mature height or width, the trees or other vegetation may conflict with electric facilities in either normal or inclement weather, the local government is liable to the electric utility for all reasonable restoration costs thereafter incurred by the electric utility attributable to damages or electrical outages caused by such trees or other vegetation. An electric utility must invoice the local government for all such restoration costs within 120 days after any event of loss. In any civil action by an electric utility against a local government to recover such damages, the burden

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of proof shifts to the local government to demonstrate that the damages are not attributable to the trees or other vegetation or that the damages are otherwise in amounts less than those claimed by the electric utility ~~ordinances~~.

(3) Before ~~Prior to~~ conducting scheduled routine vegetation maintenance and tree pruning or trimming activities within an established right-of-way, the electric utility must ~~shall~~ provide the official designated by the local government with a minimum of 5 business days' advance notice. Such advance notice is not required for vegetation maintenance and tree pruning or trimming required to restore electric service or to avoid an imminent vegetation-caused outage or when performed at the request of the property owner adjacent to the right-of-way, provided that the owner has approval of the local government, if needed. ~~Upon the request of the local government, the electric utility shall meet with the local government to discuss and submit the utility's vegetation maintenance plan, including the utility's trimming specifications and maintenance practices.~~

(4) Vegetation maintenance and tree pruning or trimming conducted by utilities must ~~shall~~ conform to ANSI A300 (Part I)—2001 pruning standards and ANSI Z133.1-2000 Pruning, Repairing, Maintaining, and Removing Trees, and Cutting Brush—Safety Requirements. Vegetation maintenance and tree pruning or trimming conducted by utilities must be supervised by qualified electric utility personnel or licensed contractors trained to conduct vegetation maintenance and tree trimming or pruning consistent with this section or by Certified Arborists certified by the Certification Program of the International Society of Arboriculture. A local government may ~~shall~~ not adopt an

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ordinance or land development regulation that requires the planting of a tree or other vegetation that will achieve a height greater than 14 feet in an established electric utility right-of-way or intrude from the side closer than the clearance distance specified in Table 2 of ANSI Z133.1-2000 for lines affected by the North American Electric Reliability Council Standard, FAC 003.1 requirement R1.2.

(5) This section does not supersede or nullify the terms of specific franchise agreements between an electric utility and a local government and may ~~shall~~ not be construed to limit a local government's franchising authority. ~~This section does not supersede local government ordinances or regulations governing planting, pruning, trimming, or removal of specimen trees or historical trees, as defined in a local government's ordinances or regulations, or trees within designated canopied protection areas.~~

(6) This section does ~~shall~~ not apply if a local government and an electric ~~develops, with input from the~~ utility agree on~~,~~ ~~and the local~~ government ~~adopts,~~ a written plan specifically for vegetation maintenance, tree pruning, tree removal, and tree trimming by the utility within the local government's established rights-of-way and the plan is not inconsistent with the minimum requirements of the National Electrical Safety Code as adopted by the Public Service Commission; provided, however, such a plan shall not require the planting of a tree or other vegetation that will achieve a height greater than 14 feet in an established electric right-of-way. Vegetation maintenance costs shall be considered recoverable costs.

Section 2. Section 589.37, Florida Statutes, is created to

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read:

589.37 Tree and vegetation maintenance within established flood and drainage rights-of-way.—

(1) The legislature finds that water management districts, water control districts, and special districts authorized to exercise powers under chapter 298 establish and manage public rights-of-way for the purpose of flood protection and drainage control. Uncontrolled growth of trees and vegetation within rights-of-way established for these purposes may compromise the function of such rights-of-way and, left unaddressed, may adversely impact public health and safety and may adversely affect other adjacent jurisdictions.

(2) After a right-of-way for flood protection or drainage control has been established and constructed by a water management district, a water control district, or a special district authorized to exercise powers under chapter 298, a local government may not require any permits or other approvals for vegetation maintenance and tree pruning or trimming within the established right-of-way. The term "vegetation maintenance and tree pruning or trimming" means the mowing of vegetation within the right-of-way, removal of trees or brush within the right-of-way, and selective removal of tree branches that extend within the right-of-way. The provisions of this section do not include the removal of trees or vegetation outside the right-of-way, which may be authorized in accordance with applicable local ordinances.

(3) Before conducting scheduled routine vegetation and tree maintenance activities within an established right-of-way, a water management district, water control district, or special

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district authorized to exercise powers under chapter 298 must provide the official designated by the local government with a minimum of 5 business days' advance notice. Such advance notice is not required when maintenance is necessary to avoid imminent threat to public safety.

(4) This section does not limit the licensing and regulation by local governments of persons engaged in vegetation maintenance and tree pruning or trimming.

(5) This section does not prohibit a water management district, water control district, or special district authorized to exercise powers under chapter 298 from entering into agreements with local governments to perform maintenance services for the water management district, water control district, or special district authorized to exercise powers under chapter 298.

(6) This section does not prohibit a local government with delegated authority from the Department of Environmental Protection from implementing a mangrove regulatory program pursuant to s. 403.9324.

(7) This section does not apply to the exercise of specifically delegated authority for mangrove protection pursuant to ss. 403.9321-403.9333.

(8) Local government regulations regarding the maintenance, pruning, or removal of trees or vegetation may not apply to such activities conducted at a single-family home, in an area zoned for residential use, during an emergency declared pursuant to s. 252.36.

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

542450

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to tree and vegetation trimming and removal; amending s. 163.3209, F.S.; providing legislative findings; providing that local governments are liable for electric utility restoration costs under certain conditions; specifying a time limit for an electric utility to invoice a local government for such costs; specifying a burden of proof; deleting a requirement that an electric utility must meet with a local government upon request to discuss and submit the utility's vegetation maintenance plan; deleting a provision regarding applicability to specimen trees, historical trees, or canopy protection areas; providing applicability when a local government and an electric utility agree on a written plan for certain specified purposes; creating s. 589.37, F.S.; providing legislative findings; prohibiting local governments from requiring permits or other approvals for vegetation maintenance and tree pruning or trimming within an established right-of-way managed by a water management district, water control district, or special district exercising chapter 298 powers; defining the term "vegetation maintenance and tree pruning or trimming"; specifying an exception; requiring water management districts, water control

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districts, and special districts exercising chapter 298 powers to provide certain advance notice before conducting vegetation maintenance under certain conditions; providing applicability; prohibiting the application of certain tree-related local regulations during emergencies; providing an effective date.

By Senator Steube

23-00623A-18 2018574__

A bill to be entitled

An act relating to tree and timber trimming, removal, and harvesting; creating s. 589.37, F.S.; preempting to the state the regulation of the trimming, removal, or harvesting of trees and timber on private property; prohibiting certain local governmental actions relating to the trimming or removal of trees or timber; prohibiting local governments from prohibiting the burial of vegetative debris on certain properties; providing an effective date.

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

Section 1. Section 589.37, Florida Statutes, is created to read:

589.37 Regulation of tree and timber trimming, removal, or harvesting preempted.

(1) The regulation of the trimming, removal, or harvesting of trees and timber on private property is preempted to the state.

(2) A municipality, county, or other political subdivision of the state may not:

(a) Prohibit or restrict a private landowner from trimming, removing, or harvesting trees or timber located on the landowner's private property.

(b) Require mitigation, including, but not limited to, the planting of trees or the payment of a fee, for the removal or harvesting of trees or timber from private property.

(c) Prohibit the burial of trees, shrubs, palmettos, or

Florida Senate - 2018 **SB 574**

23-00623A-18 2018574__

other vegetative debris on properties larger than 2.5 acres.

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

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 1576
INTRODUCER:	Agriculture Committee and Senator Steube and others
SUBJECT:	Animal Welfare
DATE:	February 12, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Akhavein	Becker	AG	**Fav/CS**
2.	Cochran	Yeatman	CA	**Pre-meeting**
3.			CJ	
4.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1576 requires animal shelters that take in stray dogs and cats to adopt written policies and procedures to ensure that every reasonable effort is made to quickly and reliably return the animals to their owners.

The bill allows a court to prohibit a person convicted of animal cruelty from owning, possessing, keeping, harboring, having contact with, or having custody or control over any animal. It leaves the time frame for the prohibition within the court's discretion.

The bill also increases the severity ranking for aggravated animal cruelty from a level three to a level five on the offense severity ranking chart of the Criminal Punishment Code.

II. Present Situation:

In 2017, Hurricane Irma resulted in hundreds of lost or stray dogs and cats across Florida, putting an added strain on already beleaguered Florida families and overburdened animal shelters in the storm's aftermath.[1] During disasters and at other times, family pets have been euthanized before the shelter's hold period has ended, before the owners could be notified of the animal's location,

[1] Ryan, Patti. September 15, 2017. "As Irma Howled, Hundreds of Tampa Bay Area Cats and Dogs Got Lost." *Tampa Bay Times* available at http://www.tampabay.com/news/humaninterest/as-irma-howled-hundreds-of-tampa-bay-area-cats-and-dogs-got-lost/2337541 (last visited Feb. 9, 2018).

or before the animal could be claimed.[2] In Escambia County, a woman has sued the county over claims that the county animal shelter euthanized her dog even though she had called the shelter to inform the staff that she would pick up the dog as soon as possible.[3]

Under section 828.12, F.S., the following acts are considered animal cruelty:

- Overloading, overdriving, or tormenting any animal;
- Depriving any animal of necessary sustenance or shelter;
- Unnecessarily mutilating or killing any animal; and
- Carrying any animal, on a vehicle or otherwise, in a cruel or inhumane manner.

Animal cruelty is a first degree misdemeanor, punishable by up to one year in the county jail and a $1,000 fine.[4]

A person commits aggravated animal cruelty, a third degree felony,[5] by intentionally committing an act to an animal – or failing to act if the person is the owner having custody and control of the animal – and such action or omission results in:

- The cruel death of the animal, or
- The excessive or repeated infliction of unnecessary pain or suffering on an animal.[6]

Aggravated animal cruelty carries minimum mandatory sanctions of a $2,500 fine and psychological testing or anger management for a first conviction,[7] and a $5,000 fine and six months of incarceration for a second or subsequent conviction.[8] A person convicted a second or subsequent time of aggravated animal cruelty is ineligible for any form of early release, including gain time.[9]

Felony offenses subject to the Criminal Punishment Code[10] are listed in a single offense severity ranking chart, which uses 10 offense levels to rank felonies from least severe to most severe. Each felony offense is assigned to a level according to the severity of the offense, commensurate with the harm or potential for harm to the community that is caused by the offense, as determined by statute. Aggravated animal cruelty is level three on the offense severity ranking chart.[11]

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[2] Aronson, Claire. "His lost best friend was found and taken to animal shelter—and killed the same day." *Bradenton Herald*, at http://www.bradenton.com/news/local/article124559479.html (last visited Feb. 9, 2018).
[3] Robinson, Kevin. August 17, 2015. "Woman Sues Escambia over Mistakenly Euthanized Dog." *Pensacola News Journal*, at http://www.pnj.com/story/news/local/escambia-county/2015/08/17/woman-sues-escambia-mistakenly-euthanized-dog/31868803/ (last visited Feb. 9, 2018).
[4] ss. 775.082 and 775.083, F.S.
[5] A third degree felony is punishable by up to five years imprisonment and a $5,000 fine. Sections 775.082 and 775.083, F.S.
[6] Section 828.12(2), F.S.
[7] Section 838.12(2)(a), F.S.
[8] Section 828.12(2)(b), F.S.
[9] *Id.*
[10] All felony offenses, with the exception of capital felonies, committed on or after October 1, 1998, are subject to the Criminal Punishment Code.
[11] Section 921.0022, F.S.

III. Effect of Proposed Changes:

Section 1 creates s. 823.151, F.S., to provide that the Legislature finds that natural disasters may result in an increase in owned dogs and cats becoming lost or stray. It also directs animal control agencies and humane organizations to adopt policies and procedures to help return lost cats or dogs to identified owners. This includes:

- Screening for identification;
- A process for matching pets coming into the shelter with reports of lost pets made by pet owners;
- Public notice of stray dogs and cats at a location in the shelter or on the Internet;
- Reasonable efforts to notify identified pet owners;
- Public notice of shelter location, hours, fees, and return-to-owner process;
- Access for owners to claim lost pets outside of normal business hours;
- Direct return-to-owner protocols that allow animal control officers to directly return lost dogs and cats to their owners when the owners have been identified;
- Procedural safeguards to minimize the euthanasia of owned dogs and cats; and
- Temporary extension of local stray hold periods when an emergency is declared, if deemed appropriate by a local government.

The bill requires records of animals lost after a disaster to be made available to the public pursuant to public records provisions in chapter 119, F.S.

Section 2 amends s. 828.12, F.S., to permit a court to prohibit a person convicted of animal cruelty from owning, possessing, keeping, harboring, having contact with, or having custody or control over any animal. The bill leaves the time frame for the prohibition within the court's discretion.

Section 3 amends s. 921.0022, F.S., to increase the severity ranking for aggravated animal cruelty from a level three to a level five on the offense severity ranking chart of the Criminal Punishment Code.

Section 4 provides that this act shall take effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Pet owners would have more assurance that lost pets would be more quickly and reliably returned to their families.

C. Government Sector Impact:

City and county animal shelters and animal control agencies may have an increase in costs to comply with the notice requirements and shelter of lost animals.

To the extent that persons are arrested for, charged with, and convicted of the criminal offenses modified in the bill, this bill will have an indeterminate fiscal impact of state and local governments. The Criminal Justice Impact Conference met on January 8, 2018, and determined that the bill will insignificantly increase the need for prison beds.[12]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends sections 828.12 and 921.0022 of the Florida Statutes.
This bill creates section 823.151 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 Agriculture Committee on February 1, 2018:

- Permits a court to prohibit a person convicted of animal cruelty from owning, possessing, keeping, harboring, having contact with, or having custody or control over any animal. The bill leaves the time frame for the prohibition within the court's discretion; and
- Increases the severity ranking for aggravated animal cruelty from a level three to a level five under the Criminal Punishment Code.

[12] An insignificant change in prison beds means a change of 10 or fewer.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment

Delete line 277

and insert:

Section 4. This act shall take effect October 1, 2018.

By the Committee on Agriculture; and Senators Steube and Perry

575-02744-18 20181576c1

A bill to be entitled

An act relating to animal welfare; creating s. 823.151, F.S.; providing legislative findings; requiring specified entities that take receivership of lost or stray dogs or cats to adopt written policies and procedures to ensure that every reasonable effort is made to quickly and reliably return owned animals to their owners; providing requirements for such policies and procedures; requiring that specified records be available to the public; amending s. 828.12, F.S.; authorizing a court to prohibit certain offenders from owning or having custody or control over animals; amending s. 921.0022, F.S.; revising the ranking of offenses on the offense severity ranking chart of the Criminal Punishment Code; providing an effective date.

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

Section 1. Section 823.151, Florida Statutes, is created to read:

823.151 Lost or stray dogs and cats.—

(1) The Legislature finds that natural disasters, such as hurricanes, may result in an increase in owned dogs and cats becoming lost or stray. The Legislature further finds that dog and cat owners statewide should be afforded the opportunity to quickly and reliably claim their lost pets. It is therefore declared to be the public policy of the state that animal control agencies and humane organizations shall adopt policies

575-02744-18 20181576c1

and procedures to help return lost cats or dogs to identified owners.

(2)(a) A public or private animal shelter, humane organization, or animal control agency operated by a humane organization or by a county, municipality, or other incorporated political subdivision that takes receivership of any lost or stray dogs or cats shall adopt written policies and procedures to ensure that every reasonable effort is made to quickly and reliably return owned animals to their owners. Such policies and procedures shall include:

1. Upon intake, screening of lost or stray dogs and cats for identification, including tags, licenses, implanted microchips, and tattoos.

2. A process for matching received lost or stray dogs and cats with any reports of lost pets received by the shelter from owners.

3. Public notice of lost or stray dogs and cats received, provided at the shelter or on the Internet, as appropriate, within 48 hours of the animal's admission.

4. Reasonable efforts to notify identified owners of lost or stray dogs and cats within 48 hours of identification. Such reasonable efforts may include, but are not limited to, attempts to contact identified owners by telephone, by electronic mail, by United States mail, or by personal service at the owner's last known phone number and address.

5. Notice to the public of the shelter's location, hours, fees, and the return-to-owner process posted on the Internet, with the shelter's business hours posted outside the shelter facility and recorded on the shelter's telephone answering

system message.

6. Access for owners to retrieve dogs and cats at least 1 weekend day per week and after 5:00 p.m. 1 weekday per week, provided that complying with the requirements of this subparagraph does not require an increase in total operating hours.

7. Direct return-to-owner protocols that allow animal control officers in the field to directly return lost or stray dogs and cats to their owners when the owners have been identified.

8. Procedural safeguards to minimize the euthanasia of owned dogs and cats. Such safeguards shall include, but are not limited to, record verification to ensure that each animal to be euthanized is the correct animal designated for the procedure and proper scanning for an implanted microchip using a universal scanner immediately prior to the procedure.

9. Temporary extension of local minimum stray hold periods after a disaster is declared by the President of the United States or a state of emergency is declared by the Governor, if deemed necessary by a local government in the area of the declaration.

(b) Records related to this section and maintained by a public or private animal shelter, humane organization, or animal control agency operated by a humane society or by a county, municipality, or other incorporated political subdivision must be made available to the public pursuant to chapter 119.

Section 2. Section 828.12, Florida Statutes, is amended to read:

828.12 Cruelty to animals.—

(1) A person who unnecessarily overloads, overdrives, torments, deprives of necessary sustenance or shelter, or unnecessarily mutilates, or kills any animal, or causes the same to be done, or carries in or upon any vehicle, or otherwise, any animal in a cruel or inhumane manner, commits animal cruelty, a misdemeanor of the first degree, punishable as provided in s. 775.082 or by a fine of not more than $5,000, or both.

(2) A person who intentionally commits an act to any animal, or a person who owns or has the custody or control of any animal and fails to act, which results in the cruel death, or excessive or repeated infliction of unnecessary pain or suffering, or causes the same to be done, commits aggravated animal cruelty, a felony of the third degree, punishable as provided in s. 775.082 or by a fine of not more than $10,000, or both.

(a) A person convicted of a violation of this subsection, where the finder of fact determines that the violation includes the knowing and intentional torture or torment of an animal that injures, mutilates, or kills the animal, shall be ordered to pay a minimum mandatory fine of $2,500 and undergo psychological counseling or complete an anger management treatment program.

(b) A person convicted of a second or subsequent violation of this subsection shall be required to pay a minimum mandatory fine of $5,000 and serve a minimum mandatory period of incarceration of 6 months. In addition, the person shall be released only upon expiration of sentence, is not eligible for parole, control release, or any form of early release, and must serve 100 percent of the court-imposed sentence. Any plea of nolo contendere shall be considered a conviction for purposes of

this subsection.

(3) A person who commits multiple acts of animal cruelty or aggravated animal cruelty against an animal may be charged with a separate offense for each such act. A person who commits animal cruelty or aggravated animal cruelty against more than one animal may be charged with a separate offense for each animal such cruelty was committed upon.

(4) A veterinarian licensed to practice in the state shall be held harmless from either criminal or civil liability for any decisions made or services rendered under the provisions of this section. Such a veterinarian is, therefore, under this subsection, immune from a lawsuit for his or her part in an investigation of cruelty to animals.

(5) A person who intentionally trips, fells, ropes, or lassos the legs of a horse by any means for the purpose of entertainment or sport commits a ~~shall be guilty of a third degree~~ felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. As used in this subsection, the term "trip" means any act that consists of the use of any wire, pole, stick, rope, or other apparatus to cause a horse to fall or lose its balance, and the term "horse" means any animal of any registered breed of the genus *Equus*, or any recognized hybrid thereof. ~~The provisions of~~ This subsection does ~~shall~~ not apply when tripping is used:

(a) To control a horse that is posing an immediate threat to other livestock or human beings;

(b) For the purpose of identifying ownership of the horse when its ownership is unknown; or

(c) For the purpose of administering veterinary care to the

horse.

(6) In addition to other penalties prescribed by law, a person who is convicted of a violation of this section may be prohibited by the court from owning, possessing, keeping, harboring, or having custody or control over any animal for a period of time determined by the court.

Section 3. Paragraphs (c) and (e) of subsection (3) of section 921.0022, Florida Statutes, are amended to read:

921.0022 Criminal Punishment Code; offense severity ranking chart.—

(3) OFFENSE SEVERITY RANKING CHART

(c) LEVEL 3

Florida Statute	Felony Degree	Description
119.10(2)(b)	3rd	Unlawful use of confidential information from police reports.
316.066 (3)(b)-(d)	3rd	Unlawfully obtaining or using confidential crash reports.
316.193(2)(b)	3rd	Felony DUI, 3rd conviction.
316.1935(2)	3rd	Fleeing or attempting to elude law enforcement officer in patrol vehicle with siren and lights activated.

319.30(4)	3rd	Possession by junkyard of motor vehicle with identification number plate removed.
319.33(1)(a)	3rd	Alter or forge any certificate of title to a motor vehicle or mobile home.
319.33(1)(c)	3rd	Procure or pass title on stolen vehicle.
319.33(4)	3rd	With intent to defraud, possess, sell, etc., a blank, forged, or unlawfully obtained title or registration.
327.35(2)(b)	3rd	Felony BUI.
328.05(2)	3rd	Possess, sell, or counterfeit fictitious, stolen, or fraudulent titles or bills of sale of vessels.
328.07(4)	3rd	Manufacture, exchange, or possess vessel with counterfeit or wrong ID number.
376.302(5)	3rd	Fraud related to reimbursement for cleanup expenses under the Inland Protection Trust Fund.

379.2431 (1)(e)5.	3rd	Taking, disturbing, mutilating, destroying, causing to be destroyed, transferring, selling, offering to sell, molesting, or harassing marine turtles, marine turtle eggs, or marine turtle nests in violation of the Marine Turtle Protection Act.
379.2431 (1)(e)6.	3rd	Possessing any marine turtle species or hatchling, or parts thereof, or the nest of any marine turtle species described in the Marine Turtle Protection Act.
379.2431 (1)(e)7.	3rd	Soliciting to commit or conspiring to commit a violation of the Marine Turtle Protection Act.
400.9935(4)(a) or (b)	3rd	Operating a clinic, or offering services requiring licensure, without a license.

400.9935(4)(e)	3rd	Filing a false license application or other required information or failing to report information.
440.1051(3)	3rd	False report of workers' compensation fraud or retaliation for making such a report.
501.001(2)(b)	2nd	Tampers with a consumer product or the container using materially false/misleading information.
624.401(4)(a)	3rd	Transacting insurance without a certificate of authority.
624.401(4)(b)1.	3rd	Transacting insurance without a certificate of authority; premium collected less than $20,000.
626.902(1)(a) & (b)	3rd	Representing an unauthorized insurer.
697.08	3rd	Equity skimming.
790.15(3)	3rd	Person directs another to

		discharge firearm from a vehicle.
806.10(1)	3rd	Maliciously injure, destroy, or interfere with vehicles or equipment used in firefighting.
806.10(2)	3rd	Interferes with or assaults firefighter in performance of duty.
810.09(2)(c)	3rd	Trespass on property other than structure or conveyance armed with firearm or dangerous weapon.
812.014(2)(c)2.	3rd	Grand theft; $5,000 or more but less than $10,000.
812.0145(2)(c)	3rd	Theft from person 65 years of age or older; $300 or more but less than $10,000.
815.04(5)(b)	2nd	Computer offense devised to defraud or obtain property.
817.034(4)(a)3.	3rd	Engages in scheme to defraud (Florida Communications Fraud Act), property valued at less

		than $20,000.
817.233	3rd	Burning to defraud insurer.
817.234 (8)(b) & (c)	3rd	Unlawful solicitation of persons involved in motor vehicle accidents.
817.234(11)(a)	3rd	Insurance fraud; property value less than $20,000.
817.236	3rd	Filing a false motor vehicle insurance application.
817.2361	3rd	Creating, marketing, or presenting a false or fraudulent motor vehicle insurance card.
817.413(2)	3rd	Sale of used goods as new.
~~828.12(2)~~	~~3rd~~	~~Tortures any animal with intent to inflict intense pain, serious physical injury, or death.~~
831.28(2)(a)	3rd	Counterfeiting a payment instrument with intent to defraud or possessing a

		counterfeit payment instrument.
831.29	2nd	Possession of instruments for counterfeiting driver licenses or identification cards.
838.021(3)(b)	3rd	Threatens unlawful harm to public servant.
843.19	3rd	Injure, disable, or kill police dog or horse.
860.15(3)	3rd	Overcharging for repairs and parts.
870.01(2)	3rd	Riot; inciting or encouraging.
893.13(1)(a)2.	3rd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs).
893.13(1)(d)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs

		within 1,000 feet of university.
893.13(1)(f)2.	2nd	Sell, manufacture, or deliver s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs within 1,000 feet of public housing facility.
893.13(4)(c)	3rd	Use or hire of minor; deliver to minor other controlled substances.
893.13(6)(a)	3rd	Possession of any controlled substance other than felony possession of cannabis.
893.13(7)(a)8.	3rd	Withhold information from practitioner regarding previous receipt of or prescription for a controlled substance.
893.13(7)(a)9.	3rd	Obtain or attempt to obtain controlled substance by fraud, forgery, misrepresentation, etc.

893.13(7)(a)10.	3rd	Affix false or forged label to package of controlled substance.
893.13(7)(a)11.	3rd	Furnish false or fraudulent material information on any document or record required by chapter 893.
893.13(8)(a)1.	3rd	Knowingly assist a patient, other person, or owner of an animal in obtaining a controlled substance through deceptive, untrue, or fraudulent representations in or related to the practitioner's practice.
893.13(8)(a)2.	3rd	Employ a trick or scheme in the practitioner's practice to assist a patient, other person, or owner of an animal in obtaining a controlled substance.
893.13(8)(a)3.	3rd	Knowingly write a prescription for a controlled substance for a fictitious person.

893.13(8)(a)4.	3rd	Write a prescription for a controlled substance for a patient, other person, or an animal if the sole purpose of writing the prescription is a monetary benefit for the practitioner.
918.13(1)(a)	3rd	Alter, destroy, or conceal investigation evidence.
944.47 (1)(a)1. & 2.	3rd	Introduce contraband to correctional facility.
944.47(1)(c)	2nd	Possess contraband while upon the grounds of a correctional institution.
985.721	3rd	Escapes from a juvenile facility (secure detention or residential commitment facility).

(e) LEVEL 5

Florida Statute	Felony Degree	Description

316.027(2)(a)	3rd	Accidents involving personal injuries other than serious bodily injury, failure to stop; leaving scene.
316.1935(4)(a)	2nd	Aggravated fleeing or eluding.
316.80(2)	2nd	Unlawful conveyance of fuel; obtaining fuel fraudulently.
322.34(6)	3rd	Careless operation of motor vehicle with suspended license, resulting in death or serious bodily injury.
327.30(5)	3rd	Vessel accidents involving personal injury; leaving scene.
379.365(2)(c)1.	3rd	Violation of rules relating to: willful molestation of stone crab traps, lines, or buoys; illegal bartering, trading, or sale, conspiring or aiding in such barter, trade, or sale, or supplying, agreeing to supply, aiding in supplying, or giving away stone crab trap tags or certificates; making, altering, forging, counterfeiting, or

		reproducing stone crab trap tags; possession of forged, counterfeit, or imitation stone crab trap tags; and engaging in the commercial harvest of stone crabs while license is suspended or revoked.
379.367(4)	3rd	Willful molestation of a commercial harvester's spiny lobster trap, line, or buoy.
379.407(5)(b)3.	3rd	Possession of 100 or more undersized spiny lobsters.
381.0041(11)(b)	3rd	Donate blood, plasma, or organs knowing HIV positive.
440.10(1)(g)	2nd	Failure to obtain workers' compensation coverage.
440.105(5)	2nd	Unlawful solicitation for the purpose of making workers' compensation claims.
440.381(2)	2nd	Submission of false, misleading, or incomplete information with the purpose of avoiding or reducing workers'

		compensation premiums.
624.401(4)(b)2.	2nd	Transacting insurance without a certificate or authority; premium collected $20,000 or more but less than $100,000.
626.902(1)(c)	2nd	Representing an unauthorized insurer; repeat offender.
790.01(2)	3rd	Carrying a concealed firearm.
790.162	2nd	Threat to throw or discharge destructive device.
790.163(1)	2nd	False report of bomb, explosive, weapon of mass destruction, or use of firearms in violent manner.
790.221(1)	2nd	Possession of short-barreled shotgun or machine gun.
790.23	2nd	Felons in possession of firearms, ammunition, or electronic weapons or devices.
796.05(1)	2nd	Live on earnings of a prostitute; 1st offense.

800.04(6)(c)	3rd	Lewd or lascivious conduct; offender less than 18 years of age.
800.04(7)(b)	2nd	Lewd or lascivious exhibition; offender 18 years of age or older.
806.111(1)	3rd	Possess, manufacture, or dispense fire bomb with intent to damage any structure or property.
812.0145(2)(b)	2nd	Theft from person 65 years of age or older; $10,000 or more but less than $50,000.
812.015(8)	3rd	Retail theft; property stolen is valued at $300 or more and one or more specified acts.
812.019(1)	2nd	Stolen property; dealing in or trafficking in.
812.131(2)(b)	3rd	Robbery by sudden snatching.
812.16(2)	3rd	Owning, operating, or conducting a chop shop.

817.034(4)(a)2.	2nd	Communications fraud, value $20,000 to $50,000.
817.234(11)(b)	2nd	Insurance fraud; property value $20,000 or more but less than $100,000.
817.2341(1), (2)(a) & (3)(a)	3rd	Filing false financial statements, making false entries of material fact or false statements regarding property values relating to the solvency of an insuring entity.
817.568(2)(b)	2nd	Fraudulent use of personal identification information; value of benefit, services received, payment avoided, or amount of injury or fraud, $5,000 or more or use of personal identification information of 10 or more persons.
817.611(2)(a)	2nd	Traffic in or possess 5 to 14 counterfeit credit cards or related documents.

817.625(2)(b)	2nd	Second or subsequent fraudulent use of scanning device, skimming device, or reencoder.
825.1025(4)	3rd	Lewd or lascivious exhibition in the presence of an elderly person or disabled adult.
827.071(4)	2nd	Possess with intent to promote any photographic material, motion picture, etc., which includes sexual conduct by a child.
827.071(5)	3rd	Possess, control, or intentionally view any photographic material, motion picture, etc., which includes sexual conduct by a child.
828.12(2)	3rd	Tortures any animal with intent to inflict intense pain, serious physical injury, or death.
839.13(2)(b)	2nd	Falsifying records of an individual in the care and custody of a state agency involving great bodily harm or

		death.
843.01	3rd	Resist officer with violence to person; resist arrest with violence.
847.0135(5)(b)	2nd	Lewd or lascivious exhibition using computer; offender 18 years or older.
847.0137 (2) & (3)	3rd	Transmission of pornography by electronic device or equipment.
847.0138 (2) & (3)	3rd	Transmission of material harmful to minors to a minor by electronic device or equipment.
874.05(1)(b)	2nd	Encouraging or recruiting another to join a criminal gang; second or subsequent offense.
874.05(2)(a)	2nd	Encouraging or recruiting person under 13 years of age to join a criminal gang.
893.13(1)(a)1.	2nd	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d),

		(2)(a), (2)(b), or (2)(c)4. drugs).
893.13(1)(c)2.	2nd	Sell, manufacture, or deliver cannabis (or other s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8., (2)(c)9., (3), or (4) drugs) within 1,000 feet of a child care facility, school, or state, county, or municipal park or publicly owned recreational facility or community center.
893.13(1)(d)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of university.
893.13(1)(e)2.	2nd	Sell, manufacture, or deliver cannabis or other drug prohibited under s. 893.03(1)(c), (2)(c)1., (2)(c)2., (2)(c)3., (2)(c)5., (2)(c)6., (2)(c)7., (2)(c)8.,

		(2)(c)9., (3), or (4) within 1,000 feet of property used for religious services or a specified business site.
893.13(1)(f)1.	1st	Sell, manufacture, or deliver cocaine (or other s. 893.03(1)(a), (1)(b), (1)(d), or (2)(a), (2)(b), or (2)(c)4. drugs) within 1,000 feet of public housing facility.
893.13(4)(b)	2nd	Use or hire of minor; deliver to minor other controlled substance.
893.1351(1)	3rd	Ownership, lease, or rental for trafficking in or manufacturing of controlled substance.

Section 4. This act shall take effect July 1, 2018.

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 1504
INTRODUCER:	Senator Rouson
SUBJECT:	Tax Deed Sales
DATE:	February 12, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Present	Yeatman	CA	**Pre-meeting**
2.			AFT	
3.			AP	

I. Summary:

SB 1504 clarifies the responsibilities of the certificateholder applying for a tax deed, including the specific costs to pay. The bill requires all tax collectors to contract with title companies to provide a property information report and deletes references to title searches and abstracts. Fees for property information reports and updates will be added to the costs of sale.

Additionally, the bill revises certain provisions on notice, distribution of surplus funds, and makes certain technical changes. Specifically, the bill requires any excess funds from the proceeds of a tax deed sale that are unclaimed to be retained by the clerk of the court for the county pursuant to s. 116.21, F.S., rather than escheat to the state under s. 717.113, F.S.

II. Present Situation:

Property Taxation

Ad valorem taxes are levied annually by counties, school districts, municipalities, and, if authorized, special districts,[1] based on the value of real and tangible personal property as of January 1 of each year.[2] The state cannot levy ad valorem taxes on real or tangible personal

[1] Art. VII, s. 9, Fla. Const. Section 192.001(12), F.S., defines "real property" as land, buildings, fixtures, and all other improvements to land. The terms "land," "real estate," "realty," and "real property" may be used interchangeably. Section 192.001(11)(d), F.S., defines "tangible personal property" as all goods, chattels, and other articles of value, not including the vehicular items under art. VII, s 1(b), Fla. Const. and elsewhere, capable of manual possession and whose chief value is intrinsic to the article itself.

[2] Office of Economic & Demographic Research (OER), *2017 Florida Tax Handbook*, p.199, available at http://edr.state.fl.us/content/revenues/reports/tax-handbook/taxhandbook2017.pdf (hereinafter 2017 Tax Handbook). Section 192.001(1) and (2), F.S., define ad valorem, or property tax, as a tax based upon the assessed value of property as determined annually by:

1. The just or fair market value of an item or property;
2. The value of property as limited by art. VII of the State Constitution; or

property but has preempted all other forms of taxation except as provided by general law.[3] All property must be assessed at just value for ad valorem tax purposes, and the property appraiser determines an assessed value of property based on statutory factors including the present cash value of the property and the highest and best use to which the property can be expected to be put in the immediate future.[4] Property's taxable base is the fair market value of locally assessed real estate, tangible personal property and state assessed railroad property, less certain exclusions, differentials, exemptions, and credits.[5]

Tax Collection and Tax Certificate Sales

All taxes are due on November 1 of each year or as soon as the certified tax roll is received by the tax collector.[6] Taxes become delinquent on April 1 of the following year or immediately upon the expiration of 60 days from the date the original tax notice was mailed, whichever is later.[7] After receiving the tax roll, the tax collector publishes notice in the local newspaper stating the tax roll is open for collection, and within 20 working days of receipt of the tax roll, sends each taxpayer, whose address is known, a tax notice with the current taxes due and any delinquent taxes due.[8]

If ad valorem taxes are not paid by June 1 or the 60th day after the tax becomes delinquent, whichever is later, the tax collector advertises and sells tax certificates to pay the delinquency.[9] A tax certificate is a legal document that represents unpaid delinquent ad valorem taxes, non-ad valorem assessments, interest, and related costs and charges issued against a specific parcel of real property.[10] Once sold, the tax certificate becomes a first lien on the property, superior to all

3. The value of property in a classified use or at a fractional value if the property is assessed solely on the basis of character or use or at a specified percentage of its value under art. VII of the State Constitution.

[3] Art. VII, s. 1, Fla. Const. All ad valorem taxation shall be at a uniform rate within each taxing unit, except the taxes on intangible personal property may be at different rates but shall never exceed two mills on the dollar of assessed value; provided, as to any obligations secured by mortgage, deed of trust, or other lien on real estate wherever located, an intangible tax of not more than two mills on the dollar may be levied by law to be in lieu of all other intangible assessments on such obligations. Art. VII, s. 2, Fla. Const.

[4] Art. VII, s. 4, Fla. Const. and s. 193.011, F.S.

[5] 2017 Tax Handbook, at 206. Exclusions are specific types of property constitutionally or statutorily removed from ad valorem taxation such as transportation vehicles which are alternatively subject to a license tax. The Homestead exemption under art. VII, s. 6, Fla. Const., provides that every person who owns real estate with legal and equitable title and permanently resides, or has a dependent who permanently resides upon such real estate, is eligible for a $25,000 homestead tax exemption applicable to all ad valorem tax levies including school district levies. An additional $25,000 homestead exemption applies to homesteads that have an assessed value greater than $50,000 and up to $75,000, excluding school district levies.

[6] Section 197.333, F.S.

[7] Section 197.333, F.S. If the delinquency date for ad valorem taxes is later than April 1st of the year following the year in which taxes are assessed, all dates or time periods relative to the collection of, or administrative procedures regarding, delinquent taxes are extended a like number of days.

[8] Section 197.322(2), F.S. If payment has not been received, the tax collector must send out an additional notice by April 30. Section 197.343, F.S

[9] Sections 197.402(3) and 197.432(1), F.S. The tax collector must advertise the sale once a week for 3 weeks. A public sale is not authorized if a tax certificate is valued under $250 and applies to property that has been granted a homestead exemption for the relevant tax year. *See* s. 197.432(4), F.S. Instead, the tax certificate is issued to the county at the maximum rate of interest allowed and cannot be sold or used for a tax deed application unless the tax certificate and accrued interest are valued at $250 or more. *See* ss. 197.432(4), 197.4725 and 197.502(3), F.S.

[10] Section 197.102(1)(f), F.S.

other liens, except as provided by law,[11] but can be enforced only through the remedies provided under ch. 197, F.S.[12]

The tax certificate expires after 7 years from the date the sale was advertised.[13] If a tax deed has not been applied for, and no other administrative or legal proceeding, including a bankruptcy, has been initiated, the tax certificate is null and void and shall be canceled.[14]

Before a tax certificate is awarded[15] to a buyer or struck to the county (an unsold tax certificate issued to the county[16]), the taxpayer may pay the delinquent taxes and all interest, costs, and charges to avoid issuance of the tax certificate.[17] Otherwise, a tax certificate can be redeemed by paying the face value amount of the tax certificate plus all interest, costs, and charges to the tax collector any time before a tax deed is issued unless full payment for the tax deed is made to the clerk of the court.[18] The tax collector pays the tax certificateholder the amount received to redeem the certificate less a redemption fee.[19] If the certificateholder cannot be found for payment, the money is remitted to the state as unclaimed money.[20]

Tax Deed Applications

Two years after April 1 of the year in which the tax certificated was issued, and before the certificate expires, a certificateholder may apply for a tax deed with the tax collector.[21] The tax collector may charge a $75 application fee and reimbursement of costs for use of an online application process if offered. If the total fee is more than $75, the applicant must have the option to apply online.[22]

A certificateholder, other than the county, must buy or redeem all other outstanding tax certificates plus interest, any omitted taxes[23] plus interest, any delinquent taxes plus interest, and any current taxes due on the property and, if applicable, pay the costs of resale.[24] If the certificateholder is the county, the application fee and reimbursement costs charged by the tax collector must be deposited with the tax collector but the county may not deposit any money for

[11] *Id.*
[12] Section 197.432(2), F.S. A tax certificate can be transferred to another at any time before it is redeemed or a tax deed is executed. Section 197.462(1), F.S.
[13] Section 197.482, F.S.
[14] *Id.* A deferred payment tax certificate is not subject to this provision.
[15] "Awarded" means the time when the tax collector or a designee determines and announces verbally or through the closing of the bid process in a live or an electronic auction that a buyer has placed the winning bid on a tax certificate at a tax certificate sale. Section 197.102(1)(a), F.S.
[16] Section 197.432(6), F.S.
[17] Section 197.432(3), F.S.
[18] Section 197.472(1), F.S. A portion of a certificate may be redeemed only if such portion can be ascertained by legal description and the portion to be redeemed is evidenced by a contract for sale or recorded deed. *See* Section 197.472(4), F.S.
[19] Section 197.472(5), F.S.
[20] Section 197.473, F.S.
[21] Section 197.502(1), F.S.
[22] *Id.*
[23] "Omitted taxes" means those taxes which have not been extended on the tax roll against a parcel of property after the property has been placed upon the list of lands available for taxes pursuant to s. 197.502, F.S. (Section 197.102, F.S.)
[24] Section 197.502(2), F.S. Failure to pay the costs of resale within 30 days after notice from the clerk shall will result in the clerk's entering the land on a list entitled "lands available for taxes."

redemption or purchase of other tax certificates covering the property.[25] Certificateholders with more than one tax certificate may consolidate them into one application, but the tax collector is required to issue separate statements to the clerk of the circuit court to identify appropriate parties for notice requirements and the clerk must issue a separate tax deed for each listed parcel of real property.[26]

After the certificateholder provides the required funds, the tax collector must send a signed statement to the clerk of the circuit court confirming receipt and directing the clerk to notify the following persons prior to the sale of the property, if their addresses are documented:

- Any legal titleholder of record;
- Any lienholder of record who has recorded a lien against the property described in the tax certificate;
- Any mortgagee of record;
- Any vendee of a recorded contract for deed or any vendee who has applied to receive notice pursuant to s. 197.344(1)(c), F.S.;
- Any other lienholder who has applied to the tax collector to receive notice;
- Any person to whom the property was assessed on the tax roll for the year in which the property was last assessed;
- Any lienholder of record who has recorded a lien against a mobile home located on the property described in the tax certificate if the lien is recorded with the clerk of the circuit court in the county where the mobile home is located; and
- Any legal titleholder of record of property that is contiguous[27] to the property described in the tax certificate, if the property described is submerged land or common elements of a subdivision and if the address of the titleholder of contiguous property appears on the record of conveyance of the property to the legal titleholder.[28]

The tax collector may purchase a reasonable bond for errors and omissions made in preparing this statement,[29] and may contract with a title or abstract company to provide the minimum information to identify the persons requiring notice from the clerk.[30] If additional information is required, the tax collector must make a written request to the title or abstract company stating the

[25] Section 197.502(3), F.S. The county must apply for a tax deed if the property has been most recently assessed at a value over $5,000 by the property appraiser and may apply for a tax deed on property most recent assessment below $5,000. The county must apply on or reasonably soon after 2 years after the April 1 of the year the tax certificate was issued.
[26] Section 197.502(9), F.S.
[27] "Contiguous" means touching, meeting, or joining at the surface or border, other than at a corner or a single point, and not separated by submerged lands. Submerged lands lying below the ordinary high-water mark which are sovereignty lands are not part of the upland contiguous property for purposes of notification. Section 197.502(4)(h), F.S.
[28] Sections 197.502(4)(a)-(h), F.S. If any legal titleholder is identified as the most recent taxpayer of the property covered by the tax certificate, the clerk is permitted to mail notice to the address on the latest tax assessment roll.
[29] Section 197.502(4), F.S. A search of the official records must be made by a direct and inverse search. "Direct" means the index in straight and continuous alphabetic order by grantor, and "inverse" means the index in straight and continuous alphabetic order by grantee.
[30] Section 197.502(5)(a), F.S. The contractual relationship must be consistent with rules adopted by the Department of Revenue.

additional requirements.[31] The law does not specify what report the tax collector must obtain but does reference the requirements for a property information report and title search or abstract.[32]

A property information report is any report that discloses documents or information about a parcel of real property appearing in:

- The Official Records in the possession of the clerk of the circuit court as county recorder;[33]
- The records of a county tax collector pertaining to ad valorem real property taxes and special assessments imposed by a governmental authority; or
- The Secretary of State filing office or another governmental filing office pertaining to real or personal property.[34]

A property information report may not include or imply, either directly or indirectly, any opinion, warranty, guarantee, insurance, or other similar assurance,[35] and liability for any errors or omissions in the report is limited to the contractual remedies available only to the party expressly identified as the recipient of the report not exceeding the amount paid for the report.[36] The report must contain the liability disclaimer worded in the statute.[37] Before a tax collector becomes liable for payment of a property information report, the report, whether in paper or electronic format, must include the letterhead of the person, firm, or company making the search and signature of the individual making the search or an officer of the firm.[38]

A title search is the compiling of title information from official or public records.[39] An abstract is a summary of the record evidence of title.[40] An abstract must include:

- A description of the property,
- The names of the grantors and grantees, mortgagors and mortgagees,
- The nature of the instrument, consideration, date, release of dower, number of witnesses, number of book and page of record, and
- Such other information arranged in such order as the said board of commissioners may deem advisable.[41]

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[31] Section 197.502(5)(a), F.S. The tax collector may advertise and accept bids from the title or abstract company, if deemed appropriate, and may select any title or abstract company authorized to do business in this state, regardless of its location, as long as the fee is reasonable and the minimum information is submitted.

[32] Section 197.502(5)(a)-(b), F.S. The tax collector may not accept or pay for any title search or abstract if financial responsibility is not assumed for the search, but may set reasonable restrictions as to the liability or responsibility of the title or abstract company.

[33] Pursuant to s. 28.222, F.S.

[34] Section 627.7843(1), F.S. A property information report may be issued by any person, including a Florida-licensed title insurer, title agent, or title agency.

[35] Section 627.7843(2), F.S. A property information report is not title insurance pursuant to s. 624.608, F.S.

[36] Section 627.7843(3), F.S.

[37] *Id.* Under the tax deed application scheme, tax collectors may contract for higher maximum liability limits despite the statutory limitation on liability. Section 197.502(5)(a)2., F.S.

[38] Section 197.502(5)(a)1., F.S.

[39] Section 627.7711(4), F.S.

[40] *Adams v. Whittle*, 101 Fla. 705, 135 So.152 (Fla. 1931). The decision actually uses "epitome," as in a summary of a written work.

[41] Section 703.03, F.S. An abstract of tax sales relating to real estate must include number of the tax certificate, date of sale, the year for which taxes were unpaid, number and page of book where it was recorded, date of redemption or cancellation, date of the tax sales deed, number and page of book where recorded, and such other information and in such order as may be deemed advisable by the clerk. Section 703.04, F.S.

If a title search or abstract of title is produced, the fee paid for the title search or abstract must be collected from the certificateholder at the time the application is made, and the amount of the fee must be added to the opening bid of the tax deed sale.[42] The tax collector may not accept or pay for any title search or abstract if financial responsibility is not assumed for the search.[43]

In order to establish uniform prices for property information reports within the county, the tax collector must ensure that the contract for such reports include all requests for title searches or abstracts for a given period of time.[44]

Tax Deed Sale

The clerk of the circuit court must advertise[45] and administer a sale and receive fees pursuant to a statutory fee schedule.[46] The clerk of the circuit court must notify the persons listed in the tax collector's statement of the tax deed application.[47] The notice must be mailed at least 20 days before the date of the sale. No notice is required if no addresses are listed in the tax collector's statement.[48] The clerk must certify the names and addresses of those persons notified and the date the notice was mailed or certify no address was listed on the tax collector's certification.[49] The failure of anyone to receive notice as provided by statute does not affect the validity of the tax deed issued pursuant to the notice.[50]

The opening bid for county-held tax certificates against non-homestead property must include:
- All outstanding tax certificates against the property plus taxes for any omitted years;
- Delinquent taxes;

[42] Section 197.502(5)(b), F.S. However, reasonable restrictions as to the liability or responsibility of the title or abstract company are acceptable.
[43] Section 197.502(5)(a)2., F.S.
[44] Section 197.502(5)(a)3., F.S.
[45] Upon the receipt of the tax deed application and payment of proper charges, the clerk shall publish a form notice once each week for 4 consecutive weeks at weekly intervals in a newspaper selected as provided in s. 197.402, F.S., or as required if there is no available newspaper. No tax deed sale can be held until 30 days after the first publication of the notice. Section 197.512(1)-(2), F.S.
[46] Sections 197.502(5)(c) and 28.24(21)-(22), F.S. Currently, the clerk's fee is $60.00 for processing an application for a tax deed sale (includes application, sale, issuance, and preparation of tax deed, and disbursement of proceeds of sale), other than excess proceeds and $10 for distribution of the excess proceeds for the first $100, or fraction thereof.
[47] Section 197.522(1)(a), F.S. Notice must be made by certified mail with return receipt requested or, if the notice is to be sent outside the continental United States, by registered mail. The notice must include the warning language listed in the statute.
[48] *Id.* The certificateholder may also request the clerk mail notice to names and addresses provided by the certificateholder. The charges are paid by the certificateholder and added to the amount required to redeem the land for sale. Section 197.532, F.S.
[49] Sections 197.522(1)(c) and (2)(b), F.S.
[50] Section 197.522(1)(d), F.S. In addition to the mailed notice, the sheriff of the county in which the legal titleholder resides must notify the legal titleholder of record of the property on which the tax certificate is outstanding at least 20 days prior to the date of sale. If the sheriff is unable to make service, he or she must post a copy of the notice in a conspicuous place at the legal titleholder's last known address. The inability of the sheriff to serve notice on the legal titleholder shall not affect the validity of the tax deed issued pursuant to the notice. A legal titleholder of record who resides outside the state may be notified by mail as required. However, no posting of notice shall be required if the property to be sold is classified for assessment purposes, according to use classifications established by the department, as nonagricultural acreage or vacant land. *See* Section 197.522(2)(a), F.S.

- Interest at the rate of 1.5 per month for the period running from the month after the date of application for the deed through the month of sale;[51]
- Costs incurred for the service of notice to the required parties by the clerk;[52] and
- All costs and fees paid by the county.[53]

The opening bid for individual tax certificates must include:
- The amount of money paid to the tax collector by the certificateholder at the time of application;
- The amount required to redeem the applicant's tax certificate and all other costs and fees paid by the applicant;
- All tax certificates that were sold subsequent to the filing of the tax deed application;
- Omitted taxes, if any exist;[54]
- Interest at the rate of 1.5 per month for the period running from the month after the date of application for the deed through the month of sale; and
- Costs incurred for the service of notice to the required parties by the clerk.[55]

Opening bids for any property assessed as homestead property on the latest tax roll must include one-half of the latest assessed value of the homestead in addition to the amounts for an opening bid on non-homestead property.[56]

The property is sold at public auction by the clerk of the circuit court, or the clerk's deputy, during regular office hours and pursuant to the published notice.[57] The opening bid is the bid of the certificateholder.[58] If there are no higher bids, the property is sold to the certificateholder, who must pay the clerk any amounts included in the minimum bid not already paid, including, but not limited to, documentary stamp taxes, recording fees, and, if the property is homestead property, the moneys to cover the one-half value of the homestead within 30 days after the sale.[59] If the certificateholder fails to make full payment when due, the clerk enters the land on a list entitled "lands available for taxes."[60]

The property shall be struck off and sold to the highest bidder who must post with the clerk a nonrefundable deposit of 5 percent of the bid or $200, whichever is greater, at the time of the sale, to be applied to the sale price at the time of full payment.[61] If the sale is canceled for any reason or the buyer fails to make full payment within the time required, the clerk must re-advertise the sale within 30 days after the buyer's nonpayment or, if canceled, within 30 days

[51] Section 197.542(1), F.S.
[52] Section 197.542(1), F.S. A clerk may conduct electronic tax deed sales in lieu of public outcry. *See* s. 197.542, F.S.
[53] Section 197.502(6)(a), F.S.
[54] Section 197.502(6)(b), F.S.
[55] Section 197.542(1), F.S. A clerk may conduct electronic tax deed sales in lieu of public outcry. *See* s. 197.542, F.S.
[56] Section 197.502(6)(c), F.S.
[57] Section 197.542(1), F.S.
[58] Section 197.542(1), F.S.
[59] *Id.* Upon payment, a tax deed shall be issued and recorded by the clerk. Under s. 197.573, F.S., the usual restrictions and covenants limiting the use of property; the type, character and location of building; covenants against nuisances and what the former parties deemed to be undesirable conditions, in, upon, and about the property; and other similar restrictions and covenants; survive the tax deed sale. *See* s. 197.573, F.S.
[60] Section 197.542(1), F.S.
[61] Section 197.542(2), F.S.

after the clerk receives the costs of resale.[62] Any person, firm, corporation, or county that is the grantee of any tax deed is entitled to the immediate possession of the lands described in the deed.[63]

Tax Sale Proceeds Distribution

If the property is not purchased by the certificateholder, the clerk must reimburse the certificateholder of the sums paid, including the amount required to redeem the certificate or certificates together with any and all subsequent unpaid taxes plus the costs and expenses of the application for deed, with interest.[64] The clerk distributes the proceeds of sale in the same manner as money received for the redemption of tax certificates owned by the county.[65]

Any proceeds exceeding the certificateholder's statutory bid must be paid over to and disbursed by the clerk.[66] If the property purchased is homestead property and the statutory bid included the required homestead deposit,[67] that amount must be treated as excess and distributed in the same manner.[68]

The clerk must distribute the excess proceeds to governmental units to pay any lien of record held by the governmental unit against the property.[69] If there is a balance after all governmental units are paid in full, the clerk retains the excess proceeds for the benefit of persons who were entitled to notice of the tax deed sale as identified by the tax collector, including any legal titleholder of record of property contiguous to tax deed property that is submerged land or common elements of a subdivision.[70] The clerk must notify these persons by mail that the funds are being held for their benefit.[71] If the money is not claimed, the clerk may report the money as unclaimed and remit it to the state.[72] The clerk may take money from the excess proceeds to cover any service charges, at the rate prescribed under the clerk's fee schedule,[73] and the costs of mailing notice.[74] Excess proceeds shall be held and disbursed in the same manner as unclaimed

[62] Section 197.542(3), F.S.
[63] Section 197.562, F.S. If a demand for possession is refused, the purchaser may apply to the circuit court for a writ of assistance upon 5 days' notice directed to the person refusing to deliver possession. Upon service of the responsive pleadings, if any, the matter shall proceed as in chancery cases. If the court finds for the applicant, an order shall be issued by the court directing the sheriff to put the grantee in possession of the lands.
[64] Section 197.582(1), F.S. Interest is 1.5% per month on the total of such sums for the period running from the month after the date of application for the deed through the month of sale.
[65] Section 197.582(1), F.S.
[66] Section 197.582(2), F.S.
[67] The homestead deposit is an amount equal to at least one-half of the assessed value of the homestead. Section 197.502(6)(c), F.S.
[68] Section 197.582(2), F.S.
[69] Section 197.582(2), F.S. Any tax certificates not incorporated in the tax deed application and omitted taxes, if any, are included. If the excess is not sufficient to pay all of such liens in full, the excess shall be paid to each governmental unit pro rata.
[70] Sections 197.502(4)(h) and 197.582(2), F.S.
[71] Section 197.582(2), F.S.
[72] Sections 197.582(2) and 717.117(4), F.S.
[73] *See* s. 28.24(10), F.S.
[74] Sections 197.582(2) and 197.473, F.S.

redemption moneys.[75] If excess proceeds are not sufficient to cover the service charges and mailing costs, the clerk shall receive the total amount of excess proceeds as a service charge.[76]

If unresolved claims against the property exist on the date the property is purchased, the clerk must ensure that the excess funds are paid according to the priorities of the claims.[77] Junior lienholders cannot be paid if a higher priority lienholder has not made a claim.[78] The clerk may initiate an interpleader action against the lienholders to resolve any potential conflicts in claim and seek reasonable fees and costs.[79]

III. Effect of Proposed Changes:

Section 1 amends section 197.502, F.S., relating to the application for obtaining a tax deed by holder of the tax sale certificate.

Section 197.502(2), F.S.

The bill requires the certificateholder applying for a tax deed to pay the costs to bring the property to sale for mailing additional notices at the request of the certificateholder under s. 197.532, F.S., and sale at public auction under s. 197.542, F.S. The required costs include property information searches and mailing costs.

Section 197.502(5)(a)-(b), F.S.

The bill requires, rather than allows, each tax collector to contract with a title company to provide a property information report, defined in s. 627.7843(1), F.S., and replaces references to "title searches or abstracts" with a reference to a "property information report" only. The fees for initial property information reports and any update within 60-days must be collected at the time an application for a tax deed is submitted, and the amount of the fee must be added to the opening bid for the tax deed. The bill defines "title company" as a title insurer defined in s. 627.7711(3), F.S., and licensed title insurance agencies and attorneys who are authorized agents for a title insurer that is licensed in Florida.

Section 197.502(5)(c), F.S.

The bill requires the clerk to record a notice of tax deed application in the official records after the tax collector submits the application to the clerk. The notice serves as notice of the pendency of the tax deed application, remains effective for 1 year after the recording date, and is deemed to provide notice to any person who acquires an interest in the described property after the date of recording without any requirement that the clerk give additional notice. The notice will be released automatically upon the sale or, if the property is redeemed, released upon payment of the required clerk's fees. The notice must have the same information required for the notice that must be published by a newspaper or posted publicly under s. 197.512, F.S. The costs of

[75] Sections 197.582(2) and 197.473, F.S.
[76] Section 197.582(2), F.S.
[77] Section 197.582(3), F.S.
[78] *Id.*
[79] *Id.*

recording the notice must be collected at the time of application and added to the opening bid for the property in the tax deed sale.

Section 197.502(5)(d), F.S.

The bill adds the specific statutory references for the advertisement and administration of a tax deed sale.

Section 197.502(5)(e), F.S.

The bill provides that sending the notice of the application for tax deed as required under ss. 197.512 and 197.522, F.S., to the persons entitled to receive notice under s. 197.502(4), F.S., is conclusively deemed sufficient adequate notice of the application and sale at public auction.

Section 197.502(6)(a) and (b), F.S.

The bill adds current taxes to the list of costs required to be added to the opening bid for the tax deed on both county-held and individually purchased tax certificates, and adds "additional fees or costs incurred by the clerk" to the opening bid for individually purchased certificates.

Section 2 amends section 197.522, F.S., to provide that the clerk may rely on the addresses submitted by the tax collector and is not required to seek additional information to verify the addresses. Additionally, the clerk is not liable if the address provided by the tax collector is incorrect.

Section 3 amends section 197.582, F.S.

Section 197.582(2) and (3), F.S.

The bill provides that the clerk must mail notices to the persons entitled to the excess proceeds from a tax deed sale to the addresses provided by the tax collector. The bill removes the provision allowing the notice to satisfy the requirements to treat any unclaimed proceeds as unclaimed money under ch. 717, F.S. The bill provides a form entitled the "Notice of Surplus Funds from Tax Deed Sale" for the clerk to use to notify claimants. Service charges and mailing costs are taken out of the excess proceeds. If the excess proceeds are not enough to cover the service charges and mailing costs, the clerk receives the total amount of excess proceeds as a service charge after certifying the deficiency.

Claimants have 120 days after the date of the notice to file a claim for the excess proceeds. The bill provide a claim form that may be used by claimants.

Section 197.582(4)-(9), F.S.

The bill provides the claims may be submitted by mail, commercial delivery service, in person, or by fax or e-mail. If submitted by mail, the postmark date is the date of filing the claim. For a claim submitted by commercial delivery service or delivered in person, the date of delivery is the filing date. The filing date for a faxed or e-mailed claim is the date of receipt by the clerk or

comptroller. Claims that are not filed by the close of business on the 120th day are barred and constitute a waiver of interest in the excess proceeds, unless they are claims by the property owner.

The bill adds a review period of 90 days during which the clerk may file an interpleader action to determine the proper disbursement of the proceeds or pay the excess funds according to the clerk's own determination of priority based on the submitted claims. A declaratory action may not be filed until after the claim and review periods have expired.

The bill requires holders of governmental liens, other than federal government liens and ad valorem tax liens, to file a request for disbursement of surplus funds within 120 days from the mailing of the notice of surplus funds. The clerk or comptroller must disburse funds to governmental units holding any lien of record against the property, including any tax certificate not incorporated in the tax deed application and any omitted tax, before non-governmental claimants. The tax deed recipient may directly pay off the liens to governmental units then file a timely claim with proof of payment and receive the same amount of funds, in the same priority, as the original lienholder.

The bill provides that if the clerk does not receive any claims for the excess funds within the 120-day claim period, there is a conclusive presumption that the legal titleholder of record described in s. 197.502(4)(a), F.S., is entitled to the excess funds, which become unclaimed moneys under s. 116.21, F.S. The clerk shall process the unclaimed moneys in the manner provided for in s. 116.21, F.S., rather than the method provided under ch. 717, F.S.

Section 4 provides that the bill applies to tax deed applications filed with the tax collector for sales pursuant to s. 197.542, F.S., which occur on or after October 1, 2018.

Section 5 provides that the bill takes effect July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference has estimated that similar legislation will reduce State School Trust Fund receipts by $1.7 million in Fiscal Year 2018-2019, with a $1.1 million recurring reduction, and the bill will increase Local Fine and Forfeiture Trust Fund receipts by $1.7 million in Fiscal Year 2018-2019 with a $2.3 million recurring increase.[80]

B. Private Sector Impact:

None.

C. Government Sector Impact:

If the bill passes, the unclaimed excess proceeds that would have gone to the State as unclaimed funds under current law, will now be placed in the Local Fine and Forfeiture Trust Fund, creating an increase in revenue to the county.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 197.502, 197.522, and 197.582.

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.

[80] Revenue Estimating Conference, *HB 1383*, p. 425, available at http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/page423-428.pdf.

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LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsections (1), (2), (5), and (6) of section 197.502, Florida Statutes, are amended to read:

197.502 Application for obtaining tax deed by holder of tax sale certificate; fees.—

(1) The holder of a tax certificate at any time after 2 years have elapsed since April 1 of the year of issuance of the

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tax certificate and before the cancellation of the certificate, may file the certificate and an application for a tax deed with the tax collector of the county where the property described in the certificate is located. The tax collector may charge a tax deed application fee of $75 and for reimbursement of the costs for providing online tax deed application services. If the tax collector charges a combined fee in excess of $75, applicants may use ~~shall have the option of using~~ the online ~~electronic~~ tax deed application process or may file applications without using such service.

(2) A certificateholder, other than the county, who applies ~~makes application~~ for a tax deed shall pay the tax collector at the time of application all amounts required for redemption or purchase of all other outstanding tax certificates, plus interest, any omitted taxes, plus interest, any delinquent taxes, plus interest, and current taxes, if due, covering the property. In addition, the certificateholder shall pay the costs required to bring the property to sale as provided in ss. 197.532 and 197.542, including property information searches and mailing costs, as well as the costs of resale, if applicable. If the certificateholder fails to pay the costs to bring the property to sale within 30 days after notice from the clerk, the tax collector must cancel the tax deed application. All taxes and costs associated with a canceled tax deed application shall earn interest at the bid rate of the certificate on which the tax deed application was based.~~, and~~ Failure to pay the ~~such~~ costs of resale, if applicable, within 30 days after notice from the clerk shall result in the clerk's entering the land on a list entitled "lands available for taxes."


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(5)(a) For purposes of determining who must be noticed and provided the information required in subsection (4), the tax collector must ~~may~~ contract with a title company or an abstract company to provide a property information report as defined in s. 627.7843(1) ~~the minimum information required in subsection (4), consistent with rules adopted by the department~~. If additional information is required, the tax collector must make a written request to the title or abstract company stating the additional requirements. The tax collector may select any title or abstract company, regardless of its location, as long as the fee is reasonable, the required ~~minimum~~ information is submitted, and the title or abstract company is authorized to do business in this state. The tax collector may advertise and accept bids for the title or abstract company if he or she considers it appropriate to do so.

1. The property information report must include the letterhead of the person, firm, or company that makes the search, and the signature of the individual who makes the search or of an officer of the firm. The tax collector is not liable for payment to the firm unless these requirements are met. The report may be submitted to the tax collector in an electronic format.

2. The tax collector may not accept or pay for a property information report ~~any title search or abstract~~ if financial responsibility is not assumed for the search. However, reasonable restrictions as to the liability or responsibility of the title or abstract company are acceptable. Notwithstanding s. 627.7843(3), the tax collector may contract for higher maximum liability limits.

3. In order to establish uniform prices for property information reports within the county, the tax collector must ensure that the contract for property information reports includes ~~include~~ all requests for property information reports ~~title searches or abstracts~~ for a given period of time.

(b) Any fee paid for initial property information reports and any updates ~~for a title search or abstract~~ must be collected at the time of application under subsection (1), and the amount of the fee must be added to the opening bid.

(c) Upon receiving the tax deed application from the tax collector, the clerk shall record a notice of tax deed application in the official records, which constitutes notice of the pendency of a tax deed application with respect to the property and which remains effective for 1 year from the date of recording. A person acquiring an interest in the property after the tax deed application notice has been recorded is deemed to be on notice of the pending tax deed sale and no additional notice is required. The sale of the property automatically releases any recorded notice of tax deed application for that property. If the property is redeemed, the clerk must record a release of the notice of tax deed application upon payment of the fees as authorized in s. 28.24(8) and (12). The contents of the notice must be the same as the contents of the notice of publication required by s. 197.512. The cost of recording must be collected at the time of application under subsection (1) and added to the opening bid.

(d) The clerk must ~~shall~~ advertise ~~and administer~~ the sale as set forth in s. 197.512, administer the sale as set forth in s. 197.542, and receive such fees for the issuance of the deed

and sale of the property as provided in s. 28.24.

(e) A notice of the application of the tax deed in accordance with ss. 197.512 and 197.522 which is sent to the addresses shown on the statement described in subsection (4) is conclusively deemed sufficient to provide adequate notice of the tax deed application and the sale at public auction.

(6) The opening bid:

(a) On county-held certificates on nonhomestead property shall be the sum of the value of all outstanding certificates against the property, plus omitted years' taxes, delinquent taxes, current taxes, if due, interest, and all costs and fees paid by the county.

(b) On an individual certificate must include, in addition to the amount of money paid to the tax collector by the certificateholder at the time of application, the amount required to redeem the applicant's tax certificate and all other costs, ~~and~~ fees paid by the applicant, and any additional fees or costs incurred by the clerk, plus all tax certificates that were sold subsequent to the filing of the tax deed application, current taxes, if due, and omitted taxes, if any.

(c) On property assessed on the latest tax roll as homestead property shall include, in addition to the amount of money required for an opening bid on nonhomestead property, an amount equal to one-half of the latest assessed value of the homestead.

Section 2. Present subsection (3) of section 197.522, Florida Statutes, is redesignated as subsection (4), and a new subsection (3) is added to that section, to read:

197.522 Notice to owner when application for tax deed is


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made.—

(3) When sending or serving a notice under this section, the clerk of the circuit court may rely on the addresses provided by the tax collector based on the certified tax roll and property information reports. The clerk of the circuit court has no duty to seek further information as to the validity of such addresses because property owners are presumed to know that taxes are due and payable annually under s. 197.122.

Section 3. Subsections (2) and (3) of section 197.582, Florida Statutes, are amended, and subsections (4) through (9) are added to that section, to read:

197.582 Disbursement of proceeds of sale.—

(2)(a) If the property is purchased for an amount in excess of the statutory bid of the certificateholder, the surplus ~~excess~~ must be paid over and disbursed by the clerk as set forth in subsections (3), (5), and (6). If the opening bid included the homestead assessment pursuant to s. 197.502(6)(c)~~.~~ ~~If the property purchased is homestead property and the statutory bid includes an amount equal to at least one-half of the assessed value of the homestead~~, that amount must be treated as surplus ~~excess~~ and distributed in the same manner. The clerk shall distribute the surplus ~~excess~~ to the governmental units for the payment of any lien of record held by a governmental unit against the property, including any tax certificates not incorporated in the tax deed application and omitted taxes, if any. ~~If the excess is not sufficient to pay all of such liens in full, the excess shall be paid to each governmental unit pro rata.~~ If~~, after all liens of governmental units are paid in full,~~ there remains a balance of undistributed funds, the

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balance must ~~shall~~ be retained by the clerk for the benefit of persons described in s. 197.522(1)(a), except those persons described in s. 197.502(4)(h), as their interests may appear. The clerk shall mail notices to such persons notifying them of the funds held for their benefit at the addresses provided in s. 197.502(4). Such notice constitutes compliance with the requirements of s. 717.117(4). Any service charges~~, at the rate prescribed in s. 28.24(10),~~ and costs of mailing notices shall be paid out of the excess balance held by the clerk. Notice must be provided in substantially the following form:

NOTICE OF SURPLUS FUNDS FROM TAX DEED SALE

CLERK OF COURT

.... COUNTY, FLORIDA

Tax Deed #:....

Certificate #:....

Property Description:....

Pursuant to chapter 197, Florida Statutes, the above property was sold at public sale on ...(date of sale)..., and a surplus of $...(amount)... (subject to change) will be held by this office for 120 days beginning on the date of this notice to benefit the persons having an interest in this property as described in section 197.502(4), Florida Statutes, as their interests may appear (except for those persons described in section 197.502(4)(h), Florida Statutes).

To the extent possible, these funds will be used to satisfy in full each claimant with a senior mortgage or lien in the property before distribution of any funds to any junior mortgage


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or lien claimant or to the former property owner. To be considered for funds when they are distributed, you must file a notarized statement of claim with this office within 120 days of this notice. If you are a lienholder, your claim must include the particulars of your lien and the amounts currently due. Any lienholder claim that is not filed within the 120-day deadline is barred.

A copy of this notice must be attached to your statement of claim. After the office examines the filed claim statements, it will notify you if you are entitled to any payment.

Dated:....

Clerk of Court

(b) The mailed notice must include a form for making a claim under subsection (3). Service charges at the rate set forth in s. 28.24(10) and the costs of mailing must be paid out of the surplus funds held by the clerk. If the clerk or comptroller certifies that the surplus funds are not sufficient to cover the service charges and mailing costs, the clerk shall receive the total amount of surplus funds as a service charge. ~~Excess proceeds shall be held and disbursed in the same manner as unclaimed redemption moneys in s. 197.473.~~ For purposes of identifying unclaimed property pursuant to s. 717.113, excess proceeds shall be presumed payable or distributable on the date the notice is sent. ~~If excess proceeds are not sufficient to cover the service charges and mailing costs, the clerk shall receive the total amount of excess proceeds as a service charge.~~

(3) A person receiving the notice under subsection (2) has 120 days from the date of the notice to file a written claim

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with the clerk for the surplus proceeds. A claim in substantially the following form is deemed sufficient:

CLAIM TO RECEIVE SURPLUS PROCEEDS OF A TAX DEED SALE

Complete and return to:....

By mail:....

By e-mail:....

Note: The Clerk of the Court must pay all valid liens before distributing surplus funds to a titleholder.

Claimant's name:....

Contact name, if applicable:....

Address:....

Telephone Number:.... E-mail Address:....

Tax No.:....

Date of sale (if known):....

.... I am not making a claim and waive any claim I might have to the surplus funds on this tax deed sale.

.... I claim surplus proceeds resulting from the above tax deed sale.

I am a (check one) ....Lienholder; ....Titleholder.

(1) LIENHOLDER INFORMATION (Complete if claim is based on a lien against the sold property).

(a) Type of Lien: ....Mortgage; ....Court Judgment; ....Other

Describe in detail:....

If your lien is recorded in the county's official records, list the following, if known:

Recording date:....; Instrument #:....; Book #:....; Page #:....

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(b) Original amount of lien: $....

(c) Amounts due: $....

1. Principal remaining due: $....

2. Interest due: $....

3. Fees and costs due, including late fees: $.... (describe costs in detail, include additional sheet if needed);

4. Attorney fees: $....(provide amount claimed): $....

(2) TITLEHOLDER INFORMATION (Complete if claim is based on title formerly held on sold property.)

(a) Nature of title (check one): ....Deed; ....Court Judgment; ....Other (describe in detail):....

(b) If your former title is recorded in the county's official records, list the following, if known: Recording date:....; Instrument#:....; Book #:....; Page #:....

(c) Amount of surplus tax deed sale proceeds claimed: $....

(d) Does the titleholder claim the subject property was homestead property? ....Yes ....No.

(3) I hereby swear or affirm that all of the above information is true and correct.

Date:....

Signature:....

STATE OF FLORIDA

.... COUNTY.

Sworn to or affirmed and signed before me on ...(date)... by ...(name of affiant)...

NOTARY PUBLIC or DEPUTY CLERK

...(Print, Type, or Stamp Commissioned Name of Notary)...

.... Personally known, or

.... Produced identification;

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Identification Produced:....

(4) A claim may be:

(a) Mailed using the United States Postal Service. The filing date is the postmark on the mailed claim;

(b) Delivered using either a commercial delivery service or in person. The filing date is the day of delivery; or

(c) Sent by fax or e-mail, as authorized by the clerk. The filing date is the date the clerk receives the fax or e-mail.

(5) Except for claims by a property owner, claims that are not filed on or before close of business on the 120th day after the date of the mailed notice as required by s. 197.582(2) are barred. A person, other than the property owner, who fails to file a proper and timely claim is barred from receiving any disbursement of the surplus funds. The failure of any person described in s. 197.502(4), other than the property owner, to file a claim for surplus funds within the 120 days constitutes a waiver of interest in the surplus funds and all claims thereto are forever barred.

(6) Within 90 days after the claim period expires, the clerk may either file an interpleader action in circuit court to determine the proper disbursement or pay the surplus funds according to the clerk’s determination of the priority of claims using the information provided by the claimants under subsection (3). The clerk may move the court to award reasonable fees and costs from the interpleaded funds. An action to require payment of surplus funds is not ripe until the claim and review periods expire. The failure of a person described in s. 197.502(4), other than the property owner, to file a claim for surplus funds

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within the 120 days constitutes a waiver of all interest in the surplus funds and all claims for them are forever barred.

(7) A holder of a recorded governmental lien, other than a federal government lien or ad valorem tax lien, must file a request for disbursement of surplus funds within 120 days after the mailing of the notice of surplus funds. The clerk or comptroller must disburse payments to each governmental unit to pay any lien of record held by a governmental unit against the property, including any tax certificate not incorporated in the tax deed application and any omitted taxes, before disbursing the surplus funds to nongovernmental claimants.

(8) The tax deed recipient may directly pay off all liens to governmental units that could otherwise have been requested from surplus funds, and, upon filing a timely claim under subsection (3) with proof of payment, the tax deed recipient may receive the same amount of funds from the surplus funds for all amounts paid to each governmental unit in the same priority as the original lienholder.

(9) If the clerk does not receive claims for surplus funds within the 120-day claim period, as required in subsection (5), there is a conclusive presumption that the legal titleholder of record described in s. 197.502(4)(a) is entitled to the surplus funds. The clerk must process the surplus funds in the manner provided in chapter 717, regardless of whether the legal titleholder is a resident of the state or not.

~~(3) If unresolved claims against the property exist on the date the property is purchased, the clerk shall ensure that the excess funds are paid according to the priorities of the claims. If a lien appears to be entitled to priority and the lienholder~~

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~~has not made a claim against the excess funds, payment may not be made on any lien that is junior in priority. If potentially conflicting claims to the funds exist, the clerk may initiate an interpleader action against the lienholders involved, and the court shall determine the proper distribution of the interpleaded funds. The clerk may move the court for an award of reasonable fees and costs from the interpleaded funds.~~

Section 4. This act applies to tax deed applications filed on or after October 1, 2018, with the tax collector pursuant to s. 197.502, Florida Statutes.

Section 5. This act shall take effect July 1, 2018.

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to tax deed sales; amending s. 197.502, F.S.; requiring a tax certificateholder to pay specified costs required to bring the property on which taxes are delinquent to sale; requiring the tax collector to cancel a tax deed application if certain costs are not paid within a specified period for certain purposes; revising procedures for applying for, recording, and releasing tax deed applications; revising provisions to require property information reports for certain purposes; prohibiting a tax collector from accepting or paying for a property information report under certain circumstances;


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amending s. 197.522, F.S.; authorizing a clerk to rely on addresses provided by the tax collector for specified purposes; amending s. 197.582, F.S.; revising procedures for the disbursement of surplus funds by clerks; providing forms for use in noticing and claiming surplus funds; specifying methods for delivering claims to the clerk's office; providing deadlines for filing claims; providing procedures to be used by clerks in determining disbursement of surplus funds; authorizing a tax deed recipient to pay specified liens; specifying procedures to be used by the tax clerk if surplus funds are not claimed; providing applicability; providing an effective date.

By Senator Rouson

19-01239-18 20181504__

A bill to be entitled

An act relating to tax deed sales; amending s. 197.502, F.S.; requiring certain tax certificateholders applying for a tax deed to pay certain costs required to bring the property to sale; deleting abstract companies as entities tax collectors may contract with for a certain purpose; requiring, rather than authorizing, tax collectors to contract with title companies for a certain purpose; revising the information to be provided by such title companies to tax collectors; defining the term "title company"; revising a requirement for fees collected at the time of application and added to the opening bid; requiring a clerk of the court, upon receiving the tax deed application file from the tax collector, to record a specified notice in the official records; providing construction, procedures, and requirements relating to such notice and the release of such notice; revising requirements for the advertisement and administration of tax deed sales by the clerk; providing construction relating to a certain notice of a tax deed application; revising requirements for opening bids; conforming provisions to changes made by the act; making technical changes; amending s. 197.522, F.S.; providing construction relating to the clerk of the circuit court's reliance on addresses provided by the tax collector when sending or serving certain notices; amending s. 197.582, F.S.; revising requirements and procedures for the holding, payment, disbursement, and

19-01239-18 20181504__

distribution by the clerk of certain excess proceeds from a tax deed sale; revising requirements and construction relating to the clerk's mailing of a certain notice; requiring such notice to be in substantially a specified form; revising requirements for service charges and mailing costs by the clerk; specifying a timeframe under which a person must file a written claim with the clerk for the excess proceeds; providing a form to claim surplus proceeds of a tax deed sale; providing procedures for the filing of such claims; providing that certain claims are barred if not filed within a specified timeframe; revising procedures and requirements relating to the clerk's determination of the priority of claims, payment of such claims, and the filing of a certain interpleader action; deleting a provision authorizing the clerk to move for an award of reasonable fees and costs from interpleaded funds; providing construction relating to the ripeness of actions to require payment of surplus funds; providing that a failure by certain persons to file a claim for excess funds within a specified timeframe constitutes a waiver to such funds and permanently bars such claims; specifying a timeframe under which holders of certain governmental liens must file requests for surplus funds disbursement; requiring the clerk or comptroller to disburse payments to governmental units for payment of liens before any other disbursements; authorizing the tax deed recipient to directly pay certain liens to

governmental units; providing that such recipient, under certain circumstances, is entitled to receive all amounts paid to governmental units in the same priority as the original lienholder; providing construction and procedures if the clerk receives no claims for the excess funds within a specified timeframe; providing applicability; providing an effective date.

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

Section 1. Subsections (1), (2), (5), and (6) of section 197.502, Florida Statutes, are amended to read:

197.502 Application for obtaining tax deed by holder of tax sale certificate; fees.—

(1) The holder of a tax certificate, at any time after 2 years have elapsed since April 1 of the year of issuance of the tax certificate and before the cancellation of the certificate, may file the certificate and an application for a tax deed with the tax collector of the county where the property described in the certificate is located. The tax collector may charge a tax deed application fee of $75 and for reimbursement of the costs for providing online tax deed application services. If the tax collector charges a combined fee in excess of $75, applicants ~~shall~~ have the option of using the online ~~electronic~~ tax deed application process or may file applications without using such service.

(2) A certificateholder, other than the county, who applies ~~makes application~~ for a tax deed shall pay the tax collector at

the time of application all amounts required for redemption or purchase of all other outstanding tax certificates~~,~~ plus interest, any omitted taxes~~,~~ plus interest, any delinquent taxes~~,~~ plus interest, and current taxes, if due, covering the property. In addition, the certificateholder shall pay costs required to bring the property to sale as provided in ss. 197.532 and 197.542, including property information searches and mailing costs, as well as the costs of resale, if applicable. The~~, and~~ failure to pay such costs within 30 days after notice from the clerk shall result in the clerk's entering the land on a list entitled "lands available for taxes."

(5)(a) For purposes of determining who must be given notice and provided the information required in subsection (4), the tax collector shall ~~may~~ contract with a title company ~~or an abstract company~~ to provide a property information report as defined in s. 627.7843(1) ~~the minimum information required in subsection (4), consistent with rules adopted by the department~~. If additional information is required, the tax collector must make a written request to the title ~~or abstract~~ company, stating the additional requirements. The tax collector may select any title ~~or abstract~~ company, regardless of its location, as long as the fee is reasonable, the required ~~minimum~~ information is submitted, and the title ~~or abstract~~ company is authorized to do business in this state. The tax collector may advertise and accept bids for the title ~~or abstract~~ company if he or she considers it appropriate to do so. As used in this section, the term "title company" includes a title insurer, as defined in s. 627.7711, and licensed title insurance agencies and attorneys authorized as agents for a title insurer licensed in this state.

1. The property information report must include the letterhead of the person, firm, or company that makes the search, and the signature of the individual who makes the search or of an officer of the firm. The tax collector is not liable for payment to the firm unless these requirements are met. The report may be submitted to the tax collector in an electronic format.

2. The tax collector may not accept or pay for any property information report ~~title search or abstract~~ if financial responsibility is not assumed for the search. However, reasonable restrictions as to the liability or responsibility of the title ~~or abstract~~ company are acceptable. Notwithstanding s. 627.7843(3), the tax collector may contract for higher maximum liability limits.

3. In order to establish uniform prices for property information reports within the county, the tax collector must ensure that the contract for property information reports include all requests for property information reports ~~title searches or abstracts~~ for a given period of time.

(b) Any fee paid for initial property information reports and any update within 60 days ~~a title search or abstract~~ must be collected at the time of application under subsection (1), and the amount of the fee must be added to the opening bid.

(c) Upon receipt of the tax deed application file from the tax collector, the clerk shall record a notice of tax deed application in the official records, which is notice of the pendency of a tax deed application with respect to the property and is effective for 1 year from the date of recording. Any person acquiring an interest in the subject property after the

recording of the notice of tax deed application is deemed to be on notice of the pending tax deed sale, and no additional notice is required. The sale of the property automatically releases any recorded notice of tax deed application. If the property is redeemed, the clerk must record a release of the notice of tax deed application upon payment of fees authorized in s. 28.24(8) and (12). The contents of the notice must be the same as the contents of the notice of publication required by s. 197.512. The cost of recording must be collected at the time of application under subsection (1) and be added to the opening bid.

(d) ~~(c)~~ The clerk shall advertise the sale in accordance with s. 197.512, ~~and~~ administer the sale in accordance with s. 197.542, and receive such fees for the issuance of the deed and sale of the property as provided in s. 28.24.

(e) Notice of the application of the tax deed in accordance with ss. 197.512 and 197.522 which is sent to the addresses shown on the statement described in subsection (4) is conclusively deemed sufficient to provide adequate notice of the tax deed application and the sale at public auction.

(6) The opening bid:

(a) On county-held certificates on nonhomestead property must ~~shall~~ be the sum of the value of all outstanding certificates against the property, plus omitted years' taxes, delinquent taxes, current taxes if due, interest, and all costs and fees paid by the county.

(b) On an individual certificate must include, in addition to the amount of money paid to the tax collector by the certificateholder at the time of application, the amount

required to redeem the applicant's tax certificate and all other costs, ~~and~~ fees paid by the applicant, and any additional fees or costs incurred by the clerk, plus all tax certificates that were sold subsequent to the filing of the tax deed application, current taxes, if due, and omitted taxes, if any.

(c) On property assessed on the latest tax roll as homestead property must ~~shall~~ include, in addition to the amount of money required for an opening bid on nonhomestead property, an amount equal to one-half of the latest assessed value of the homestead.

Section 2. Present subsection (3) of section 197.522, Florida Statutes, is redesignated as subsection (4), and a new subsection (3) is added to that section, to read:

197.522 Notice to owner when application for tax deed is made.—

(3) When sending or serving notices under this section, the clerk of the circuit court is entitled to rely on the addresses provided by the tax collector and has no duty to seek further information as to the validity of such addresses, nor incurs any liability if an address provided is incorrect.

Section 3. Section 197.582, Florida Statutes, is amended to read:

197.582 Disbursement of proceeds of sale.—

(1) If the property is purchased by any person other than the certificateholder, the clerk shall forthwith pay to the certificateholder all of the sums he or she has paid, including the amount required for the redemption of the certificate or certificates together with any and all subsequent unpaid taxes plus the costs and expenses of the application for deed, with

interest on the total of such sums for the period running from the month after the date of application for the deed through the month of sale at the rate of 1.5 percent per month. The clerk shall distribute the amount required to redeem the certificate or certificates and the amount required for the redemption of other tax certificates on the same land with omitted taxes and with all costs, plus interest thereon at the rate of 1.5 percent per month for the period running from the month after the date of application for the deed through the month of sale, in the same manner as he or she distributes money received for the redemption of tax certificates owned by the county.

(2) If the property is purchased for an amount in excess of the statutory bid of the certificateholder, the excess must be paid over and disbursed by the clerk according to subsections (3), (5), and (6). If the opening bid included the homestead assessment under s. 197.502(6)(c) ~~property purchased is homestead property and the statutory bid includes an amount equal to at least one-half of the assessed value of the homestead~~, that amount must be treated as excess and distributed in the same manner. The clerk shall distribute the excess ~~to the governmental units~~ for the payment of ~~any lien of record held by a governmental unit against the property, including~~ any tax certificates not incorporated in the tax deed application and omitted taxes, if any. ~~If the excess is not sufficient to pay all of such liens in full, the excess shall be paid to each governmental unit pro rata.~~ If~~, after all liens of governmental units are paid in full,~~ there remains a balance of undistributed funds, the balance must ~~shall~~ be retained by the clerk for the benefit of persons described in s. 197.522(1)(a), except those

persons described in s. 197.502(4)(h), as their interests may appear. The clerk shall mail notices to such persons at the addresses provided in s. 197.502(4), notifying them of the funds held for their benefit. ~~Such notice constitutes compliance with the requirements of s. 717.117(4).~~ Any service charges~~, at the rate prescribed in s. 28.24(10),~~ and costs of mailing notices must ~~shall~~ be paid out of the excess balance held by the clerk. Notice must be in substantially the following form:

NOTICE OF SURPLUS FUNDS FROM TAX DEED SALE

CLERK OF COURT
.... COUNTY, FLORIDA
Tax Deed #:....
Certificate #:....
Property Description:....

Pursuant to chapter 197, Florida Statutes, the above property was sold at public sale on ...(date of sale)..., and a surplus of $...(amount)..., subject to change, will be held by this office for a period of 120 days after the date of this notice for the benefit of persons having an interest in this property as described in s. 197.502(4), Florida Statutes, as their interests may appear, except for those persons described in s. 197.502(4)(h), Florida Statutes.

These funds will be used to satisfy in full, to the extent possible, each claimant with a senior mortgage or lien in the property before distribution of any funds to any junior mortgage

or lien claimant or to the former property owners. To be considered for distribution of any funds, you must file a notarized statement of claim with this office within 120 days after the date of this notice. If you are a lienholder, your claim must include the particulars of your lien and the amounts currently due. Lienholder claims that are not filed within the 120-day deadline are barred.

A copy of this notice must be attached to your statement of claim. After examination of the statements of claim filed, this office will notify you if you are entitled to any payment.

Dated: .....
Clerk of Court

The mailed notice must include a form for making a claim under subsection (3). Any service charges, at the rate prescribed in s. 28.24(10), and costs of mailing must be paid out of the excess balance held by the clerk. If the clerk or comptroller certifies that excess proceeds are not sufficient to cover the service charges, and mailing costs, if any, the clerk must receive the total amount of excess proceeds as a service charge ~~Excess proceeds shall be held and disbursed in the same manner as unclaimed redemption moneys in s. 197.473. For purposes of identifying unclaimed property pursuant to s. 717.113, excess proceeds shall be presumed payable or distributable on the date the notice is sent. If excess proceeds are not sufficient to cover the service charges and mailing costs, the clerk shall receive the total amount of excess proceeds as a service charge~~.

(3) A person receiving the notice under subsection (2) has 120 days after the date of the notice to file a written claim with the clerk for the excess proceeds. A claim in substantially the following form is deemed sufficient:

CLAIM TO SURPLUS PROCEEDS OF A TAX DEED SALE

Complete and return to ...(clerk of the court)...
By mail: ....
By e-mail: ....
Note: The Clerk of the Court must pay all valid liens before distributing to a titleholder.

Claimant's name: ....
Contact name, if applicable: ....
Address: ....
Telephone no.: .... E-mail address: ....
Tax deed no.: .... Date of sale (if known): ....

(check one)

.... I am not making a claim and waive any claim I might have to the surplus funds on this tax deed sale.

.... I claim surplus proceeds resulting from the above tax deed sale. I am a (check one) .... Lienholder .... Titleholder.

(1) LIENHOLDER INFORMATION (Complete if claim is based on a lien against the sold property)

(a) Type of lien (check one): .... Mortgage; .... Court Judgment; .... Other; describe in detail: ....

If your lien is recorded in the county's official records, list the following, if known: Recording date: ....; Instrument #: ....; Book #: ....; Page #: ....

(b) Original amount of lien $....

(c) Amounts due:

1. Principal remaining due: $....

2. Interest due: $....

3. Fees and costs due, including late fees: $.... (describe costs in detail, include additional sheet if needed)

4. Attorney fees: $.... (provide agreement to show entitlement to attorney fees)

(d) Total amount claimed: $....

(2) TITLEHOLDER INFORMATION (Complete if claim is based on title formerly held on sold property)

(a) Nature of title (check one): .... Deed; .... Court Judgment; .... Other; describe in detail: ....

If your former title is recorded in the county's official records, list the following, if known: Recording date: ....; Instrument #: ....; Book #: ....; Page #: ....

(b) Amount of surplus tax deed sale proceeds claimed: $....

(c) Does titleholder claim the subject property was homestead? .... Yes .... No

(3) I hereby swear or affirm that all of the above information is true and correct.

Date: ....

Signature: ....

STATE OF FLORIDA

.... COUNTY

Sworn to or affirmed and signed before me on ...(date)... by ...(name of affiant)...

NOTARY PUBLIC or DEPUTY CLERK

...(Print, type, or stamp commissioned name of notary)...

.... Personally known, or

.... Produced identification; type of identification produced: .... ~~If unresolved claims against the property exist on the date the property is purchased, the clerk shall ensure that the excess funds are paid according to the priorities of the claims. If a lien appears to be entitled to priority and the lienholder has not made a claim against the excess funds, payment may not be made on any lien that is junior in priority. If potentially conflicting claims to the funds exist, the clerk may initiate an interpleader action against the lienholders involved, and the court shall determine the proper distribution of the interpleaded funds. The clerk may move the court for an award of reasonable fees and costs from the interpleaded funds.~~

(4) A claim may be mailed using the United States Postal Service, delivered by a commercial delivery service or in person, faxed, or e-mailed as authorized by the clerk or comptroller. The postmark on a mailed claim is the filing date of the claim. For a claim submitted using a commercial delivery service or delivered in person, the date of delivery is the filing date. The filing date for a faxed or e-mailed claim is the date of receipt by the clerk or comptroller.

(5) Except for a claim by a property owner, a claim is barred if it is not filed with the clerk or comptroller on or

before close of business on the 120th day after the date of the mailed notice as required by subsection (2). Any person, other than the property owner, who fails to file a proper and timely claim is barred from receiving any disbursement of the excess funds.

(6) Within 90 days after the claim period expires, the clerk or comptroller may either file an interpleader action in circuit court to determine proper disbursement or pay the excess funds according to the clerk's determination of the priority of proper claims as provided in subsection (3). The filing of an action to require payment of surplus funds is not ripe until the claim and review periods expire. The failure of any person described in s. 197.502(4), other than the property owner, to file a claim for excess funds within the 120 days constitutes a waiver of all interest in the excess funds, and all claims thereto are forever barred.

(7) A holder of a governmental lien of record, other than a federal government lien or ad valorem taxes, must file a request for disbursement of surplus funds within 120 days after the mailing of the notice of surplus funds. The clerk or comptroller must disburse payments to governmental units for the payment of any lien of record held by a governmental unit against the property, including any tax certificates not incorporated in the tax deed application, and omitted taxes, if any, before any other disbursements from the surplus funds.

(8) The tax deed recipient may directly pay any and all liens to governmental units which could have been requested from surplus funds, and, upon filing a timely claim under subsection (3) with proof of payment, the tax deed recipient is entitled to

receive from the surplus funds payment for any and all amounts paid to governmental units in the same priority as the original lienholder.

(9) If the clerk receives no claims for the excess funds within the 120-day claim period as required under subsection (5), there is a conclusive presumption that the legal titleholder of record described in s. 197.502(4)(a) is entitled to the excess funds, which become unclaimed moneys under s. 116.21. The clerk shall process the unclaimed moneys in the manner provided for in s. 116.21.

Section 4. This act applies to tax deed applications filed with the tax collector for sales pursuant to s. 197.542, Florida Statutes, which occur on or after October 1, 2018.

Section 5. This act shall take effect July 1, 2018.

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 1282
INTRODUCER:	Banking and Insurance Committee and Senator Taddeo
SUBJECT:	Residential Property Insurance
DATE:	February 12, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Fav/CS**
2.	Present	Yeatman	CA	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1282 expands the required notice in a homeowner's property insurance policy to include a separate notice that the purchase of hurricane insurance does not include flood insurance.

Additionally, the insurer shall include the notice with the policy documents upon the initial issuance and at each renewal of the homeowner's insurance policy rather than within the homeowner's insurance policy itself.

The new requirements will apply to policies issued or renewed on or after July 1, 2019.

II. Present Situation:

Insurance Policy Notice Requirements

The Florida Insurance Code[1] requires that various insurance policies include specific notices to provide consumers with important information or ensure consistency and readability of insurance contracts from different insurers. The content of the notice depends on the type of coverage provided. Statutory provisions requiring notices often establish requirements regarding their content, print type or size, and appearance (e.g., bold type or all capitalized text).

[1] Chapters 624-632, 634, 635, 636, 641, 642, 648, and 651 constitute the "Florida Insurance Code." s. 624.01, F.S.

Section 627.7011(4), F.S., requires a homeowner's property insurance policy to include the following statement in bold, 18-point type:

> "LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE. YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE FROM THE NATIONAL FLOOD INSURANCE PROGRAM. WITHOUT THIS COVERAGE, YOU MAY HAVE UNCOVERED LOSSES. PLEASE DISCUSS THESE COVERAGES WITH YOUR INSURANCE AGENT."[2]

National Flood Insurance Program

The National Flood Insurance Program (NFIP) was created by the passage of the National Flood Insurance Act of 1968 to offer federally subsidized flood insurance to property owners and to promote land-use controls in floodplains. The Federal Emergency Management Agency (FEMA) administers the NFIP. The federal government will make flood insurance available within a community if that community adopts and enforces a floodplain management ordinance to reduce future flood risk to new construction in floodplains.[3]

Nationally, the NFIP insured almost $1.29 trillion in assets in 2014 and $1.27 trillion in assets in 2015. Total earned premium for NFIP coverage for 2014 was $3.56 billion and for 2015 was $3.44 billion.[4]

Private Market Flood Insurance in Florida

In response to changes to the NFIP, the 2014 Legislature created s. 627.715, F.S., governing the sale of personal lines residential flood insurance.[5] "Flood" is defined as a general and temporary condition of partial or complete inundation of two or more acres of normally dry land area or of two or more properties from:

- Overflow of inland or tidal waters;
- Unusual and rapid accumulation or runoff of surface waters from any source;
- Mudflow; or
- Collapse or subsidence of land along the shore of a lake or similar body of water as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood as defined above.[6]

The Legislature amended the law in 2015[7] and 2017.[8] Flood insurance is a separate line of insurance from homeowner's property insurance and is not included in such a policy.[9] In the case of flood damage occurring during the course of a hurricane, the windstorm portion of the

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[2] s. 627.7011(4), F.S.
[3] FEMA, *National Flood Insurance Program, Program Description*, (Aug. 1, 2002), https://www.fema.gov/media-library/assets/documents/1150?id=1480 (last visited Feb. 7, 2018).
[4] FEMA, *Total Coverage by Calendar Year*, http://www.fema.gov/statistics-calendar-year (last visited Feb. 7, 2018).
[5] Ch. 2014-80, Laws of Fla.
[6] s. 627.715(1)(b), F.S.
[7] Ch. 2015-69, Laws of Fla.
[8] Ch. 2017-142, Laws of Fla.
[9] part X, ch. 627, F.S.

homeowner's property insurance policy does not cover the flood damage.[10] If the homeowner does not separately purchase flood insurance through the National Flood Insurance Program or an admitted Florida flood insurer, such losses will be uninsured.

III. Effect of Proposed Changes:

The bill expands the required notice in a homeowner's property insurance policy to include a separate notice that the purchase of hurricane insurance does not include flood insurance.

Additionally, the insurer shall include the notice with the policy documents upon the initial issuance and at each renewal of the homeowner's insurance policy rather than within the homeowner's insurance policy itself.

If the bill passes, the notice will read:

"LAW AND ORDINANCE: LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE. PLEASE DISCUSS WITH YOUR INSURANCE AGENT."

"FLOOD INSURANCE: YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE. YOUR HOMEOWNER'S INSURANCE POLICY DOES NOT INCLUDE COVERAGE FOR DAMAGE RESULTING FROM FLOOD, EVEN IF HURRICANE WINDS AND RAIN CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD INSURANCE COVERAGE, YOU MAY HAVE UNCOVERED LOSSES CAUSED BY FLOOD. PLEASE DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE WITH YOUR INSURANCE AGENT."

The new notice requirements will apply to policies issued or renewed on or after July 1, 2019.

The effective date of the bill is July 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

[10] Flood insurance covers rising water that sits or flows on the ground and damages property by inundation and flow. Windstorm insurance covers water falling or driven by wind that damages property by infiltration of the structure from above or laterally while carried by the wind. In short, flood insurance covers damage related to rising water and windstorm insurance covers damage related to airborne water.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Policyholders should become better aware of flood insurance and their potential need to purchase such coverage.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 627.7011 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.)

CS by Banking and Insurance on January 30, 2018:
The CS:

- Removes the requirement that the notice be signed by the applicant.
- Makes technical changes to the wording of the notice.
- Changes the effective date to July 1, 2019.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Taddeo

597-02620-18 20181282c1

A bill to be entitled

An act relating to residential property insurance; amending s. 627.7011, F.S.; revising a mandatory homeowner's insurance policy disclosure regarding the absence of law and ordinance and flood insurance coverage; requiring insurers issuing such policies to include the disclosure with the policy documents upon the initial issuance of the policy and each renewal; providing applicability; providing an effective date.

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

Section 1. Subsection (4) of section 627.7011, Florida Statutes, is amended to read:

627.7011 Homeowners' policies; offer of replacement cost coverage and law and ordinance coverage.—

(4) Upon the initial issuance and each renewal of a homeowner's insurance policy, the insurer shall ~~must~~ include with the policy documents, in bold type no smaller than 18 points, the following statement:

"LAW AND ORDINANCE: LAW AND ORDINANCE COVERAGE IS AN IMPORTANT COVERAGE THAT YOU MAY WISH TO PURCHASE. PLEASE DISCUSS WITH YOUR INSURANCE AGENT."

"FLOOD INSURANCE: YOU MAY ALSO NEED TO CONSIDER THE PURCHASE OF FLOOD INSURANCE ~~FROM THE NATIONAL FLOOD INSURANCE PROGRAM~~. YOUR HOMEOWNER'S INSURANCE POLICY DOES NOT INCLUDE COVERAGE FOR DAMAGE RESULTING FROM

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

597-02620-18 20181282c1

FLOOD, EVEN IF HURRICANE WINDS AND RAIN CAUSED THE FLOOD TO OCCUR. WITHOUT SEPARATE FLOOD INSURANCE ~~THIS~~ COVERAGE, YOU MAY HAVE UNCOVERED LOSSES CAUSED BY FLOOD. PLEASE DISCUSS THE NEED TO PURCHASE SEPARATE FLOOD INSURANCE COVERAGE ~~THESE COVERAGES~~ WITH YOUR INSURANCE AGENT."

The intent of this subsection is to encourage policyholders to purchase sufficient coverage to protect them in case events excluded from the standard homeowners policy, such as law and ordinance enforcement and flood, combine with covered events to produce damage or loss to the insured property. The intent is also to encourage policyholders to discuss these issues with their insurance agent.

Section 2. The amendment made by this act to s. 627.7011, Florida Statutes, applies to policies issued or renewed on or after July 1, 2019.

Section 3. This act shall take effect July 1, 2019.

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 1274
INTRODUCER:	Regulated Industries Committee and Senator Passidomo and others
SUBJECT:	Community Associations
DATE:	February 12, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	McSwain	RI	**Fav/CS**
2.	Cochran	Yeatman	CA	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

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

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

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

Regarding condominium and cooperative associations, the bill:

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

Regarding condominium associations, the bill:

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

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

Regarding cooperative associations, the bill:

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

Regarding homeowners' associations, the bill:

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

II. Present Situation:

Division of Florida Condominiums, Timeshares, and Mobile Homes

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

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

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

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

> The Legislature recognizes that it is not in the best interest of homeowners' associations or the individual association members thereof to create or impose a bureau or other agency of state government to regulate the affairs of homeowners' associations. However, in accordance with s. 720.311, 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

[1] Sections 718.501(1) and 719.501(1), F.S.
[2] *Id.*
[3] Section 718.501(1), F.S.
[4] Section 719.501(1), F.S.
[5] Sections 718.501(1) and 719.501(1), F.S.
[6] *Id.*

> of other disputes involving covenant enforcement and authorizes the department to hear, administer, and determine these disputes as more fully set forth in this chapter. Further, the Legislature recognizes that certain contract rights have been created for the benefit of homeowners' associations and members thereof before the effective date of this act and that ss. 720.301-720.407 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.

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

Condominium

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

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

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

Cooperative Associations

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

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

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

[7] *See* s. 720.306(9)(c), F.S.
[8] Section 718.103(11), F.S.
[9] Section 718.104(2), F.S.
[10] *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).
[11] Section 718.103(4), F.S.

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

Homeowners' Associations

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

A "homeowners' association" is defined as a "Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel."[14] Unless specifically stated to the contrary, homeowners' associations are also governed by ch. 607, F.S., relating to for-profit corporations or by ch. 617, F.S., relating to not-for-profit corporations.[15]

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

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

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

[12] *See* ss. 719.106(1)(g) and 719.107, F.S.
[13] *See* s. 720.302(1), F.S.
[14] Section 720.301(9), F.S.
[15] Section 720.302(5), F.S.
[16] *See* ss. 720.303 and 720.307, F.S.
[17] *See* ss. 720.301 and 720.303, F.S.
[18] Section 720.303(1), F.S.
[19] *See* s. 718.112(2), F.S., for condominiums, s. 719.106(2)(c), F.S., for cooperatives, and s. 720.303(2), F.S., for homeowners' associations.
[20] *See* s. 718.111(12), F.S., for condominiums, s. 719.104(2), F.S., for cooperatives, and s. 720.303(4), F.S., for homeowners' associations.
[21] *See* s. 718.111(13), F.S., for condominiums, s. 719.104(4), F.S., for cooperatives, and s. 720.303(7), F.S., for homeowners' associations.

For ease of reference to each of the topics addressed in 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:

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

Attorney Representation – Condominium Associations

Present Situation:

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

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

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

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

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

Effect of Proposed Changes:

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

[22] Rule 4-1.7, Florida Rules of Professional Conduct, November 20, 2017.
[23] *Id.*

Official Records – Condominium and Cooperative Associations

Present Situation:

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

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

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

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

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

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[24] See s. 718.111(12), F.S., relating to condominium associations, s. 719.104(2), F.S., relating to cooperative associations, and s. 720.303(5), F.S., relating to homeowners' associations.
[25] See s. 718.111(12)(b), F.S., for condominiums, s. 719.104(2)(b), F.S., for cooperatives, and s. 720.303(5), F.S., for homeowners' associations.
[26] *See* s. 718.111(12)(a), F.S., for condominiums, s. 719.104(2)(a), F.S., for cooperatives, and s. 720.303(5), F.S., for homeowners' associations.
[27] *See* s. 718.111(12)(c), F.S., for condominiums, s. 719.104(2)(c), F.S., for cooperatives, and s. 720.303(5), F.S., for homeowners' associations.
[28] Sections 719.104(2)(a)9.d. and 720.303(4)(i), F.S., require cooperative and homeowners' associations, respectively, to main a copy of such bids for one year.
[29] *See* s. 718.111(12)(a)11.d., F.S.
[30] Sections 718.111(12)(a)12., and 719.104(2)(a)10., F.S.
[31] Sections 718.111(12)(g)1.e., F.S.
[32] *Id.*
[33] Section 718.111(12)(g)1.g., F.S.
[34] Section 718.111(12)(g)3., F.S.

Effect of Proposed Changes:

Condominium and Cooperative Associations

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

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

Condominium Associations

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

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

Financial Reporting – Condominium Associations

Present Situation:

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

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

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

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

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

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

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

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

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

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

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

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

Effect of Proposed Changes:

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

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

Present Situation:

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

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

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

Effect of Proposed Changes:

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

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

[39] Section 718.111(13)(e), F.S.
[40] Sections 718.112(2)(c) and 719.106(1)(c)(1), F.S.
[41] Sections 718.112(2)(d)6. and 719.106(1)(d)3., F.S., dealing with meeting notices for condominium and cooperative associations, respectively.
[42] Section 720.303(2)(c)1., F.S.

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

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

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

Board Members – Condominium Associations

Present Situation:

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

Effect of Proposed Changes:

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

Board Members – Cooperative Associations

Present Situation:

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

[43] *See* ss. 718.112(2)(c) and 719.106(1)(c), F.S., providing the notice requirements for meetings in condominium and cooperative associations, respectively.
[44] Section 718.112(2)(d), F.S.
[45] Section 718.112(2)(a), F.S., provides an identical requirement for condominium associations.

Effect of Proposed Changes:

The bill amends s. 719.106(1)(a)1., F.S., to prohibit co-owners of a unit in a residential cooperative association of more than 10 units from serving on the board at the same time, unless the co-owners own more than one unit or there are not enough eligible candidates.[46]

Recall of Directors – Condominiums

Present Situation:

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

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

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

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

Effect of Proposed Changes:

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

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

[46] *Id.*
[47] Section 718.112(2)(j)1., F.S.
[48] Sections 718.112(2)(j)2., F.S.
[49] Section 718.112(2)(j)4., F.S.
[50] Section 718.112(2)(j)6., F.S.
[51] *See* s. 718.112(2)(j), F.S., relating to the process for the recall of board members.

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

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

Alterations and Additions to Condominium Property

Present Situation:

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

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

Effect of Proposed Changes:

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

Conflicts of Interest – Condominiums

Present Situation:

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

[52] *See* s. 718.112(2)(j)4., F.S.
[53] Section 718.111(1)(a), F.S.
[54] *Id.*
[55] *See* ss. 718.111(1)(a), (d), and 617.0834, F.S. Sections 718.111(1)(d) and 617.0834, F.S., specify that an officer's or director's breach of, or failure to perform, his or her duties constitutes a violation of the criminal law, but do not specify the criminal law violated.

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

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

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

The existence of the contract or other transaction must be disclosed to the members at the next regular or special meeting of the members, and any member may make a motion for the contract or transaction to be brought up for a vote. The contract or transaction may be canceled by a majority vote of the members present at the meeting. If the members cancel the contract, the association is only liable for the reasonable value of goods and services provided up to the time of cancellation and is not liable for any termination fee, liquidated damages, or other form of penalty for the cancellation.[61]

Additionally, s. 718.3027, F.S., also provides a process for the resolution of conflicts of interests of directors and officers of the board, and the relatives of such directors and officers, in an association that is not a timeshare condominium. These persons must disclose to the board any activity that may reasonably be construed to be a conflict of interest. A rebuttable presumption of a conflict of interest exists if such person enters into a contract for goods or services with the association, or has an interest in the business entity conducting business with the association or which proposes to enter into a contract or other transaction with the association.

[56] Section 617.0830(1), F.S.
[57] Sections 617.0830 and 617.0834, F.S.
[58] Section 617.0832(1), F.S.
[59] *Id.*
[60] Section 718.3026(3)(b), F.S.
[61] Section 718.3026(3)(d), F.S.

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

Effect of Proposed Changes:

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

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

Present Situation:

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

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

Effect of Proposed Changes:

The bill amends ss. 718.303(3)(b), 719.303(3)(b), and 720.305(2)(b), F.S., relating to the obligations of owners in condominium, cooperative, and homeowners' associations, respectively, to require a committee reviewing a recommendation of the association to fine, or suspend the use rights of, a unit owner or occupant, licensee or invitee of the unit owner, contain at least three members appointed by the board who are not officers, directors or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee.

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

[62] Sections 718.303(3), 719.303(3), and 720.305(2) F.S., relating to condominiums, cooperatives, and homeowners' associations, respectively.
[63] Sections 718.303(3)(b), 719.303(3)(b), 720.305(2)(2), F.S., relating to condominiums, cooperatives, and homeowners' associations, respectively.
[64] *Id.*

Distressed Condominium Relief Act

Present Situation:

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

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

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

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

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

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

The Act was created in reaction to the "massive downturn in the condo market which has occurred throughout the state"[68] and was not intended to be open-ended. Rather, the intent of the Legislature was to enact the relief only for a specific and defined period:

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

[65] Ch. 2010-174, s. 18, Laws of Fla., codified as part VII, ch. 718, F.S.
[66] Section 718.703(1), F.S.
[67] Section 718.703(2), F.S.
[68] Section 718.702(1), F.S.
[69] Section 718.702(3), F.S.

Originally, the time limitation for classification as a bulk assignee or bulk buyer ended July 1, 2012.[70] In 2012, the Legislature extended the time limitation to July 1, 2015.[71] In 2014, the legislature amended s. 718.707, F.S., to extend the time limitation to July 1, 2016.[72]

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

Effect of Proposed Changes:

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

Directors and Officers - Cooperative Associations

Present Situation

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

Effect of Proposed Changes

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

Common Expenses – Cooperative Associations

Present Situation

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

[70] Ch. 2010-174, s. 18, Laws of Fla.
[71] Ch. 2012-61, s. 36, Laws of Fla.
[72] Ch. 2014-74, s. 5, Laws of Fla.
[73] *See* 718.112(2)(n), F.S.
[74] Section 718.112(2)(n), F.S., provides an identical provision for condominium associations.
[75] Section 719.107(1), F.S.
[76] Section 719.107(1)(b), F.S.

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

Effect of Proposed Changes

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

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

Budgets and Reserve Accounts - Homeowners' Associations

Present Situation

Budgets and Reserve Accounts

Homeowners' associations must prepare an annual budget for the coming year that includes:
- The estimated revenues and operating expenses for that year;
- The estimated surplus or deficit as of the end of the current year; and
- All fees or charges paid for by the association for recreational amenities.[78]

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

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

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

[77] Section 719.107(1)(b)1., F.S.
[78] *Id.*
[79] *Id.*
[80] Section 720.303(6)(b), F.S.

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

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

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

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

There are two types of reserve accounts:
- Separate reserve accounts for each asset; and
- Pooled reserve accounts for two or more assets.[85]

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

Budgets and Assessments

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

[81] Section 720.303(6)(c), F.S.
[82] Section 720.303(6)(d), F.S.
[83] Section 720.303(6)(e), F.S.
[84] Section 720.303(6)(f), F.S.
[85] *See* s. 720.303(6)(g), F.S.
[86] Section 720.303(6)(g), F.S. *See also* Division of Florida Condominiums, Timeshares, and Mobile Homes, Budgets & Reserves Schedules: A Self-Study Training Manual, available at: http://www.myfloridalicense.com/dbpr/lsc/documents/BudgetsandReserveSchedules.pdf (last visited January 25, 2018).
[87] Section 720.303(6)(h), F.S.

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

Effect of Proposed Changes:

Budgets and Reserve Accounts

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

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

[88] Section 718.112(2)(e)2.a., F.S.

Budgets and Assessments

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

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

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

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

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

Other Provisions – Cooperatives and Homeowners' Associations

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

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

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

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

IX. Additional Information:

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

CS by Regulated Industries on January 30, 2018:
The committee substitute amends s. 718.111(12), F.S., relating to condominium associations, to:

- Specify the official records an association must maintain from the inception of the association.
- Replace the term “electronic mailing” with “e-mail”.
- Require an association to maintain for one year, as an official record, bids for work performed, and bids for materials, equipment, or services.

- Require an association with 150 or more units to post on its website a list of all executory contracts or documents, and to require the association to list the bids it received for the past year for material, equipment, or services which exceed $2,500.
- Permit an association to post on its website complete copies of bids instead of a summary of bids.
- Repeal the requirement for an association with 150 or more units to post on its website a digital copy of any proposed financial report to be considered at a meeting.
- Exempt an association from liability for the disclosure of protected or restricted information on its website.
- Provide that an association's failure to post information on its website is not, in and of itself, sufficient to invalidate any action or decision of the association's board or its committees.

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

B. Amendments:

None.

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

580-02650-18 20181274c1

A bill to be entitled

An act relating to community associations; amending s. 718.111, F.S.; deleting a provision prohibiting an association from hiring an attorney who represents the management company of the association; revising condominium association recordkeeping and financial reporting requirements; revising the list of documents that the association is required to post online; limiting an association's liability for inadvertent disclosure of protected or restricted information; providing that the failure of an association to post certain information is not sufficient, in and of itself, to invalidate any action or decision of the association; amending s. 718.112, F.S.; revising provisions relating to required association bylaws; authorizing an association to adopt rules for posting certain notices on the association's website; revising board term limits; providing responsibilities for unit owners who receive electronic notices; revising and providing board member recall and challenge requirements; authorizing the recovery of attorney fees and costs in an action to challenge the validity of a board member recall; amending s. 718.113, F.S.; revising voting requirements relating to alterations and additions to certain common elements or association property; amending s. 718.3026, F.S.; removing a provision relating to certain contracts or transactions regarding conflicts of interest; amending s. 718.3027, F.S.; providing requirements for proposed

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

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

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

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

718.111 The association.—

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

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

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

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

(12) OFFICIAL RECORDS.—

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

constitutes the official records of the association:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

d. Medical records of unit owners.

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

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

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

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

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

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

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

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

a. The association's website must be:

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

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

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

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

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

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

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

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

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

d. The rules of the association, if any.

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

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

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

h. The certification of each director required by s.

718.112(2)(d)4.b.

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

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

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

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

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

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

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

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

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

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

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

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

718.112 Bylaws.—

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

(a) *Administration.*—

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

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

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

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

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

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

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

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

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

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

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

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

(d) *Unit owner meetings.*—

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

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

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

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

of the board of a nonresidential or timeshare condominium.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

paragraph (j) and rules adopted by the division.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

material alterations or substantial additions are commenced. This paragraph is intended to clarify existing law and applies to associations existing on July 1, 2018 ~~October 1, 2008~~.

(b) There may ~~shall~~ not be any material alteration of, or substantial addition to, the common elements of any condominium operated by a multicondominium association unless approved in the manner provided in the declaration of the affected condominium or condominiums as originally recorded or as amended under the procedures provided therein. If a declaration as originally recorded or as amended under the procedures provided therein does not specify a procedure for approving such an alteration or addition, the approval of 75 percent of the total voting interests of each affected condominium is required before the material alterations or substantial additions are commenced. This subsection does not prohibit a provision in any declaration, articles of incorporation, or bylaws as originally recorded or as amended under the procedures provided therein requiring the approval of unit owners in any condominium operated by the same association or requiring board approval before a material alteration or substantial addition to the common elements is permitted. This paragraph is intended to clarify existing law and applies to associations existing on July 1, 2018 ~~the effective date of this act~~.

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

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

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

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

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

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

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

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

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

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

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

718.3027 Conflicts of interest.—

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

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

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

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

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

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

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

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

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

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

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

718.303 Obligations of owners and occupants; remedies.—

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

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

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

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

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

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

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

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

(2) OFFICIAL RECORDS.—

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

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

2. A photocopy of the cooperative documents.

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

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

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

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

6. All current insurance policies of the association.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

719.106 Bylaws; cooperative ownership.—

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

(a) *Administration.*—

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

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

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

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

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

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

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

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

~~which regular assessments against unit owners are to be considered for any reason shall specifically contain a statement that assessments will be considered and the nature of any such assessments~~. Meetings of a committee to take final action on behalf of the board or to make recommendations to the board regarding the association budget are subject to the provisions of this paragraph. Meetings of a committee that does not take final action on behalf of the board or make recommendations to the board regarding the association budget are subject to the provisions of this section, unless those meetings are exempted from this section by the bylaws of the association. Notwithstanding any other law to the contrary, the requirement that board meetings and committee meetings be open to the unit owners does not apply to board or committee meetings held for the purpose of discussing personnel matters or meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if the meeting is held for the purpose of seeking or rendering legal advice.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

719.107 Common expenses; assessment.—

(1)

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

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

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

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

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

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

719.303 Obligations of owners.—

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

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

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

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

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

(2) BOARD MEETINGS.—

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

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

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

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

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

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

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

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

(6) BUDGETS; BUDGET MEETINGS.—

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

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

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

(c)~~1.~~ The developer may vote the voting interests allocated to its parcels with completed improvements, as evidenced by certificates of occupancy for such improvements, to waive the reserves or reduce the funding of reserves. If a meeting of the parcel owners has been called to waive or reduce the funding of reserves and a waiver or reduction is not achieved or a quorum is not present, the reserves required by paragraph (b) must be maintained ~~If the budget of the association does not provide for reserve accounts pursuant to paragraph (d) and the association is responsible for the repair and maintenance of capital improvements that may result in a special assessment if reserves are not provided, each financial report for the preceding fiscal year required by subsection (7) must contain the following statement in conspicuous type:~~

~~THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

the obligation of the association under the governing documents.

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

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

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

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

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

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

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

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

(9) ELECTIONS AND BOARD VACANCIES.—

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

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

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

720.3085 Payment for assessments; lien claims.—

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

(b) Any payment received by an association and accepted

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

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

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

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

DISCLOSURE SUMMARY
FOR
(NAME OF COMMUNITY)

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

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

COMMUNITY.

3. YOU WILL BE OBLIGATED TO PAY ASSESSMENTS TO THE ASSOCIATION. ASSESSMENTS MAY BE SUBJECT TO PERIODIC CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS $.... PER ..... YOU WILL ALSO BE OBLIGATED TO PAY ANY SPECIAL ASSESSMENTS IMPOSED BY THE ASSOCIATION. SUCH SPECIAL ASSESSMENTS MAY BE SUBJECT TO CHANGE. IF APPLICABLE, THE CURRENT AMOUNT IS $.... PER .....

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

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

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

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

8.~~7.~~ THE DEVELOPER MAY HAVE THE RIGHT TO AMEND THE RESTRICTIVE COVENANTS WITHOUT THE APPROVAL OF THE ASSOCIATION MEMBERSHIP OR THE APPROVAL OF THE PARCEL OWNERS.

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

10.~~9.~~ THESE DOCUMENTS ARE EITHER MATTERS OF PUBLIC RECORD AND CAN BE OBTAINED FROM THE RECORD OFFICE IN THE COUNTY WHERE THE PROPERTY IS LOCATED, OR ARE NOT RECORDED AND CAN BE OBTAINED FROM THE DEVELOPER.

DATE: PURCHASER:

PURCHASER:

The disclosure must be supplied by the developer, or by the parcel owner if the sale is by an owner that is not the developer. Any contract or agreement for sale shall refer to and incorporate the disclosure summary and shall include, in prominent language, a statement that the potential buyer should not execute the contract or agreement until they have received and read the disclosure summary required by this section.

Section 17. This act shall take effect July 1, 2018.

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 1304
INTRODUCER:	Banking and Insurance Committee and Senator Young
SUBJECT:	Bicycle Sharing
DATE:	February 12, 2018
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Matiyow	Knudson	BI	**Fav/CS**
2.	Cochran	Yeatman	CA	**Pre-meeting**
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1304 creates a regulatory framework for bicycle sharing companies operating in the state and would preempt any local governmental entity from limiting or preventing bicycle sharing companies within their jurisdiction that demonstrate compliance with all local laws and regulations applicable to other similar businesses seeking to do business or presently doing business within the jurisdiction.

The bill provides that a person operating a bicycle sharing company in this state must maintain a current and valid combined single-limit policy of commercial general liability insurance coverage in the amount of at least $500,000 per occurrence for bodily injury and property damage. Bicycle sharing companies must register with the Division of Corporations at the Department of State and provide such registration to any governmental entity whose jurisdiction they operate within. The bill requires bicycle sharing companies to remove illegally parked bicycles and secure bicycles in the event of a tropical storm or hurricane warning. Local governments may fine companies that fail to meet these requirements by amounts specified in the bill.

The bill specifies that an airport or seaport may designate locations for the staging and pickup of bicycles, a local government entity may contract with a bicycle sharing company for the placement of bicycle docking stations on public land, and that a local government entity may enforce violations under the uniform traffic code under ch. 316, F.S.

II. Present Situation:

Bicycle Regulation

Section 316.2065, F.S., regulates the operation of bicycles in Florida. Bicycle riders are generally subject to the same rights and duties that are applied to the driver of any other vehicle under state traffic laws codified in the State Uniform Traffic Control Law, ch. 316, F.S.[1]

The provisions of 16 C.F.R. part 1512, relate to consumer product safety, and provide for bicycle specifications, including mechanical and safety requirements as well as testing and certification standards and requirements.

Currently, the regulation of bicycle sharing companies is left up to local jurisdictions. Neither state nor federal laws regulate bicycle sharing companies or require general liability insurance coverage.

Bicycle Sharing Programs

Bicycle sharing programs allow users to rent available bicycles located at one or more unmanned, designated bicycle racks. The user unlocks the bicycle using information provided by or transmitted from the program's mobile application on their mobile phone, and the bicycle may be used according to the terms of the program agreement. Many jurisdictions require that the bicycle sharing company acquire a permit for operations.

Rental options vary by program, but generally allow some combination of a single use rate for a flat fee, or a weekly, monthly, or annual subscription allowing the member to rent a bicycle for either an unlimited number of rides or a certain number of minutes per day during the subscription period.[2] Some companies assess additional fees for locking the bicycle away from a designated bicycle rack or station.

Bicycle sharing companies often equip their bicycles with GPS technology. This allows users to locate bicycles available nearby via their mobile application and also allows the company to locate bicycles, track movement, calculate distance traveled, or apply geofencing technology to control where bicycles may be rented, returned, or parked. Some companies offer "rewards" to incentivize the transport or return of bicycles to certain locations.

Currently, a variety of bicycle sharing programs are offered by a number of companies in different local jurisdictions across the state.[3] Local governments in Florida, and across the country, have entered into public-private partnerships with bicycle sharing companies to facilitate bicycle sharing programs in their jurisdiction. Proponents of this approach cite the

[1] s. 316.2065(1), F.S.
[2] *See, e.g.,* Broward B-cycle https://broward.bcycle.com/; Juice Orlando Bike Share *https://juicebikeshare.com/#about.*
[3] *See e.g.,* Florida Bicycle Associate, Florida Bike Share Programs http://floridabicycle.org/florida-bike-share-programs/ (Last viewed Feb. 8, 2018); Ryan Pfeffer, *America's first dockless bike-share company launches in Coral Gables,* TIMEOUT (Nov. 10, 2017) https://www.timeout.com/miami/blog/americas-first-dockless-bike-share-company-launches-in-coral-gables-111017 (Last viewed Feb. 8, 2018); Nancy Dahlberg, *You'll find more shared bikes around town — and pay less to use them, too*, MIAMI HERALD (Nov. 12, 2017) http://www.miamiherald.com/news/business/article183868451.html (Last viewed Feb. 8, 2018).

importance of such partnerships in the successful implementation of bicycle sharing programs in local communities.[4] Specific examples include the use of dockless bicycle sharing data to assist in local bicycle network planning, prioritization, and evaluation, and the use of local regulations to incentivize users to start or end their trip at a mass transit stop in order to combat first-mile, last-mile challenges.[5] Local partnership advocates believe that working closely with local governments is necessary to ensure that sufficient safety standards are in place, control over the public right-of-way is properly maintained, sensitive customer data is protected, and that bicycle sharing operations are tailored to the needs and characteristics of local communities.

Some local governments and bicycle sharing companies have entered into exclusive, long term contracts, effectively banning any other company from operating within that jurisdiction.[6] In Florida, so far it appears that "exclusive" contracts may make a specific provider the vendor of the city, but would not ban other companies from participation.

Dockless Bicycles

The absence of designated bicycle racks, stations, or hubs to "dock" the bicycles when not in use distinguishes the "dockless" bicycle sharing model from more traditional bicycle sharing models. In the past few years, the dockless bicycle sharing industry has experienced tremendous growth both in the United States and abroad.[7]

Dockless bicycle companies require a smaller initial capital investment due to not having to set up expensive stations and sometimes do not require that rental fees be paid to the local government.[8] Advocates of the dockless bicycle sharing model see dockless bicycles as a way for private industry to provide alternative transportation options with little or no up-front investment by local government.

Opponents of the dockless bicycle model highlight that, because the bicycles aren't locked to anything, there is the potential for bicycles to be left in inconvenient places such as in the middle of the sidewalk, blocking curb ramps and other ADA-sensitive locations, businesses and transit access points. Additionally, some cities have experienced problems with bicycles being thrown

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[4] *See* Letter from NASBA, Re: Opposition to SB 1304/HB 1033: Dockless Bicycle Sharing (Jan. 12, 2018, on file with Banking and Insurance Committee). The North American Bikeshare Association (NASBA) was formed to support, promote and enhance bikeshare across North America on behalf of its members, who represent a wide share of the bikeshare industry, including system owners, operators, host cities, equipment manufacturers and technology providers.
Letter from SPIN, Re: Opposition to HB 1033/SB1304: Dockless Bicycle Sharing (Jan. 10, 2018, on file with Banking and Insurance Committee). SPIN is a leading stationless bike sharing company in the United States, operating in over two-dozen markets.

[5] *Id.*

[6] Johana Bhuiyan and Rani Molla. *A bike-sharing war is coming to the U.S. as investors pour money into new entrants*, RECODE (Oct. 23, 2017) https://www.recode.net/2017/10/23/16496908/bike-sharing-dockless-limebike-ofo-motivate-citi-bike-spin (Last viewed Feb. 8, 2018).

[7] See, e.g. Evgeny Tchebotarev, *With Hundreds Of Millions Of Dollars Burned, The Dockless Bike Sharing Market Is Imploding*, FORBES (Dec. 16, 2017), https://www.forbes.com/sites/evgenytchebotarev/2017/12/16/with-hundreds-of-millions-of-dollars-burned-the-dockless-bike-sharing-market-is-imploding/#12fb1fa4543b (Last Viewed Feb. 8, 2018); Henry Grabar, *Docks Off*, SLATE (Dec. 18, 2017), https://slate.com/business/2017/12/dock-less-bike-share-is-ready-to-take-over-u-s-cities.html (Last viewed Feb. 8, 2018).

[8] *See* Bhuiyan & Molla. *A bike-sharing war is coming to the U.S. as investors pour money into new entrants*.

into bodies of water, stranded in trees, on rooftops, and other undesirable places.[9] In China, which experienced extreme growth of bicycle sharing companies, a number of companies are now going out of business and cities are experiencing problems with large numbers of dockless bicycles being dumped on public sidewalks.[10]

Home Rule and Preemption

Counties

A county without a charter has such power of self-government as provided by general[11] or special law, and may enact county ordinances not inconsistent with general law.[12] General law authorizes counties "the power to carry on county government"[13] 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."[14]

Municipalities

Chapter 166, F.S., also known as the Municipal Home Rule Powers Act,[15] acknowledges the constitutional grant to municipalities of governmental, corporate, and proprietary power necessary to conduct municipal government, functions, and services.[16] Chapter 166, F.S., provides municipalities with broad home rule powers, respecting expressed limits on municipal powers established by the Florida Constitution, applicable laws, and county charters.[17]

Section 166.221, F.S., authorizes municipalities to levy reasonable business, professional, and occupational regulatory fees, commensurate with the cost of the regulatory activity, including consumer protection, on such classes of businesses, professions, and occupations, the regulation of which has not been preempted by the state or a county pursuant to a county charter.

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.[18] Florida law recognizes two types of preemption: express and implied. Express preemption requires a specific legislative statement; it cannot be implied or inferred.[19] Express preemption of a field by the Legislature must be accomplished by clear

[9] Josh Cohen, *Seattle Test Will Lead to Regulating Dockless Bike-Share*, NEXT CITY (Dec. 21, 2017) https://nextcity.org/daily/entry/seattle-dockless-bikeshare-pilot-regulation (Last viewed Feb. 8, 2018).
[10] Michelle Toh, *China's Bike-Sharing Frenzy Has Turned Into A Bubble*, CNN Money (Dec. 29, 2017). http://money.cnn.com/2017/12/29/investing/china-bike-sharing-boom-bust/index.html (last viewed Feb. 8, 2018).
[11] ch. 125, part I, F.S.
[12] FLA. CONST. art. VIII, s. 1(f).
[13] s. 125.01(1), F.S.
[14] s. 125.01(1)(w), F.S.
[15] s. 166.011, F.S.
[16] Local Government Formation Manual 2017-2018, p. 16.
[17] s. 166.021(4), F.S.
[18] Wolf, *The Effectiveness of Home Rule: A Preemptions and Conflict Analysis*, 83 Fla. B.J. 92 (June 2009).
[19] *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).

language stating that intent.[20] In cases where the Legislature expressly or specifically preempts an area, there is no problem with ascertaining what the Legislature intended.[21] 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.[22] Implied preemption is actually a decision by the courts to create preemption in the absence of an explicit legislative directive.[23] 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.[24] Implied preemption is found where the local legislation would present the danger of conflict with the state's pervasive regulatory scheme.[25]

III. Effect of Proposed Changes:

Section 1 creates s. 341.851, F.S., relating to bicycle sharing.

Legislative Intent

The bill provides that it is the intent of the Legislature to provide Florida residents with access to innovative, environmentally friendly transportation options and to ensure the safety and reliability of bicycle sharing services within the state.

Definitions

The bill defines the following terms as they relate to the regulation of bicycle sharing:

- "Bicycle sharing company" means a person who makes bicycles, as defined in s. 316.003(3), F.S., available for private use by reservation through an online application, software, or website.
- “Docking station” means a bicycle rack controlled by a bicycle sharing company where bicycles may be parked.
- “Local governmental entity” means a county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision.
- “User” means a person at least 18 years of age who reserves a bicycle through a bicycle sharing company’s online application, software, or website.

Minor Operators

The bill also states that a bicycle sharing company may allow a minor to operate a bicycle if accompanied by a user. Minor operators under the age of 16 must wear a helmet as required in s. 316.2065(3)(d), F.S.

[20] *Mulligan*, 934 So.2d at 1243.
[21] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880, 886 (Fla. 2010).
[22] *See, e.g., Nat’l Rifle Ass’n of Am., Inc. v. City of S. Miami,* 812 So.2d 504 (Fla. 3d DCA 2002).
[23] *Phantom of Clearwater, Inc. v. Pinellas County*, 894 So.2d 1011(Fla. 2d DCA 2005).
[24] 12A FLA. JUR 2D COUNTIES, ETC. s. 87 *Implied preemption—When preemption will be implied* (2018).
[25] *Sarasota Alliance for Fair Elections, Inc. v. Browning*, 28 So.3d 880 (Fla. 2010).

Insurance Requirement

The bill provides that a person may not operate a bicycle sharing company in this state unless the person or entity maintains a current and valid combined single-limit policy of commercial general liability insurance coverage in the amount of at least $500,000 per occurrence for bodily injury and property damage. A local governmental entity may annually require a bicycle sharing company to provide proof of insurance. If proof of insurance is not provided, the local governmental entity may issue a fine no greater than $5,000 and may order the bicycle sharing company to cease and desist from operating within the local governmental entity's jurisdiction until such proof is provided.

Bicycle Requirements

The bill requires that bicycles made available for reservation by a bicycle sharing company must:

- Meet the requirements for bicycles set forth in 16 C.F.R. part 1512 and s. 316.2065, F.S.
- Prominently display the bicycle company's trade dress.
- Display an e-mail address and telephone number at which a user or operator may contact the bicycle sharing company for customer support.
- Be lawfully parked when not in use.

Bicycle Sharing Company Responsibilities

The bill requires a bicycle sharing company to register with the Division of Corporations of the Department of State and must provide such registration to any local governmental entity in whose jurisdiction the company operates. Failure to provide such registration can result in a fine of up to $1,000.

The bill requires a bicycle sharing company to provide through its online application, software, or website:

- Notification that a rider of a bicycle must operate the bicycle in compliance with state and local law; and
- An interface that enables a user to notify the bicycle sharing company of an issue relating to the safety or maintenance of a bicycle.

The bill specifies that a bicycle sharing company is responsible for:

- The maintenance and rebalancing of each bicycle that it makes available for reservation and the removal of any such bicycle that is for any reason inoperable or does not comply with state or federal requirements for bicycles; and
- The securing of all company bicycles located in an area where a tropical storm of hurricane warning has been issued. Failure to comply with this requirement can result in a fine of no greater than $1,000.

A bicycle sharing company must remove an unlawfully parked company bicycle within 24 hours of notice of its location and identification number by a local governmental entity. The local governmental entity may immediately move an unlawfully parked company bicycle and place it in the nearest location where it does not endanger the safe movement of pedestrians or vehicles. A local governmental entity may impose a fine of up to $10 per bicycle, per day the bicycle is

illegally parked, not to exceed $100 per bicycle, if the bicycle sharing company does not remove the bicycle within 24 hours of receiving notice. The local governmental entity may impound the illegally parked bicycle if the bicycle sharing company does not remove it within 10 days of receiving notice.

Preemption

The bill prohibits local governments from taking any action or adopt any local ordinance, policy, or regulation that is designed to limit or prevent a bicycle sharing company or any company engaged in the rental of bicycles from operating within its jurisdiction, provided that the company has demonstrated compliance with all local laws and regulations applicable to other similar businesses seeking to do business or presently doing business within that jurisdiction.

The bill allows:

- An airport or seaport from designating locations for staging, pickup, and other similar operations relating to bicycles at the airport or seaport;
- A local governmental entity from entering into agreements with bicycle sharing companies for the placement of docking stations on public land; or
- A local governmental entity from enforcing uniform traffic infractions under ch. 316, F.S.

Section 2 provides that the bill shall take 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.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

To the extent that local governments currently collect exclusive fees from bicycle sharing companies, local governments will lose this source of revenue. However, the fiscal impact is unknown at this time.

B. Private Sector Impact:

The bill will create statewide uniform requirements for bicycle sharing companies and will allow any bicycle sharing company meeting the requirements of the bill to operate

throughout Florida. This is likely to increase marketplace competition among bicycle sharing companies. Bicycle sharing companies may incur costs for complying with the insurance requirement of the bill; some companies already maintain coverage.

C. Government Sector Impact:

The bill prohibits a local government entity from banning all bicycle sharing companies from within their jurisdiction.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 341.851 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.)

CS by Banking and Insurance on February 6, 2018:

- Includes all bicycle sharing companies that utilize an application.
- Defines user as a rider 18 years of age or older and allows only users can reserve a bicycle.
- Requires minors 17 years of age and under must be in the company of a user and minors under 16 years of age must wear a helmet as required in ch. 316, F.S.
- Defines docking station for those bicycle sharing companies that utilize them and allows local governmental entities to enter into agreements for the placement of docking stations on public land.
- Allows a local governmental entity to check once a year to see if a bicycle sharing company has the proper level of insurance coverage as required in the bill.
- Requires rental bicycles must also meet all the requirements of ch. 316, F.S.
- Requires bicycle sharing companies register their business with the Division of Corporations and provide such registration to any local governmental entity in whose jurisdiction they operate.
- Requires a bicycle sharing company to secure all their bicycles during hurricane or tropical storm warnings.
- Requires local governmental entities to give a bicycle sharing company 24 hour notice to move an illegally parked bicycle before a fine can be issued.
- Prohibits local governmental entities from passing ordinances that would prohibit a bicycle sharing company from operating within their jurisdiction.

- Clarifies local governmental entities can enforce uniform traffic violations under ch. 316, F.S.

B. Amendments:

None.

By the Committee on Banking and Insurance; and Senator Young

597-02931-18 20181304c1

A bill to be entitled

An act relating to bicycle sharing; creating s. 341.851, F.S.; providing legislative intent; defining terms; authorizing a bicycle sharing company to allow a minor to operate a bicycle reserved by a user if accompanied by a user; requiring such a minor operator who is under a specified age to wear a helmet; providing insurance requirements for a bicycle sharing company; authorizing a local governmental entity to annually require a bicycle sharing company to provide proof of insurance; authorizing the local governmental entity to issue a fine no greater than a specified amount and to order the bicycle sharing company to cease and desist from operating within the local governmental entity's jurisdiction until any such fine is paid and proof of such insurance is provided, if the company does not provide proof of such insurance; providing requirements for bicycles made available for reservation by a bicycle sharing company; providing company responsibilities; authorizing a local governmental entity to issue a bicycle sharing company certain fines and fees and to impose other penalties under certain circumstances; prohibiting a local governmental entity, under certain circumstances, from taking any action or adopting any local ordinance, policy, or regulation that is designed to limit or prevent a bicycle sharing company or any company engaged in the rental of bicycles from operating within its jurisdiction; providing construction;

597-02931-18 20181304c1

providing an effective date.

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

Section 1. Section 341.851, Florida Statutes, is created to read:

341.851 Bicycle sharing.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature to provide Florida residents with access to innovative, environmentally friendly transportation options and to ensure the safety and reliability of bicycle sharing services within the state.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Bicycle sharing company" means a person who makes bicycles, as defined in s. 316.003(3), available for private use by reservation through an online application, software, or website.

(b) "Docking station" means a bicycle rack controlled by a bicycle sharing company where bicycles may be parked.

(c) "Local governmental entity" means a county, municipality, special district, airport authority, port authority, or other local governmental entity or subdivision.

(d) "User" means a person at least 18 years of age who reserves a bicycle through a bicycle sharing company's online application, software, or website.

(3) MINORS.—A bicycle sharing company may allow a minor to operate a bicycle reserved by a user if accompanied by a user. Such a minor operator who is under the age of 16 must wear a helmet as required in s. 316.2065(3)(d).

(4) INSURANCE REQUIRED.—

(a) A person may not operate a bicycle sharing company in this state pursuant to this section unless the person maintains a current and valid combined single-limit policy of commercial general liability insurance coverage in the amount of at least $500,000 per occurrence for bodily injury and property damage.

(b) A local governmental entity may annually require a bicycle sharing company to provide proof of insurance meeting the requirements of this subsection. If a bicycle sharing company does not provide proof of such insurance, the local governmental entity may issue a fine no greater than $5,000 and may order the bicycle sharing company to cease and desist from operating within the local governmental entity's jurisdiction until any such fine is paid and proof of such insurance is provided.

(5) BICYCLE REQUIREMENTS.—Each bicycle made available for reservation by a bicycle sharing company must:

(a) Meet the requirements for bicycles set forth in 16 C.F.R. part 1512 and s. 316.2065.

(b) Prominently display the bicycle company's trade dress.

(c) Display an e-mail address or a telephone number at which a user or operator may contact the bicycle sharing company for customer support.

(d) Be lawfully parked when not in use.

(6) COMPANY RESPONSIBILITIES.—

(a) A bicycle sharing company must register with the Division of Corporations of the Department of State and must provide such registration to any local governmental entity in whose jurisdiction the company operates. A local governmental

entity may issue a bicycle sharing company a fine no greater than $1,000 for failure to comply with this paragraph.

(b) A bicycle sharing company must provide to users through its online application, software, or website:

1. Notification that bicycles must be operated in compliance with state and local law.

2. An interface that enables a user to notify the bicycle sharing company of an issue relating to the safety or maintenance of a bicycle.

(c) A bicycle sharing company is responsible for the maintenance and rebalancing of each bicycle made available for reservation and for the removal of any such bicycle that is for any reason inoperable or does not comply with subsection (5).

(d) A bicycle sharing company is responsible for securing all company bicycles located within any area of the state where an active tropical storm or hurricane warning has been issued. A local governmental entity may issue a bicycle sharing company a fine no greater than $1,000 for failure to comply with this paragraph.

(e) A bicycle sharing company must comply with the requirement of s. 316.2065(15)(a) when allowing a minor operator under the age of 16.

(f) A bicycle sharing company must remove an unlawfully parked company bicycle within 24 hours of receiving notification of the violation via e-mail from a local governmental entity. Such notice must include the location and identification number of the company bicycle. A local governmental entity may immediately move an unlawfully parked company bicycle and place it in the nearest location where it does not obstruct or

endanger the safe movement of pedestrians or vehicles. For any company bicycle that remains unlawfully parked and is not removed by a bicycle sharing company within the 24-hour period, a local governmental entity may impose a fee of up to $10 per bicycle, per day, not to exceed a total fee of $100 per bicycle. If a bicycle sharing company has not removed an unlawfully parked bicycle within 10 days of receiving notice in accordance with this section, the local governmental entity may impound the bicycle in accordance with local ordinances.

(7) PREEMPTION.—

(a) A local governmental entity may not take any action or adopt any local ordinance, policy, or regulation that is designed to limit or prevent a bicycle sharing company or any company engaged in the rental of bicycles from operating within its jurisdiction, provided that the company has demonstrated compliance with all local laws and regulations applicable to other similar businesses seeking to do business or presently doing business within that jurisdiction.

(b) This subsection does not prohibit:

1. An airport or seaport from designating locations for staging, pickup, and other similar operations relating to bicycles at the airport or seaport;

2. A local governmental entity from entering into agreements with bicycle sharing companies for the placement of docking stations on public land; or

3. A local governmental entity from enforcing uniform traffic infractions under chapter 316.

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

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 1308
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Perry
SUBJECT:	Environmental Regulation
DATE:	February 5, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Mitchell	Rogers	EP	**Fav/CS**
2.	Cochran	Yeatman	CA	**Pre-meeting**
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1308 provides that when a water management district (WMD) evaluates a consumptive use permit (CUP), impact offsets may be created if the applicant proposes reclaimed water use in certain ways to increase the quantity of water available for water supply.

The bill requires DEP to develop criteria for the application of an impact offset or a substitution credit to a CUP or to a minimum flows and levels recovery or prevention strategy and requires DEP and the WMDs to enter into a memorandum of agreement providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a CUP.

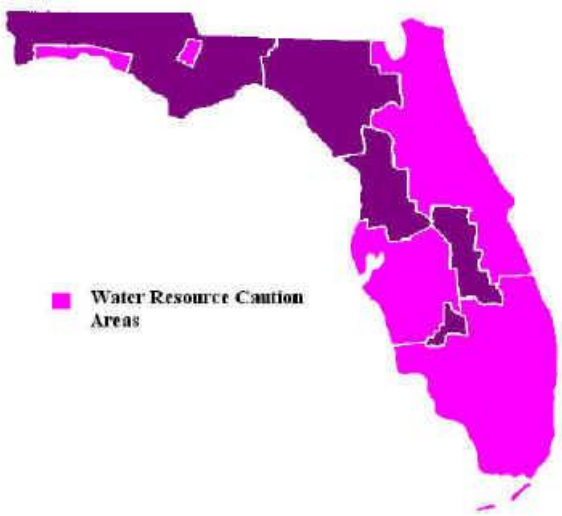
The bill provides criteria by which counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material, including that residential recycling collectors and materials recovery facilities may not be required to collect, transport, or process contaminated recyclable material. The criteria apply to contracts between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after the effective date of the act.

The bill revises the exemption from the requirement to obtain an environmental resource permit (ERP) for the replacement or repair of an existing dock or pier and prevents a local government from requiring further verification from DEP for all of the activities and projects exempted from ERP requirements.

II. Present Situation:

Water Supply and Constraints

By 2030, Florida's population is estimated to reach 23,609,000 – almost a 26 percent increase over 2010.[1] Fresh water demand is projected to reach 7.7 billion gallons per day by 2030, an additional 1.3 billion gallons more than the water use for the state in 2010.[2] In Florida, groundwater accounts for about 90 percent of public and domestic water supply.[3] The major source of groundwater supply in Florida is the Floridan Aquifer System, which underlies the entire state.[4]



Water Management Districts (WMDs) are required to ensure an adequate supply of water and water resources for all citizens and natural features, provide protection and improvement of natural systems and water quality, minimize harm to water resources, and promote the reuse of reclaimed water.[5] The WMDs set minimum flows and minimum levels (MFLs) for surface waters and groundwater, respectively. The purpose of setting MFLs is to prevent significant harm to the water resources or ecology of an area as a result of water withdrawals.[6] The WMDs regulate consumptive use of water through a permitting process.[7] WMD governing boards are required to conduct regional water supply planning for areas where existing water sources are insufficient to meet projected 20-year demands while sustaining water resources and related natural systems. Those areas are also to be designated as Water Resource Caution Areas. Chapter 62-40 of the Florida Administrative Code, requires the reuse of reclaimed water in these areas.[8]

Consumptive Use Permits (CUPs)

A consumptive use permit (CUP) establishes the duration and type of water use as well as the maximum amount of water that may be withdrawn daily. Pursuant to s. 373.219, F.S., each CUP must be consistent with the objectives of the issuing WMD or the Department of Environmental Protection (DEP) and may not be harmful to the water resources of the area. To obtain a CUP, an

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[1] Department of Environmental Protection (DEP), *Report on Expansion of Beneficial Use of Reclaimed Water, Stormwater and Excess Surface Water*, 11 (December 1, 2015) *available at* https://floridadep.gov/sites/default/files/SB536%20Final%20Report.pdf.
[2] *Id.*
[3] *Id*. at 14.
[4] DEP, *Aquifers*, *available at* https://fldep.dep.state.fl.us/swapp/Aquifer.asp# (last visited Feb. 1, 2018).
[5] Section 373.036, F.S.
[6] Section 373.042, F.S.
[7] Section 373.219, F.S. Note that a water management district may not require a permit for the use of reclaimed water. Section 373.250 (3)(b), F.S.
[8] *See also* s. 403.064(2), F.S.

applicant must establish that the proposed use of water satisfies the statutory test, commonly referred to as "the three-prong test." Specifically, the proposed water use must:

- Be a "reasonable-beneficial use;"[9]
- Not interfere with any presently existing legal use of water; and
- Be consistent with the public interest.[10]

If two or more competing applications qualify equally, the applicable WMD or the DEP must give preference to a renewal application over an initial application.[11] If neither application is a renewal, preference is given to the applicant nearest the source.[12]

Reclaimed Water

Section 373.019(17), F.S., defines the term "reclaimed water" as "water that has received at least secondary treatment and basic disinfection and is reused after flowing out of a domestic wastewater treatment facility." Water conservation and the promotion of reuse of reclaimed water have been established as formal state objectives in ss. 403.064 and 373.250, F.S. Florida tracks its reuse inventory in an annual report compiled by DEP.[13] In 2016, a total of 478 domestic wastewater treatment facilities reported making reclaimed water available for reuse.[14] The 760 million gallons per day (mgd) of reclaimed water use represents approximately 44 percent of the total domestic wastewater flow in the state.[15] The 1,645 mgd of reuse capacity represents approximately 64 percent of the total domestic wastewater treatment capacity in the state.[16] Reclaimed water from these systems was used to irrigate 397,750 residences, 574 golf courses, 1,053 parks, and 381 schools.[17] Over 12,739 acres of edible crops on 65 farms were reported to be irrigated with reclaimed water.[18] Approximately 43 wastewater treatment facilities do not provide reuse of any kind.[19] Reclaimed water is a type of alternative water supply as defined in s. 373.019(1), F.S., and is eligible for alternative water supply funding.

Originally, water reuse was required only within water resource caution areas, unless such reuse was not economically, environmentally, or technically feasible as determined by a reuse feasibility study. Currently, ch. 62-40 of the Florida Administrative Code requires use of reclaimed water statewide. A domestic wastewater facility located within, discharging within, or serving a population within designated water resource caution areas is required to prepare a reuse

[9] Section 373.019(16), F.S., defines reasonable-beneficial use as, "the use of water in such quantity as is necessary for economic and efficient utilization for a purpose and in a manner which is both reasonable and consistent with the public interest." *See also* Fla. Admin. Code R. 62-40.410(2) for additional factors to help determine if a water use is a reasonable-beneficial use.
[10] Fla. Admin. Code R. 62-40.410(1).
[11] Section 373.233(2), F.S.
[12] *Id.*
[13] DEP, *2016 Reuse Inventory*, *available at* https://floridadep.gov/sites/default/files/2016_reuse-report_0.pdf (last visited Feb. 1, 2018); compiled from reports collected pursuant to Fla. Admin. Code R. Ch. 62-610 (note that this report tracks wastewater facilities with permitted capacities of 0.1 million gallons per day or greater).
[14] *Id.* at 2.
[15] *Id*. at 3.
[16] *Id*.
[17] *Id*. at 2.
[18] *Id*., noting that "[a]round 79 percent of the farmland was dedicated to the production of citrus (i.e., oranges, tangerines, grapefruit, etc.)."
[19] *Id*. at 3.

feasibility study before receiving a domestic wastewater permit.[20] Section 403.064, F.S., provides that if the study shows that reuse is feasible, the permit applicant must give significant consideration to making reuse available.

Discharges of Reclaimed Water into Surface Waters

DEP may issue permits for backup discharges. A "backup discharge" is a surface water discharge that occurs as part of a functioning reuse system which has been permitted under DEP rules and which provides reclaimed water for irrigation of public access areas, residential properties, or edible food crops, or for industrial cooling or other acceptable reuse purposes. Backup discharges may occur during periods of reduced demand for reclaimed water in the reuse system. Backup discharges of reclaimed water meeting advanced water treatment standards are presumed to be allowable and are permitted in all waters in the state at a reasonably accessible point where such discharge results in minimal negative impact. Discharges of reclaimed water must meet applicable water quality standards.[21]

Impact Offsets and Substitution Credits

The water resource implementation rule (Florida Administrative Code Chapter 62-40), formerly known as the state water policy rule, is part of the Florida water plan and sets forth the goals, objectives, and guidance for the development and review of programs, rules, and plans relating to water resources, based on statutory policies and directives.[22] DEP adopts changes or additions to the water resource implementation rule and has adopted a rule establishing criteria for the use of proposed impact offsets and substitution credits when a water management district evaluates applications for CUPs.[23] Substitution credits may be considered if a water management district has adopted rules establishing withdrawal limits from a specified water resource within a defined geographic area.

An impact offset is the use of reclaimed water to reduce or eliminate a harmful impact that has occurred or would otherwise occur as a result of other surface water or groundwater withdrawals. A substitution credit is the use of reclaimed water to replace all or a portion of an existing permitted use of resource-limited surface water or groundwater which then allows a different user or use to initiate a withdrawal or increase its withdrawal from the same resource-limited surface water or groundwater source.[24] CUP permit applicants may propose impact offsets or substitution credits as part of a permit application. The portion of a surface water or groundwater allocation made available by an impact offset will be based on the beneficial water resource impact provided by the impact offset project. The proposed withdrawal, after application of a substitution credit, must result in no net adverse impact on the limited water resource or create a net positive impact if required by district rule as part of a strategy to protect or recover a water resource.[25]

[20] *Id.* at 20
[21] Section 403.086, F.S.
[22] Section 373.036(1), F.S.
[23] Fla. Admin. Code R. 62-40.416.
[24] Section 373.250(5), F.S.
[25] Fla. Admin. Code R. 62-40.416.

Ground Water Regulations

DEP regulates underground injection;[26] water well permitting;[27] water well construction;[28] source water and wellhead protection programs;[29] and ground water classes, standards, and monitoring.[30] DEP's Aquifer Protection Program is responsible for regulatory programs affecting ground water.[31] DEP exercises regulatory authority over ground water quality under Chapter 62-520 of the Florida Administrative Code. In Florida, ground water standards are equivalent to the drinking water standards. By definition, a violation of any ground water standard or criterion constitutes pollution.[32]

The Safe Drinking Water Act

The Safe Drinking Water Act (SDWA) is the federal law that protects public drinking water supplies throughout the nation.[33] Under the SDWA, the U.S. Environmental Protection Agency (EPA) sets standards for drinking water quality and, with its partners, implements various technical and financial programs to ensure drinking water safety.[34] Florida has the primary authority to implement the SDWA, having adopted a Florida SDWA that has been demonstrated to be at least as stringent as the federal law.[35] These statutes direct DEP to formulate and enforce rules pertaining to drinking water. The rules adopt the federal primary and secondary drinking water standards and create additional rules to fulfill state requirements. Drinking water standards are set out in ch. 62-550 of the Florida Administrative Code.

Local Government Solid Waste Responsibilities

The governing body of a county has the responsibility and power to provide for the operation of solid waste disposal facilities to meet the needs of all incorporated and unincorporated areas of the county.[36] Municipalities are responsible for collecting and transporting solid waste from their jurisdictions to a solid waste disposal facility operated by a county or operated under a contract with a county. Counties may charge reasonable fees for the handling and disposal of solid waste at their facilities. Each county must have a recyclable materials recycling program that has a goal of recycling 40 percent of recyclable solid waste by December 31, 2012; 50 percent by December 31, 2014; 60 percent by December 31, 2016; 70 percent by December 31, 2018; and 75 percent by December 31, 2020.[37]

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[26] Fla. Admin. Code R. Ch. 62-528.
[27] Fla. Admin. Code R. Ch. 62-532.
[28] Fla. Admin. Code R. Chs. 62-531 (Water Well Contractors) and 62-532 (Water Well Permitting and Construction Requirements)
[29] Fla. Admin. Code R. Ch. 62-521.
[30] Fla. Admin. Code R. Ch. 62-520
[31] DEP, *Aquifer Protection Program- UIC*, *available at* https://floridadep.gov/water/aquifer-protection (last visited Feb. 1, 2018).
[32] Florida Admin. Code s. 62-520.310.
[33] The Public Health Service Act, 42 U.S. ss. 300f to 300j-26 (2016).
[34] U.S. Environmental Protection Agency, *Summary of the Safe Water Drinking Act*, *available at* https://www.epa.gov/laws-regulations/summary-safe-drinking-water-act (last visited Feb. 1, 2018).
[35] Sections 403.850-403.864, F.S.
[36] Section 403.706(1), F.S.
[37] Section 403.706(2), F.S.

Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs. Each county must implement a program for recycling construction and demolition debris. If the state's recycling rate is below 60 percent by January 1, 2017; below 70 percent by January 1, 2019; or below 75 percent by January 1, 2021, DEP must provide a report to the President of the Senate and the Speaker of the House of Representatives. The report must identify those additional programs or statutory changes needed to achieve the state's recycling goals. The programs must be designed to recover a significant portion of at least four of the following materials from the solid waste stream prior to final disposal at a solid waste disposal facility and to offer these materials for recycling:

- Newspapers;
- Aluminum cans;
- Steel cans;
- Glass;
- Plastic bottles;
- Cardboard;
- Office paper; and
- Yard trash.[38]

Each county must ensure, to the maximum extent possible, that municipalities within its boundaries participate in the preparation and implementation of recycling and solid waste management programs through interlocal agreements or other means provided by law.[39]

"Municipal solid waste" includes any solid waste, except for sludge, resulting from the operation of residential, commercial, governmental, or institutional establishments that would normally be collected, processed, and disposed of through a public or private solid waste management service. The term includes yard trash but does not include solid waste from industrial, mining, or agricultural operations.[40] DEP may reduce or modify the municipal solid waste recycling goal that a county is required to achieve if the county demonstrates to DEP that:

- The achievement of the goal would have an adverse effect on the financial obligations of the county that are directly related to the county's waste-to-energy facility; and
- The county cannot remove normally combustible materials from solid waste that is to be processed at a waste-to-energy facility because of the need to maintain a sufficient amount of solid waste to ensure the financial viability of the facility.

The goal may only be reduced or modified to the extent necessary to alleviate the adverse effects on the financial viability of a county's waste-to-energy facility.[41]

In the development and implementation of a curbside recyclable materials collection program, a county or municipality must enter into negotiations with a franchisee who is operating to exclusively collect solid waste within a service area of a county or municipality to undertake curbside recyclable materials collection responsibilities for a county or municipality. Local governments are authorized to enact ordinances that require and direct all residential properties, multifamily dwellings, and apartment complexes and industrial, commercial, and institutional

[38] Section 403.706(2)(f), F.S.
[39] Section 403.706(3), F.S.
[40] Section 403.706(5), F.S.
[41] Section 403.706(6), F.S.

establishments as defined by the local government to establish programs for the separation of recyclable materials designated by the local government. A market must exist for the recyclable materials and the local government must specifically intend for them to be recycled. Local governments are authorized to provide for the collection of the recyclable materials. Such ordinances may include, but are not limited to, provisions that prohibit any person from knowingly disposing of recyclable materials designated by the local government and that ensure the collection of recovered materials as necessary to protect public health and safety.[42]

A local government may not:

- Require a commercial establishment that generates source-separated recovered materials to sell or otherwise convey its recovered materials to the local government or to a facility designated by the local government;
- Restrict such a generator's right to sell or otherwise convey such recovered materials to any properly certified recovered materials dealer who has registered with DEP; and
- Enact any ordinance that prevents such a dealer from entering into a contract with a commercial establishment to purchase, collect, transport, process, or receive source-separated recovered materials.[43]

Local governments may require a commercial establishment to source separate the recovered materials generated on the premises.[44]

Florida's Recycling Goal

In recognition of the volume of waste generated by Floridians and visitors every year and the value of some of these discarded commodities, the Legislature set a goal to recycle at least 75 percent of the municipal solid waste that would otherwise be disposed of in waste management facilities, landfills, or incineration facilities by 2020.[45] DEP established several programs and initiatives to reach that goal. In 2015, Florida's recycling rate was 54 percent, meeting the 50 percent target rate specified in statute.[46]

Florida achieved the interim recycling goals established for 2012 and 2014, but Florida's recycling rate for 2016 was 56 percent, falling short of the 2016 interim recycling goal of 60 percent. The current practices in Florida are not expected to significantly increase the recycling rate beyond the 56 percent rate. Without significant changes to Florida's current approach, the state's recycling rate will likely fall short of the 2020 goal of 75 percent.[47]

DEP, in partnership with material recycling facilities (MRFs) across the state, has developed a statewide public education campaign, entitled "Rethink. Reset. Recycle." The campaign addresses the need to educate Florida residents on how to reduce single stream curbside

[42] Section 403.706(21), F.S.
[43] Section 403.7046(3), F.S.
[44] Section 403.7046(3)(a), F.S.
[45] Section 403.7032, F.S.; DEP, *Florida and the 2020 75% Recycling Goal* (2017) 5 https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited Feb. 1, 2018).
[46] DEP, *Recycling*, http://www.dep.state.fl.us/waste/categories/recycling/default.htm (last visited Feb. 1, 2018).
[47] DEP, *Florida and the 2020 75% Recycling Goal* (2017) 5 https://floridadep.gov/sites/default/files/FinalRecyclingReportVolume1_0_0.pdf (last visited Feb. 1, 2018).

recycling contamination. Plastic bags, cords, clothing and packaging are causing contamination problems that can shut down MRF operations and cause good loads of recyclables to become trash. The campaign also serves to remind Florida residents of the basics of curbside recycling: clean and dry aluminum and steel cans, plastic bottles and jugs and paper and cardboard. DEP is also working on the following recycling options:

- Evaluating the implications of shifting from a weight-based recycling goal to sustainable materials management processes;
- Researching the concept of moving from a weight-based recycling goal of 75 percent by 2020, to market specific goals such as a food diversion goal or an organics recycling goal;
- Engaging Florida's state universities and the Florida Department of Education to review potential K-12 curriculum programs emphasizing waste reduction and recycling practices;
- Continuing to work with state agencies to identify recycling/cost saving measures specific to their operations; and
- Providing counties not achieving the 2016 interim recycling goal with assistance in analyzing, planning and executing opportunities to increase recycling.[48]

A number of counties and municipalities have instituted single stream recycling programs. Single stream recycling programs allow all accepted recyclables to be placed in a single, curbside recycling cart, comingling materials from paper and plastic bottles to metal cans and glass containers. Single stream recycling programs have been marginally successful in providing curbside collection efficiency by increasing the amount of recyclables collected and residential participation. While there are many advantages to single stream recycling, it has not consistently yielded positive results for the recycling industry. The unexpected consequence of single stream recycling has been the collection of unwanted materials and poorly sorted recyclables, resulting in increased contamination originating in the curbside recycling cart.[49]

Contamination hinders processing at MRFs when unwanted items are placed into recycling carts. Those items are often harmful to the automated equipment typically used to process and separate recyclable materials from single stream collections. While MRFs are equipped to handle some non-recyclable materials, excessive contamination can undermine the recycling process resulting in additional sorting, processing, energy consumption, and other increased costs due to equipment downtime, repair or replacement costs and delays. In addition to increased recycling processing costs, contamination also results in poorer quality recyclables, and increased rejection and landfilling on unusable materials. Although some local governments have implemented successful single stream recycling programs with low contamination rates, contamination rates for other programs have continued to rise, in some case reaching contamination rates of more than 30-40 percent by weight.[50]

Exceptions to Requirements for Environmental Permits

An environmental resource permit (ERP) is required, if a project exceeds certain thresholds, for surface water management systems and, more specifically, for the construction, alteration, operation, maintenance, repair, abandonment, and removal of stormwater management systems,

[48] *Id.* at 11.
[49] *Id.* at 13.
[50] *Id.*

dams, impoundments, reservoirs, appurtenant works, and works (including docks, piers, structures, dredging, and filling located in, on or over wetlands or other surface waters).[51] However, for a number of low impact activities and projects that are narrow in scope, an environmental permit under state law is not required.[52] Engaging in these activities and projects requires compliance with applicable local requirements, but generally requires no notice to an agency.[53] Activities exempted from an ERP are varied and include the installation of overhead transmission lines, installation and maintenance of boat ramps, work on sea walls and mooring pilings, swales, and foot bridges, the removal of aquatic plants, construction of floating vessel platforms, and work on county roads and bridges, among many others.[54] Included among activities exempt from the requirement to obtain a permit is the replacement or repair of existing docks and piers, if fill material is not used and the replacement or repaired dock or pier is in the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired.[55] Although permitting is not required for these activities, there may be a requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a water management district in its governmental or proprietary capacity.[56]

III. Effect of Proposed Changes:

Impact Offsets and Substitution Credits

CS/SB 1308 provides that when a water management district (WMD) evaluates a consumptive use permit (CUP), impact offsets may be created if the applicant proposes reclaimed water use to:

- Prevent or stop further saltwater intrusion;
- Raise aquifer levels;
- Improve the water quality of an aquifer; or
- Augment surface water to increase the quantity of water available for water supply.

The bill requires the water resource implementation rule to include criteria for the application of an impact offset or a substitution credit to a consumptive use permit or to a minimum flows and levels recovery or prevention strategy.

Memorandum of Agreement

The bill includes a legislative finding that reuse through aquifer recharge is a critical component of meeting the state's existing and future water supply needs while sustaining natural systems. The bill requires the Department of Environmental Protection (DEP) and the WMDs to develop and enter into a memorandum of agreement (MOA) no later than December 1, 2018 providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit. The MOA must

[51] Fla. Admin. Code R. 62-330.010.
[52] Section 403.813, F.S.
[53] Fla. Admin. Code R. 62-330.50.
[54] Section 403.813, F.S., Fla. Admin. Code R. 62-330.051.
[55] Section 403.813(1)(d), F.S.
[56] Section 403.813(1), F.S.

provide that the coordinated review is performed only if the applicant for such permits requests a coordinated review. The goal of the coordinated review is to share information, avoid the need for an applicant to submit redundant information, and ensure, to the extent feasible, a harmonized review of the reclaimed water project under these various permitting programs, including the use of a proposed impact offset or substitution credit.

Contaminated Recyclable Material

The bill provides the following criteria by which counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material:

- A residential recycling collector may not be required to collect or transport contaminated recyclable material.
- A materials recovery facility may not be required to process contaminated recyclable material.
- Contracts between a residential recycling collector and a county or municipality, each request for proposal for residential recyclable material, and contracts between a materials recovery facility and a county or municipality must include:
  - A definition of the term "contaminated recyclable material" that is appropriate for the local community, based on the available markets for recyclable material.
  - The respective strategies and obligations of the parties to reduce the amount of contaminated recyclable material being collected or processed;
  - The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, bins, or loads that contain contaminated recyclable material; and
  - The remedies that will be used if a container, cart, bin, or load contains contaminated recyclable material.
- Contracts between a collector and a county or municipality and each request for proposal for residential recyclable material must include the education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.
- Provides that the above criteria apply to contracts between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after the effective date of the act.

The bill provides that "residential recycling collector" means a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality.

ERP Exemptions for Repair or Replacement of Existing Docks or Piers/Verification from DEP

The bill revises the ERP exemption for the repair or replacement of existing docks and piers. Existing law requires the replaced or repaired dock or pier to be in the same location and of the same configuration and dimensions as the deck or pier being replaced or repaired. The bill provides that, in order to be exempt from permitting, the replaced or repaired dock or pier must be in approximately the same location and no larger in size than the existing dock or pier. It also requires that no additional aquatic resources be adversely and permanently impacted by the replacement or repair. The bill provides that for all of the activities and projects excluded from

the requirement to obtain a permit, a local government may not require further verification from DEP.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county and municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because the bill requires counties and municipalities to address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material according to certain restrictions and criteria specified in the bill. This may affect the revenue stream or the costs of operating recycling or waste collection programs for counties and municipalities. However, an exemption to the mandates provision may apply if revenue stream and cost effects result in insignificant fiscal impacts to local governments. These effects are indeterminate at this time.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

The bill may have an indeterminate fiscal effect on local government recycling and waste removal services.

The bill may have an indeterminate, negative fiscal impact on DEP as a result of the costs of rulemaking to develop criteria for use of impact offsets or substitution credits. The bill may also have indeterminate negative fiscal impacts on DEP and the WMDs as a result of the costs of developing an MOA for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit.

D. Other Constitutional Issues:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

C. Government Sector Impact:

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 373.250, 403.064, 403.706, and 403.813.

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 Environmental Preservation and Conservation on January 22, 2018:
The amendment removes provisions in the bill related to contaminated recycling and adds the following criteria by which counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material:

- A residential recycling collector may not be required to collect or transport contaminated recyclable material.
- A materials recovery facility may not be required to process contaminated recyclable material.
- Each contract between a residential recycling collector and a county or municipality for the collection or transport of residential recyclable material, and each request for proposal for residential recyclable material, must define the term "contaminated recyclable material" in a manner that is appropriate for the local community, based on the available markets for recyclable material. The amendment specifies elements that the contract and request for proposal must include.
- Each contract between a materials recovery facility and a county or municipality for processing residential recyclable material must define the term "contaminated recyclable material" in a manner that is appropriate for the local community, based on the available markets for recyclable material. The amendment specifies elements that the contract must include.
- Provides that the above criteria apply to contracts between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after the effective date of the act.

The amendment provides that "residential recycling collector" means a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality.

B. Amendments:

None.

200016

LEGISLATIVE ACTION

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

Senate Amendment (with title amendment)

Delete lines 120 - 167
and insert:
(22) Counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material based upon the following:
(a) A residential recycling collector may not be required to collect or transport contaminated recyclable material, except

200016

pursuant to a contract consistent with paragraph (c). As used in this subsection, the term "residential recycling collector" means a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality.

(b) A recovered materials processing facility may not be required to process contaminated recyclable material, except pursuant to a contract consistent with subsection (d).

(c) Each contract between a residential recycling collector and a county or municipality for the collection or transport of residential recyclable material, and each request for proposal or other solicitation for residential recyclable material, must define the term "contaminated recyclable material." The term must be defined in a manner that is appropriate for the local community, taking into consideration available markets for recyclable material, available waste composition studies, and other relevant factors. The contract and request for proposal or other solicitation must include:

1. The respective strategies and obligations of the county or municipality and the collector to reduce the amount of contaminated recyclable material being collected;

2. The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, or bins that contain contaminated recyclable material;

3. The remedies authorized to be used if a container, cart, or bin contains contaminated recyclable material; and

4. The education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.

(d) Each contract between a recovered materials processing

200016

facility and a county or municipality for processing residential recyclable material, and each request for proposal or other solicitation for processing residential recyclable material, must define the term "contaminated recyclable material." The term must be defined in a manner that is appropriate for the local community, taking into consideration available markets for recyclable material, available waste composition studies, and other relevant factors. The contract and request for proposal must include:

1. The respective strategies and obligations of the county or municipality and the facility to reduce the amount of contaminated recyclable material being collected;

2. The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, or bins that contain contaminated recyclable material;

3. The remedies authorized to be used if a container, cart, or bin contains contaminated recyclable material; and

(e) This subsection applies to each contract between a municipality or county and a residential recycling collector or recovered materials processing facility executed or renewed after July 1, 2018.

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

And the title is amended as follows:

Delete lines 22 - 25

and insert:

residential recycling collectors except under certain conditions; defining the term "residential recycling collector"; prohibiting counties and municipalities

from requiring the processing of contaminated recyclable material by recovered materials processing facilities except under certain conditions; specifying required contract provisions in residential recycling collector and recovered materials processing facility contracts with

520250

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

Senate Amendment to Amendment (200016)

Delete lines 24 - 44
and insert:
should be defined in a manner that is appropriate for the local community, taking into consideration available markets for recyclable material, available waste composition studies, and other relevant factors. The contract and request for proposal or other solicitation must include:
1. The respective strategies and obligations of the county

520250

or municipality and the residential recycling collector to reduce the amount of contaminated recyclable material being collected;

2. The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, or bins that contain contaminated recyclable material;

3. The remedies authorized to be used if a container, cart, or bin contains contaminated recyclable material; and

4. The education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.

(d) Each contract between a recovered materials processing facility and a county or municipality for processing residential recyclable material, and each request for proposal or other solicitation for processing residential recyclable material, must define the term "contaminated recyclable material." The term should be defined in a manner that is appropriate for the

207382

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete lines 120 - 236
and insert:
(22) Counties and municipalities must address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material based upon the following:
(a) A residential recycling collector may not be required to collect or transport contaminated recyclable material, except

pursuant to a contract consistent with paragraph (c). As used in this subsection, the term "residential recycling collector" means a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality.

(b) A recovered materials processing facility may not be required to process contaminated recyclable material, except pursuant to a contract consistent with paragraph (d).

(c) Each contract between a residential recycling collector and a county or municipality for the collection or transport of residential recyclable material, and each request for proposal or other solicitation for residential recyclable material, must define the term "contaminated recyclable material." The term should be defined in a manner that is appropriate for the local community, taking into consideration available markets for recyclable material, available waste composition studies, and other relevant factors. The contract and request for proposal or other solicitation must include:

1. The respective strategies and obligations of the county or municipality and the residential recycling collector to reduce the amount of contaminated recyclable material being collected;

2. The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, or bins that contain contaminated recyclable material;

3. The remedies authorized to be used if a container, cart, or bin contains contaminated recyclable material; and

4. The education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.

(d) Each contract between a recovered materials processing facility and a county or municipality for processing residential recyclable material, and each request for proposal or other solicitation for processing residential recyclable material, must define the term "contaminated recyclable material." The term should be defined in a manner that is appropriate for the local community, taking into consideration available markets for recyclable material, available waste composition studies, and other relevant factors. The contract and request for proposal must include:

1. The respective strategies and obligations of the county or municipality and the facility to reduce the amount of contaminated recyclable material being collected and processed;

2. The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, or bins that contain contaminated recyclable material; and

3. The remedies authorized to be used if a container or load contains contaminated recyclable material.

(e) This subsection applies to each contract between a municipality or county and a residential recycling collector or recovered materials processing facility executed or renewed after July 1, 2018.

Section 4. Subsection (1) of section 403.813, Florida Statutes, is amended to read:

403.813 Permits issued at district centers; exceptions.—

(1) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, and a local government may not require an individual claiming this exemption to provide

further department verification, for activities associated with the following types of projects; however, except as otherwise provided in this subsection, this subsection does not relieve an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county and municipal governments:

(a) The installation of overhead transmission lines, having ~~with~~ support structures that ~~which~~ are not constructed in waters of the state and which do not create a navigational hazard.

(b) The installation and repair of mooring pilings and dolphins associated with private docking facilities or piers and the installation of private docks, piers, and recreational docking facilities, or piers and recreational docking facilities of local governmental entities when the local governmental entity's activities will not take place in any manatee habitat, any of which docks:

1. Has 500 square feet or less of over-water surface area for a dock ~~which is~~ located in an area designated as Outstanding Florida Waters or 1,000 square feet or less of over-water surface area for a dock ~~which is~~ located in an area that ~~which~~ is not designated as Outstanding Florida Waters;

2. Is constructed on or held in place by pilings or is a floating dock ~~which is~~ constructed so as not to involve filling or dredging other than that necessary to install the pilings;

3. May ~~Shall~~ not substantially impede the flow of water or

create a navigational hazard;

4. Is used for recreational, noncommercial activities associated with the mooring or storage of boats and boat paraphernalia; and

5. Is the sole dock constructed pursuant to this exemption as measured along the shoreline for a distance of 65 feet, unless the parcel of land or individual lot as platted is less than 65 feet in length along the shoreline, in which case there may be one exempt dock allowed per parcel or lot.

~~Nothing in~~ This paragraph does not ~~shall~~ prohibit the department from taking appropriate enforcement action pursuant to this chapter to abate or prohibit any activity otherwise exempt from permitting pursuant to this paragraph if the department can demonstrate that the exempted activity has caused water pollution in violation of this chapter.

(c) The installation and maintenance to design specifications of boat ramps on artificial bodies of water where navigational access to the proposed ramp exists or the installation of boat ramps open to the public in any waters of the state where navigational access to the proposed ramp exists and where the construction of the proposed ramp will be less than 30 feet wide and will involve the removal of less than 25 cubic yards of material from the waters of the state, and the maintenance to design specifications of such ramps; however, the material to be removed shall be placed upon a self-contained upland site so as to prevent the escape of the spoil material into the waters of the state.

(d) The replacement or repair of existing docks and piers,

207382

except that fill material may not be used and the replacement or repaired dock or pier must be within 5 feet of the same location and no larger in size than the existing dock or pier, and additional aquatic resources may not be adversely and permanently impacted by such replacement or repair ~~in the same location and of~~

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

And the title is amended as follows:

Delete lines 22 - 29

and insert:

residential recycling collectors except under certain conditions; defining the term "residential recycling collector"; prohibiting counties and municipalities from requiring the processing of contaminated recyclable material by recovered materials processing facilities except under certain conditions; specifying required contract provisions in residential recycling collector and recovered materials processing facility contracts with counties and municipalities; providing applicability; amending s. 403.813, F.S.; prohibiting a local government from requiring an individual to provide further department verification for certain projects; revising the

979634

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/07/2018	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 173 - 174
and insert:
chapter 25270, 1949, Laws of Florida, and a local government may not require an individual claiming this exemption to provide further department verification, for

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:

979634

Delete lines 28 - 29

and insert:

government may not require an individual to provide further department verification for certain projects; revising the

605428

LEGISLATIVE ACTION

Senate	.	House
Comm: WD	.	
02/07/2018	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 233 - 236
and insert:
repaired dock or pier must be within 5 feet of the same location and no larger in size than the existing dock or pier, and no additional aquatic resources may be adversely and permanently impacted by such replacement or repair ~~in the same location and of~~

657036

LEGISLATIVE ACTION

Senate . House

. . . . .

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

Senate Amendment (with title amendment)

Between lines 631 and 632
insert:

Section 5. Section 1004.49, Florida Statutes, is amended to read:

1004.49 Florida LAKEWATCH Program.—The Florida LAKEWATCH Program is hereby created within the School of Forest Resources and Conservation's Fisheries and Aquatic Sciences Program ~~Department of Fisheries and Aquaculture~~ of the Institute of Food

657036

and Agricultural Sciences at the University of Florida. The purpose of the program is to provide public education and training with respect to the water quality of Florida's lakes. The Fisheries and Aquatic Sciences Program ~~Department of Fisheries and Aquaculture~~ may, in implementing the LAKEWATCH Program:

(1) Train, supervise, and coordinate volunteers to collect water quality data from Florida's lakes, streams, and estuaries.

(2) Compile the data collected by volunteers.

(3) Disseminate information to the public about the LAKEWATCH Program.

(4) Provide or loan equipment to volunteers in the program.

(5) Perform other functions as may be necessary or beneficial in coordinating the LAKEWATCH Program.

Data collected and compiled shall be used to establish trends and provide general background information and may ~~shall in no instance~~ be used by the Department of Environmental Protection and the water management districts if the data collection methods meet sufficient quality assurance and quality control requirements ~~in a regulatory proceeding~~.

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

And the title is amended as follows:

Delete line 32

and insert:

permitting requirements; amending s. 1004.49, F.S.; specifying that the Florida LAKEWATCH Program resides within the School of Forest Resources and


657036

Conservation’s Fisheries and Aquatic Sciences Program at the University of Florida; revising the duties of the Fisheries and Aquatic Sciences Program; authorizing the department and water management districts to use program data under certain circumstances; providing a directive to the

By the Committee on Environmental Preservation and Conservation; and Senator Perry

592-02315-18 20181308c1

A bill to be entitled

An act relating to environmental regulation; amending s. 373.250, F.S.; deleting an obsolete provision; providing examples of reclaimed water use that may create an impact offset; revising the required provisions of the water resource implementation rule; amending s. 403.064, F.S.; revising legislative findings; requiring the Department of Environmental Protection and the water management districts to develop and enter into a memorandum of agreement providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit; specifying the required provisions of such memorandum; specifying the date by which the memorandum must be developed and executed; amending s. 403.706, F.S.; requiring counties and municipalities to address contamination of recyclable material in specified contracts; prohibiting counties and municipalities from requiring the collection or transport of contaminated recyclable material by residential recycling collectors; defining the term "residential recycling collector"; specifying required contract provisions in residential recycling collector and materials recovery facility contracts with counties and municipalities; providing applicability; amending s. 403.813, F.S.; providing that a local government may not require further verification from the department for certain projects; revising the

592-02315-18 20181308c1

types of dock and pier replacements and repairs that are exempt from such verification and certain permitting requirements; providing a directive to the Division of Law Revision and Information; providing an effective date.

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

Section 1. Subsection (5) of section 373.250, Florida Statutes, is amended to read:

373.250 Reuse of reclaimed water.—

(5)(a) ~~No later than October 1, 2012, the department shall initiate rulemaking to adopt revisions to~~ The water resource implementation rule, as defined in s. 373.019(25), must ~~which shall~~ include:

1. Criteria for the use of a proposed impact offset derived from the use of reclaimed water when a water management district evaluates an application for a consumptive use permit. As used in this subparagraph, the term "impact offset" means the use of reclaimed water to reduce or eliminate a harmful impact that has occurred or would otherwise occur as a result of other surface water or groundwater withdrawals. Examples of reclaimed water use that may create an impact offset include, but are not limited to, the use of reclaimed water to:

a. Prevent or stop further saltwater intrusion;

b. Raise aquifer levels;

c. Improve the water quality of an aquifer; or

d. Augment surface water to increase the quantity of water available for water supply.

2. Criteria for the use of substitution credits where a water management district has adopted rules establishing withdrawal limits from a specified water resource within a defined geographic area. As used in this subparagraph, the term "substitution credit" means the use of reclaimed water to replace all or a portion of an existing permitted use of resource-limited surface water or groundwater, allowing a different user or use to initiate a withdrawal or increase its withdrawal from the same resource-limited surface water or groundwater source provided that the withdrawal creates no net adverse impact on the limited water resource or creates a net positive impact if required by water management district rule as part of a strategy to protect or recover a water resource.

3. Criteria by which an impact offset or substitution credit may be applied to the issuance, renewal, or extension of the utility's or another user's consumptive use permit or may be used to address additional water resource constraints imposed through the adoption of a recovery or prevention strategy under s. 373.0421.

(b) Within 60 days after the final adoption by the department of the revisions to the water resource implementation rule required under paragraph (a), each water management district must ~~shall~~ initiate rulemaking to incorporate those revisions by reference into the rules of the district.

Section 2. Subsection (1) of section 403.064, Florida Statutes, is amended, and subsection (17) is added to that section, to read:

403.064 Reuse of reclaimed water.—

(1) The encouragement and promotion of water conservation,

and reuse of reclaimed water, as defined by the department, are state objectives and are considered to be in the public interest. The Legislature finds that the reuse of reclaimed water, including reuse through aquifer recharge, is a critical component of meeting the state's existing and future water supply needs while sustaining natural systems. The Legislature further finds that for those wastewater treatment plants permitted and operated under an approved reuse program by the department, the reclaimed water shall be considered environmentally acceptable and not a threat to public health and safety. The Legislature encourages the development of incentive-based programs for reuse implementation.

(17) The department and the water management districts shall develop and enter into a memorandum of agreement providing for a coordinated review of any reclaimed water project requiring a reclaimed water facility permit, an underground injection control permit, and a consumptive use permit. The memorandum of agreement must provide that the coordinated review is performed only if the applicant for such permits requests a coordinated review. The goal of the coordinated review is to share information, avoid requesting the applicant to submit redundant information, and ensure, to the extent feasible, a harmonized review of the reclaimed water project under these various permitting programs, including the use of a proposed impact offset or substitution credit in accordance with s. 373.250(5). The department and the water management districts must develop and execute such memorandum of agreement no later than December 1, 2018.

Section 3. Present subsection (22) of section 403.706,

Florida Statutes, is renumbered as subsection (23), and a new subsection (22) is added to that section, to read:

403.706 Local government solid waste responsibilities.—

(22) Counties and municipalities shall address the contamination of recyclable material in contracts for the collection, transportation, and processing of residential recyclable material based upon the following:

(a) A residential recycling collector may not be required to collect or transport contaminated recyclable material. As used in this subsection, the term "residential recycling collector" means a for-profit business entity that collects and transports residential recyclable material on behalf of a county or municipality.

(b) A materials recovery facility may not be required to process contaminated recyclable material.

(c) Each contract between a residential recycling collector and a county or municipality for the collection or transport of residential recyclable material, and each request for proposal for residential recyclable material, must define the term "contaminated recyclable material" in a manner that is appropriate for the local community, based on the available markets for recyclable material. The contract and request for proposal must include:

1. The respective strategies and obligations of the county or municipality and the collector to reduce the amount of contaminated recyclable material being collected;

2. The procedures for identifying, documenting, managing, and rejecting residential recycling containers, carts, or bins that contain contaminated recyclable material;

3. The remedies that will be used if a container, cart, or bin contains contaminated recyclable material; and

4. The education and enforcement measures that will be used to reduce the amount of contaminated recyclable material.

(d) Each contract between a materials recovery facility and a county or municipality for processing residential recyclable material must define the term "contaminated recyclable material" in a manner that is appropriate for the local community, based on the available markets for recyclable material. The contract must include:

1. The respective strategies and obligations of the parties to reduce the amount of contaminated recyclable material being processed;

2. The procedures for identifying, documenting, managing, and rejecting residential recycling containers or loads that contain contaminated recyclable material; and

3. The remedies that will be used if a container or load contains contaminated recyclable material.

(e) This subsection shall apply to each contract between a municipality or county and a residential recycling collector or materials recovery facility executed or renewed after the effective date of this act.

Section 4. Subsection (1) of section 403.813, Florida Statutes, is amended to read:

403.813 Permits issued at district centers; exceptions.—

(1) A permit is not required under this chapter, chapter 373, chapter 61-691, Laws of Florida, or chapter 25214 or chapter 25270, 1949, Laws of Florida, and a local government may not require further verification from the department, for

activities associated with the following types of projects; however, except as otherwise provided in this subsection, this subsection does not relieve an applicant from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund or a water management district in its governmental or proprietary capacity or from complying with applicable local pollution control programs authorized under this chapter or other requirements of county and municipal governments:

(a) The installation of overhead transmission lines, having ~~with~~ support structures that ~~which~~ are not constructed in waters of the state and which do not create a navigational hazard.

(b) The installation and repair of mooring pilings and dolphins associated with private docking facilities or piers and the installation of private docks, piers, and recreational docking facilities, or piers and recreational docking facilities of local governmental entities when the local governmental entity's activities will not take place in any manatee habitat, any of which docks:

1. Has 500 square feet or less of over-water surface area for a dock ~~which is~~ located in an area designated as Outstanding Florida Waters or 1,000 square feet or less of over-water surface area for a dock ~~which is~~ located in an area that ~~which~~ is not designated as Outstanding Florida Waters;

2. Is constructed on or held in place by pilings or is a floating dock ~~which is~~ constructed so as not to involve filling or dredging other than that necessary to install the pilings;

3. May ~~Shall~~ not substantially impede the flow of water or create a navigational hazard;

4. Is used for recreational, noncommercial activities associated with the mooring or storage of boats and boat paraphernalia; and

5. Is the sole dock constructed pursuant to this exemption as measured along the shoreline for a distance of 65 feet, unless the parcel of land or individual lot as platted is less than 65 feet in length along the shoreline, in which case there may be one exempt dock allowed per parcel or lot.

~~Nothing in~~ This paragraph does not ~~shall~~ prohibit the department from taking appropriate enforcement action pursuant to this chapter to abate or prohibit any activity otherwise exempt from permitting pursuant to this paragraph if the department can demonstrate that the exempted activity has caused water pollution in violation of this chapter.

(c) The installation and maintenance to design specifications of boat ramps on artificial bodies of water where navigational access to the proposed ramp exists or the installation of boat ramps open to the public in any waters of the state where navigational access to the proposed ramp exists and where the construction of the proposed ramp will be less than 30 feet wide and will involve the removal of less than 25 cubic yards of material from the waters of the state, and the maintenance to design specifications of such ramps; however, the material to be removed shall be placed upon a self-contained upland site so as to prevent the escape of the spoil material into the waters of the state.

(d) The replacement or repair of existing docks and piers, except that fill material may not be used and the replacement or

repaired dock or pier must be in approximately the same location and no larger in size than the existing dock or pier, and no additional aquatic resources may be adversely and permanently impacted by such replacement or repair ~~the same location and of the same configuration and dimensions as the dock or pier being replaced or repaired~~. This does not preclude the use of different construction materials or minor deviations to allow upgrades to current structural and design standards.

(e) The restoration of seawalls at their previous locations or upland of, or within 18 inches waterward of, their previous locations. However, this may ~~shall~~ not affect the permitting requirements of chapter 161, and department rules shall clearly indicate that this exception does not constitute an exception from the permitting requirements of chapter 161.

(f) The performance of maintenance dredging of existing manmade canals, channels, intake and discharge structures, and previously dredged portions of natural water bodies within drainage rights-of-way or drainage easements which have been recorded in the public records of the county, where the spoil material is to be removed and deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material into the waters of the state, provided that no more dredging is to be performed than is necessary to restore the canals, channels, and intake and discharge structures, and previously dredged portions of natural water bodies, to original design specifications or configurations, provided that the work is conducted in compliance with s. 379.2431(2)(d), provided that no significant impacts occur to previously undisturbed natural areas, and provided that control devices for return flow and

best management practices for erosion and sediment control are utilized to prevent bank erosion and scouring and to prevent turbidity, dredged material, and toxic or deleterious substances from discharging into adjacent waters during maintenance dredging. Further, for maintenance dredging of previously dredged portions of natural water bodies within recorded drainage rights-of-way or drainage easements, an entity that seeks an exemption must notify the department or water management district, as applicable, at least 30 days before ~~prior to~~ dredging and provide documentation of original design specifications or configurations where such exist. This exemption applies to all canals and previously dredged portions of natural water bodies within recorded drainage rights-of-way or drainage easements constructed before ~~prior to~~ April 3, 1970, and to those canals and previously dredged portions of natural water bodies constructed on or after April 3, 1970, pursuant to all necessary state permits. This exemption does not apply to the removal of a natural or manmade barrier separating a canal or canal system from adjacent waters. When no previous permit has been issued by the Board of Trustees of the Internal Improvement Trust Fund or the United States Army Corps of Engineers for construction or maintenance dredging of the existing manmade canal or intake or discharge structure, such maintenance dredging shall be limited to a depth of no more than 5 feet below mean low water. The Board of Trustees of the Internal Improvement Trust Fund may fix and recover from the permittee an amount equal to the difference between the fair market value and the actual cost of the maintenance dredging for material removed during such maintenance dredging. However, no

charge shall be exacted by the state for material removed during such maintenance dredging by a public port authority. The removing party may subsequently sell such material; however, proceeds from such sale that exceed the costs of maintenance dredging shall be remitted to the state and deposited in the Internal Improvement Trust Fund.

(g) The maintenance of existing insect control structures, dikes, and irrigation and drainage ditches, provided that spoil material is deposited on a self-contained, upland spoil site which will prevent the escape of the spoil material into waters of the state. In the case of insect control structures, if the cost of using a self-contained upland spoil site is so excessive, as determined by the Department of Health, pursuant to s. 403.088(1), that it will inhibit proposed insect control, then-existing spoil sites or dikes may be used, upon notification to the department. In the case of insect control where upland spoil sites are not used pursuant to this exemption, turbidity control devices shall be used to confine the spoil material discharge to that area previously disturbed when the receiving body of water is used as a potable water supply, is designated as shellfish harvesting waters, or functions as a habitat for commercially or recreationally important shellfish or finfish. In all cases, no more dredging is to be performed than is necessary to restore the dike or irrigation or drainage ditch to its original design specifications.

(h) The repair or replacement of existing functional pipes or culverts the purpose of which is the discharge or conveyance of stormwater. In all cases, the invert elevation, the diameter,

and the length of the culvert may ~~shall~~ not be changed. However, the material used for the culvert may be different from the original.

(i) The construction of private docks of 1,000 square feet or less of over-water surface area and seawalls in artificially created waterways where such construction will not violate existing water quality standards, impede navigation, or affect flood control. This exemption does not apply to the construction of vertical seawalls in estuaries or lagoons unless the proposed construction is within an existing manmade canal where the shoreline is currently occupied in whole or part by vertical seawalls.

(j) The construction and maintenance of swales.

(k) The installation of aids to navigation and buoys associated with such aids, provided the devices are marked pursuant to s. 327.40.

(l) The replacement or repair of existing open-trestle foot bridges and vehicular bridges that are 100 feet or less in length and two lanes or less in width, provided that no more dredging or filling of submerged lands is performed other than that which is necessary to replace or repair pilings and that the structure to be replaced or repaired is the same length, the same configuration, and in the same location as the original bridge. No debris from the original bridge shall be allowed to remain in the waters of the state.

(m) The installation of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters in the state, except in Class I and Class II waters and aquatic preserves, provided no dredging or filling is necessary.

(n) The replacement or repair of subaqueous transmission and distribution lines laid on, or embedded in, the bottoms of waters of the state.

(o) The construction of private seawalls in wetlands or other surface waters where such construction is between and adjoins at both ends existing seawalls; follows a continuous and uniform seawall construction line with the existing seawalls; is no more than 150 feet in length; and does not violate existing water quality standards, impede navigation, or affect flood control. However, in estuaries and lagoons the construction of vertical seawalls is limited to the circumstances and purposes stated in s. 373.414(5)(b)1.-4. This paragraph does not affect the permitting requirements of chapter 161, and department rules must clearly indicate that this exception does not constitute an exception from the permitting requirements of chapter 161.

(p) The restoration of existing insect control impoundment dikes which are less than 100 feet in length. Such impoundments shall be connected to tidally influenced waters for 6 months each year beginning September 1 and ending February 28 if feasible or operated in accordance with an impoundment management plan approved by the department. A dike restoration may involve no more dredging than is necessary to restore the dike to its original design specifications. For the purposes of this paragraph, restoration does not include maintenance of impoundment dikes of operating insect control impoundments.

(q) The construction, operation, or maintenance of stormwater management facilities which are designed to serve single-family residential projects, including duplexes, triplexes, and quadruplexes, if they are less than 10 acres

total land and have less than 2 acres of impervious surface and if the facilities:

1. Comply with all regulations or ordinances applicable to stormwater management and adopted by a city or county;

2. Are not part of a larger common plan of development or sale; and

3. Discharge into a stormwater discharge facility exempted or permitted by the department under this chapter which has sufficient capacity and treatment capability as specified in this chapter and is owned, maintained, or operated by a city, county, special district with drainage responsibility, or water management district; however, this exemption does not authorize discharge to a facility without the facility owner's prior written consent.

(r) The removal of aquatic plants, the removal of tussocks, the associated replanting of indigenous aquatic plants, and the associated removal from lakes of organic detrital material when such planting or removal is performed and authorized by permit or exemption granted under s. 369.20 or s. 369.25, provided that:

1. Organic detrital material that exists on the surface of natural mineral substrate shall be allowed to be removed to a depth of 3 feet or to the natural mineral substrate, whichever is less;

2. All material removed pursuant to this paragraph shall be deposited in an upland site in a manner that will prevent the reintroduction of the material into waters in the state except when spoil material is permitted to be used to create wildlife islands in freshwater bodies of the state when a governmental

entity is permitted pursuant to s. 369.20 to create such islands as a part of a restoration or enhancement project;

3. All activities are performed in a manner consistent with state water quality standards; and

4. No activities under this exemption are conducted in wetland areas, as defined in s. 373.019(27), which are supported by a natural soil as shown in applicable United States Department of Agriculture county soil surveys, except when a governmental entity is permitted pursuant to s. 369.20 to conduct such activities as a part of a restoration or enhancement project.

The department may not adopt implementing rules for this paragraph, notwithstanding any other provision of law.

(s) The construction, installation, operation, or maintenance of floating vessel platforms or floating boat lifts, provided that such structures:

1. Float at all times in the water for the sole purpose of supporting a vessel so that the vessel is out of the water when not in use;

2. Are wholly contained within a boat slip previously permitted under ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of chapter 373, or do not exceed a combined total of 500 square feet, or 200 square feet in an Outstanding Florida Water, when associated with a dock that is exempt under this subsection or associated with a permitted dock with no defined boat slip or attached to a bulkhead on a parcel of land where there is no other docking structure;

3. Are not used for any commercial purpose or for mooring vessels that remain in the water when not in use, and do not substantially impede the flow of water, create a navigational hazard, or unreasonably infringe upon the riparian rights of adjacent property owners, as defined in s. 253.141;

4. Are constructed and used so as to minimize adverse impacts to submerged lands, wetlands, shellfish areas, aquatic plant and animal species, and other biological communities, including locating such structures in areas where seagrasses are least dense adjacent to the dock or bulkhead; and

5. Are not constructed in areas specifically prohibited for boat mooring under conditions of a permit issued in accordance with ss. 403.91-403.929, 1984 Supplement to the Florida Statutes 1983, as amended, or part IV of chapter 373, or other form of authorization issued by a local government.

Structures that qualify for this exemption are relieved from any requirement to obtain permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund and, with the exception of those structures attached to a bulkhead on a parcel of land where there is no docking structure, may ~~shall~~ not be subject to any more stringent permitting requirements, registration requirements, or other regulation by any local government. Local governments may require either permitting or one-time registration of floating vessel platforms to be attached to a bulkhead on a parcel of land where there is no other docking structure as necessary to ensure compliance with local ordinances, codes, or regulations. Local governments may require either permitting or one-time

registration of all other floating vessel platforms as necessary to ensure compliance with the exemption criteria in this section; to ensure compliance with local ordinances, codes, or regulations relating to building or zoning, which are no more stringent than the exemption criteria in this section or address subjects other than subjects addressed by the exemption criteria in this section; and to ensure proper installation, maintenance, and precautionary or evacuation action following a tropical storm or hurricane watch of a floating vessel platform or floating boat lift that is proposed to be attached to a bulkhead or parcel of land where there is no other docking structure. The exemption provided in this paragraph shall be in addition to the exemption provided in paragraph (b). The department shall adopt a general permit by rule for the construction, installation, operation, or maintenance of those floating vessel platforms or floating boat lifts that do not qualify for the exemption provided in this paragraph but do not cause significant adverse impacts to occur individually or cumulatively. The issuance of such general permit shall also constitute permission to use or occupy lands owned by the Board of Trustees of the Internal Improvement Trust Fund. No local government shall impose a more stringent regulation, permitting requirement, registration requirement, or other regulation covered by such general permit. Local governments may require either permitting or one-time registration of floating vessel platforms as necessary to ensure compliance with the general permit in this section; to ensure compliance with local ordinances, codes, or regulations relating to building or zoning that are no more stringent than the general permit in this section; and to ensure proper

installation and maintenance of a floating vessel platform or floating boat lift that is proposed to be attached to a bulkhead or parcel of land where there is no other docking structure.

(t) The repair, stabilization, or paving of existing county maintained roads and the repair or replacement of bridges that are part of the roadway, within the Northwest Florida Water Management District and the Suwannee River Water Management District, provided:

1. The road and associated bridge were in existence and in use as a public road or bridge, and were maintained by the county as a public road or bridge on or before January 1, 2002;

2. The construction activity does not realign the road or expand the number of existing traffic lanes of the existing road; however, the work may include the provision of safety shoulders, clearance of vegetation, and other work reasonably necessary to repair, stabilize, pave, or repave the road, provided that the work is constructed by generally accepted engineering standards;

3. The construction activity does not expand the existing width of an existing vehicular bridge in excess of that reasonably necessary to properly connect the bridge with the road being repaired, stabilized, paved, or repaved to safely accommodate the traffic expected on the road, which may include expanding the width of the bridge to match the existing connected road. However, no debris from the original bridge shall be allowed to remain in waters of the state, including wetlands;

4. Best management practices for erosion control shall be employed as necessary to prevent water quality violations;

5. Roadside swales or other effective means of stormwater treatment must be incorporated as part of the project;

6. No more dredging or filling of wetlands or water of the state is performed than that which is reasonably necessary to repair, stabilize, pave, or repave the road or to repair or replace the bridge, in accordance with generally accepted engineering standards; and

7. Notice of intent to use the exemption is provided to the department, if the work is to be performed within the Northwest Florida Water Management District, or to the Suwannee River Water Management District, if the work is to be performed within the Suwannee River Water Management District, 30 days before ~~prior to~~ performing any work under the exemption.

Within 30 days after this act becomes a law, the department shall initiate rulemaking to adopt a no fee general permit for the repair, stabilization, or paving of existing roads that are maintained by the county and the repair or replacement of bridges that are part of the roadway where such activities do not cause significant adverse impacts to occur individually or cumulatively. The general permit shall apply statewide and, with no additional rulemaking required, apply to qualified projects reviewed by the Suwannee River Water Management District, the St. Johns River Water Management District, the Southwest Florida Water Management District, and the South Florida Water Management District under the division of responsibilities contained in the operating agreements applicable to part IV of chapter 373. Upon adoption, this general permit shall, pursuant to ~~the provisions of~~ subsection (2), supersede and replace the

exemption in this paragraph.

(u) Notwithstanding any provision to the contrary in this subsection, a permit or other authorization under chapter 253, chapter 369, chapter 373, or this chapter is not required for an individual residential property owner for the removal of organic detrital material from freshwater rivers or lakes that have a natural sand or rocky substrate and that are not Aquatic Preserves or for the associated removal and replanting of aquatic vegetation for the purpose of environmental enhancement, providing that:

1. No activities under this exemption are conducted in wetland areas, as defined in s. 373.019(27), which are supported by a natural soil as shown in applicable United States Department of Agriculture county soil surveys.

2. No filling or peat mining is allowed.

3. No removal of native wetland trees, including, but not limited to, ash, bay, cypress, gum, maple, or tupelo, occurs.

4. When removing organic detrital material, no portion of the underlying natural mineral substrate or rocky substrate is removed.

5. Organic detrital material and plant material removed is deposited in an upland site in a manner that will not cause water quality violations.

6. All activities are conducted in such a manner, and with appropriate turbidity controls, so as to prevent any water quality violations outside the immediate work area.

7. Replanting with a variety of aquatic plants native to the state shall occur in a minimum of 25 percent of the preexisting vegetated areas where organic detrital material is

removed, except for areas where the material is removed to bare rocky substrate; however, an area may be maintained clear of vegetation as an access corridor. The access corridor width may not exceed 50 percent of the property owner's frontage or 50 feet, whichever is less, and may be a sufficient length waterward to create a corridor to allow access for a boat or swimmer to reach open water. Replanting must be at a minimum density of 2 feet on center and be completed within 90 days after removal of existing aquatic vegetation, except that under dewatered conditions replanting must be completed within 90 days after reflooding. The area to be replanted must extend waterward from the ordinary high water line to a point where normal water depth would be 3 feet or the preexisting vegetation line, whichever is less. Individuals are required to make a reasonable effort to maintain planting density for a period of 6 months after replanting is complete, and the plants, including naturally recruited native aquatic plants, must be allowed to expand and fill in the revegetation area. Native aquatic plants to be used for revegetation must be salvaged from the enhancement project site or obtained from an aquatic plant nursery regulated by the Department of Agriculture and Consumer Services. Plants that are not native to the state may not be used for replanting.

8. No activity occurs any farther than 100 feet waterward of the ordinary high water line, and all activities must be designed and conducted in a manner that will not unreasonably restrict or infringe upon the riparian rights of adjacent upland riparian owners.

9. The person seeking this exemption notifies the

applicable department district office in writing at least 30 days before commencing work and allows the department to conduct a preconstruction site inspection. Notice must include an organic-detrital-material removal and disposal plan and, if applicable, a vegetation-removal and revegetation plan.

10. The department is provided written certification of compliance with the terms and conditions of this paragraph within 30 days after completion of any activity occurring under this exemption.

(v) Notwithstanding any other provision in this chapter, chapter 373, or chapter 161, a permit or other authorization is not required for the following exploratory activities associated with beach restoration and nourishment projects and inlet management activities:

1. The collection of geotechnical, geophysical, and cultural resource data, including surveys, mapping, acoustic soundings, benthic and other biologic sampling, and coring.

2. Oceanographic instrument deployment, including temporary installation on the seabed of coastal and oceanographic data collection equipment.

3. Incidental excavation associated with any of the activities listed under subparagraph 1. or subparagraph 2.

Section 5. The Division of Law Revision and Information is directed to replace the phrase "the effective date of this act" wherever it occurs in this act with the date the act becomes a law.

Section 6. This act shall take effect upon becoming a law.