The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

JUDICIARY
Senator Diaz de la Portilla, Chair
Senator Ring, Vice Chair

MEETING DATE: Tuesday, April 7, 2015
TIME: 4:00 —6:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Diaz de la Portilla, Chair; Senator Ring, Vice Chair; Senators Bean, Benacquisto, Brandes, Joyner, Simmons, Simpson, Soto, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 64** Legg (Identical H 3549)	Relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta by Miami-Dade County; Providing for the relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta, the surviving children of Nhora Acosta, by Miami-Dade County; providing for an appropriation to compensate them for the wrongful death of their mother, Ms. Acosta, due to injuries sustained as a result of the negligence of a Miami-Dade County bus driver; providing a limitation on the payment of fees and costs, etc. SM 04/03/2015 Recommendation: Unfavorable JU 04/07/2015 CA FP	
2	**CS/SB 312** Children, Families, and Elder Affairs / Detert (Similar CS/CS/H 235)	Restitution for Juvenile Offenses; Requiring a child's parent or guardian, in addition to the child, to make restitution for damage or loss caused by the child's offense; authorizing the court to order restitution to be paid only by the parents or guardians who have current custody and parental responsibility of the child; specifying that the Department of Children and families, foster parents, a facility registered under s. 409.176, F.S., and specified agencies contracted with the department are not guardians for purposes of restitution, etc. CJ 03/02/2015 Favorable CF 03/26/2015 Fav/CS JU 04/07/2015 FP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**CS/SB 736** Regulated Industries / Stargel (Similar CS/CS/H 611)	Residential Properties; Providing requirements relating to the request for an estoppel certificate by a unit or parcel owner or a unit or parcel mortgagee; providing that the association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate under certain conditions; providing that the association waives any claim against a person or entity who would have relied in good faith upon the estoppel certificate under certain conditions; deleting provisions regarding expedited court action to compel issuance of an estoppel certificate, etc. RI 03/24/2015 RI 03/31/2015 Fav/CS JU 04/07/2015 FP	
4	**SB 796** Evers (Identical H 4021)	Financial Reporting; Deleting provisions with respect to the preparation by certain condominium associations, cooperative associations, and homeowners' associations of annual reports of cash receipts and expenditures in lieu of certain financial statements, etc. RI 03/31/2015 Favorable JU 04/07/2015 RC	
5	**SB 1528** Evers	Commission on Federalism; Creating the Commission on Federalism; providing for the membership, meetings, and staff support of the commission; providing duties of the commission; providing criteria to evaluate a federal law; specifying what sources the commission may rely on in an evaluation of a federal law; requiring the commission to submit biannual reports to the Governor and the Legislature, etc. JU 04/07/2015 GO RC	
6	**CS/SB 912** Environmental Preservation and Conservation / Bean (Similar CS/H 787)	Recycled and Recovered Materials; Exempting a person who sells, transfers, or arranges for the transfer of recycled and recovered materials from liability for hazardous substances released or threatened to be released from the receiving facility or site under certain circumstances, etc. EP 03/31/2015 Fav/CS JU 04/07/2015 FP	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
7	**CS/SB 1172** Regulated Industries / Latvala (Similar CS/CS/H 643)	Termination of a Condominium Association; Providing and revising procedures and requirements for termination of a condominium property; revising requirements relating to the right to contest a plan of termination, etc. RI 03/24/2015 Fav/CS JU 04/07/2015 FP	
8	**SB 7070** Appropriations (Compare CS/CS/H 335, CS/H 547, H 705, H 1017, H 7113, H 7119, CS/S 476, CS/S 1340, S 1452, S 1458, S 7068)	Mental Health and Substance Abuse; Adding substance abuse impairment to a list of disorders for which the Legislature intends to develop treatment programs; adding substance abuse services as a program focus for which the Department of Children and Families is responsible; adding substance abuse care as an element of the continuity of care management system that the department must establish, etc. JU 04/07/2015	
9	**SB 238** Ring (Identical H 479)	Athletic Coaches; Requiring an independent sanctioning authority to dismiss an athletic coach ejected from a game for the remainder of that sport season under certain circumstances; authorizing such athletic coach to resume working under certain circumstances, etc. CF 03/12/2015 Favorable CA 03/31/2015 Favorable JU 04/07/2015 FP	
10	**CS/SB 748** Regulated Industries / Ring (Similar CS/H 791, Compare CS/CS/CS/H 1211, S 348)	Residential Properties; Providing that a certain deed, transfer, or conveyance from an owner of property is subject to certain taxes; providing that the vote necessary to charge use fees for the use of the common elements or association property may be approved by a majority of the voting interests present, in person or by proxy, at a meeting of the association if a quorum has been established; authorizing condominium associations to conduct elections by electronic voting under certain conditions, etc. RI 03/18/2015 Fav/CS JU 04/07/2015 FP	
	Other Related Meeting Documents		

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
302 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/19/14	SM	Unfavorable
4/7/15	JU	Pre-meeting
	CA	
	FP	

December 19, 2014

The Honorable Andy Gardiner
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 64** – Senator John Legg
Relief of Monica Cantillo Acosta and Luis Alberto Acosta

SPECIAL MASTER'S FINAL REPORT

THIS UNOPPOSED, NEGLIGENCE-BASED EQUITABLE CLAIM FOR $940,000, IN LOCAL FUNDS, AGAINST MIAMI-DADE COUNTY FOR NON-ECONOMIC DAMAGES IS BROUGHT BY THE TWO CHILDREN OF A PASSENGER WHO FELL IN A BUS AND SUFFERED A FATAL HEAD INJURY AFTER THE DRIVER STOPPED SUDDENLY TO AVOID A COLLISION.

CURRENT STATUS:

On December 21, 2010, an administrative law judge from the Division of Administrative Hearings, serving as a Senate special master, held a de novo hearing on a previous version of this bill, SB 60 (2011). After the hearing, the judge issued a report containing findings of fact and conclusions of law and recommended that the bill be reported unfavorably. The same administrative law judge served as the Senate special master for the identical bill the following year, SB 50 (2012). The judge issued an effectively identical report and recommended that the bill be reported unfavorably. That report is attached as an addendum to this report.

Due to the passage of time since the hearing, the Senate President reassigned the claim to me, Sandra Stovall. My responsibilities were to review the records relating to the claim

bill, be available for questions from the members, and determine whether any changes have occurred since the hearing, which if know at the hearing, might have significantly altered the findings or recommendation in the previous report.

According to counsel for the parties, no changes have occurred since the hearing which might have altered the findings and recommendations in the report.

The prior claim bill, SB 50 (2012), is effectively identical to the 2015 bill filed for the 2015 Legislative Session, except the full amount to be paid by Miami-Dade County under the claim bill correctly reflects the amount agreed upon in the settlement agreement ($940,000) rather than the entire amount of the judgment.

Respectfully submitted,

Sandra R. Stovall
Senate Special Master

cc: Debbie Brown, Secretary of the Senate

THE FLORIDA SENATE

SPECIAL MASTER ON CLAIM BILLS

Location
402 Senate Office Building

Mailing Address
404 South Monroe Street
Tallahassee, Florida 32399-1100
(850) 487-5237

DATE	COMM	ACTION
12/2/11	SM	Unfavorable

December 2, 2011

The Honorable Mike Haridopolos
President, The Florida Senate
Suite 409, The Capitol
Tallahassee, Florida 32399-1100

Re: **SB 50 (2012)** – Senator Ellyn Setnor Bogdanoff
Relief of Monica Cantillo Acosta and Luis Alberto Acosta

SPECIAL MASTER'S FINAL REPORT

THIS UNOPPOSED, NEGLIGENCE-BASED EQUITABLE CLAIM FOR $940,000, IN LOCAL FUNDS, AGAINST MIAMI-DADE COUNTY FOR NON-ECONOMIC DAMAGES IS BROUGHT BY THE TWO CHILDREN OF A PASSENGER WHO FELL IN A BUS AND SUFFERED A FATAL HEAD INJURY AFTER THE DRIVER STOPPED SUDDENLY TO AVOID A COLLISION.

FINDINGS OF FACT:

On November 12, 2004, at 2:28 p.m., Nhora Acosta, 53, and her friend Zunilda Vargas boarded a bus operated by the Miami-Dade Transit Authority (MTA). The bus was eastbound on SW 8th Street in Miami. Ms. Acosta was returning to work after having lunched with Ms. Vargas. Neither woman was elderly, handicapped, infirm, or burdened with packages; both were able-bodied and apparently healthy.

The bus was crowded, and there were no seats for the women near the front. They began walking down the center aisle to the rear of the bus, where seats were available in an elevated seating area. To access this raised seating platform, a passenger must climb two steps, which are incorporated into the center aisle. As Ms. Acosta and Ms. Vargas headed to the back of the bus, the driver, Fernando Arrieta, pulled away

from the bus stop and proceeded to drive eastward on SW 8th Street, in the right lane.

About 11 seconds after the bus began moving, an SUV traveling in the left eastbound lane began pulling into the right lane, in front of the bus. This maneuver took nearly 4 seconds to complete. Immediately upon changing lanes, however, the SUV began breaking. Mr. Arrieta simultaneously stepped on the bus's breaks, to avoid a rear-end collision with the SUV.

The SUV needed to stop suddenly because a jaywalker was standing in the middle of the road, in between the two eastbound lanes. Two vehicles in the left eastbound lane had come to a complete stop. (The SUV had changed lanes, moving left-to-right in front of the bus, to pass these vehicles on the right.) It is reasonable to infer, and the undersigned finds, that the jaywalker had not anticipated that the SUV would cut in front of the bus when he began to cross the eastbound lanes on SW 8th Street. When the SUV suddenly appeared in the right lane, ahead of, and moving faster than, the bus, the jaywalker froze, calculating that he might not beat the SUV if it failed to slow down. Once the SUV began to break, however, the jaywalker dashed in front of it, safely reaching the sidewalk 2 seconds later. The SUV continued forward, and the two vehicles in the left lane, which had stopped, now took off. The bus came to a complete stop in the right lane, at the curb. Twenty seconds had elapsed from the time the bus pulled away after picking up Ms. Acosta and Ms. Vargas.

Inside the bus, a tragic accident had occurred. At about the moment the SUV began to change lanes, Ms. Acosta stepped up onto the rear seating platform. Ms. Vargas, who was right behind her, did the same about 2 seconds later. When the bus stopped to avoid running into the SUV, both Ms. Acosta and Ms. Vargas lost balance. Ms. Acosta tripped over Ms. Vargas's leg and fell off the elevated platform, striking her head on the lower center aisle. The injury proved to be fatal. Ms. Acosta died the next day in the hospital, having never regained consciousness.

The foregoing findings are based not only on the testimony presented, but also on the undersigned's independent review of the videos that the bus's onboard cameras recorded.

Based on a careful review of the videos, the following chronology of the material events has been created:

Hour	Minute	Second(s)	Event
2PM	28	44	Front doors are open
		46	Acosta steps onto bus
		47	Vargas boards
		48-53	Acosta pays fare; begins walking to back of crowded bus
		53-56	Vargas pays fare; begins walking to back of crowded bus
		57	Bus starts moving forward
		57-59	Acosta and Vargas walking to back of moving bus
	29	00-06	Acosta and Vargas still walking to back of moving bus
		06-08	Acosta steps up onto rear seating platform; Vargas approaching her from behind
		08-12	SUV, moving left to right, pulls into the right eastbound lane, in front of bus
		09-10	Vargas steps up onto rear seating platform, behind Acosta
		09-16	Two vehicles have stopped moving in the left eastbound lane, one behind the other
		11-13	Drives applies the breaks
		12-13	Pedestrian stands between the left and right eastbound lanes; two vehicles are parked in the left lane, having stopped for the pedestrian
		12	SUV is breaking
		13-14	Vargas loses balance, begins to fall

		14-15	Acosta begins to trip on Vargas's outstretched leg, falls
		14-16	Pedestrian dashes, left to right, toward sidewalk, directly in front of the SUV in the right eastbound lane
		16-18	Acosta is down; Vargas recovers balance, stands without having fallen
		17	Bus is at complete stop; SUV proceeds eastbound
		17-21	Two vehicles in left lane drive off, eastbound
		29-33	Front doors open
		36	Driver gets up from seat
		40	Driver begins walking back

At the conclusion of the trial in the civil action that Ms. Acosta's daughter Monica and son Luis brought against Miami-Dade County, which will be discussed below, the jury returned a verdict in favor of the plaintiffs, awarding each of them $3 million for non-economic damages, i.e., "pain and suffering." No award for economic damages, e.g., lost earnings, was made because Ms. Acosta, a Venezuelan citizen, was in the U.S. illegally, having overstayed her tourist visa, and hence her children could not prove earnings from lawful employment.

The jury in the civil trial was asked to compare the negligence, if any, of Ms. Acosta; the unnamed pedestrian; the unnamed driver of the SUV; and Mr. Arrieta, and to apportion the fault between them by percentages. The jury determined that Mr. Arrieta's negligence was the sole cause of Ms. Acosta's fatal injury.

The undersigned considers the jury's apportionment of 100 percent of the fault to the bus driver to be inexplicable (except as the product of sympathy and emotion) and, ultimately, indefensible. Clearly, the unnamed pedestrian, who decided to cross a busy road outside of a marked crosswalk, acted recklessly and endangered himself and others. This jaywalker therefore owned the lion's share of the blame for this unfortunate accident, and the undersigned charges him with 90 percent of the fault. The unnamed driver of the SUV

was partially responsible for the accident; had he remained in the left lane and slowed to a stop, as the two vehicles in front of him did, it is likely that this accident would not have occurred. The undersigned places 10 percent of the blame on this driver. Mr. Arrieta's conduct in bringing the bus to a controlled, nonviolent stop to avoid rear-ending the SUV, which had stopped suddenly to avoid hitting the jaywalker standing the middle of the busy road, was reasonable under the circumstances.

The claimants argue that Mr. Arrieta was negligent in failing to wait for Ms. Acosta and her friend to sit down or grab a handrail. As will be discussed below, the standard of care does not generally require a bus driver to wait for a boarding passenger to sit down before pulling away, unless the passenger is elderly, infirm, disabled, etc., or the driver knows or reasonably should know of some reason (besides ordinary traffic conditions) that might cause him to make a sudden stop. Based on the evidence presented in this case, the undersigned finds that (a) both Ms. Acosta Ms. Vargas were able-bodied and apparently healthy; and (b) Mr. Arrieta had no reason to anticipate that a jaywalker soon would cross his bus's path and disrupt traffic. Thus, it is determined that Mr. Arrieta did not breach the duty of care by driving the bus while Ms. Acosta and Ms. Vargas were still in the process of finding seats.

Even if Mr. Arrieta were negligent in failing to wait for Ms. Acosta to take her seat before driving off, however, which the undersigned (based on the law and the evidence presented here) does not believe was the case, he was certainly not more responsible for the accident than the unnamed driver of the SUV. At most, therefore, Mr. Arrieta was 5 percent at fault, the SUV driver 5 percent responsible, and the jaywalker 90 percent to blame.

LEGAL PROCEEDINGS:

In 2005, the Monica and Luis Acosta, Ms. Acosta's children, brought a wrongful death action against Miami-Dade County based on the alleged negligence of the MTA employee, Mr. Arrieta. The action was filed in the circuit court in Miami-Dade County.

The case was tried before a jury in or around November 2007. The jury returned a verdict awarding Monica and Luis $3 million each for pain and suffering. As mentioned above, the

jury apportioned 100 percent the fault for Ms. Acosta's death to the bus driver, finding specifically that neither the jaywalker, the SUV driver, nor Ms. Acosta herself were in any way negligent in causing Ms. Acosta's death. On November 8, 2007, trial court entered a judgment against Miami-Dade County in accordance with the jury's verdict.

The county appealed the judgment. In April 2010, while the appeal was pending before the Third District Court, the parties agreed to a settlement of the case, under which the county, in exchange for a release of liability, would: (a) pay $200,000 to the claimants (which it since has done); (b) dismiss the appeal; and (c) support a claim bill in the amount of $940,000.

Upon the county's payment of $200,000, the claimants received net proceeds of $98,237.30, after deductions for attorneys' fees ($50,000) and costs ($51,762.70).

CLAIMANTS' ARGUMENTS: Miami-Dade County is vicariously liable for the negligence of its employee, Mr. Arrieta, who breached the duty of a common carrier to exercise the highest degree of care consistent with the practical operation of the bus by:

- Failing to wait for Ms. Acosta to take a seat before pulling away from the bus stop;
- Failing to pay attention to his surroundings while driving; and
- Slamming the brakes and making a sudden, violent stop.

RESPONDENT'S POSITION: The county supports a claim bill in the amount of $940,000. If the claim bill were enacted, the county would satisfy the award using the operating funds of the MTA.

CONCLUSIONS OF LAW: As provided in section 768.28, Florida Statutes (2010), sovereign immunity shields Miami-Dade County against tort liability in excess of $200,000 per occurrence.

The operator of a bus system is vicariously liable for any negligent act committed by a driver whom it employs, provided the act is with the scope of the driver's employment. See, e.g., Metro. Dade Cnty. v. Asusta, 359 So. 2d 58, 59 (Fla. 3d DCA 1978); Miami Transit Co. v. Ford, 159 So. 2d 261 (Fla. 3d DCA

1964). Mr. Arrieta was the county's employee and was clearly acting within the scope of his employment at the time of the accident in question. Accordingly, the negligence of Mr. Arrieta, if any, is attributable to the county.

As a general rule, the duty of a common carrier is "to exercise the highest degree of care consistent with the practical operation of the bus." Jacksonville Coach Co. v. Rivers, 144 So. 2d 308, 310 (Fla. 1962). That the bus stopped suddenly, however, is insufficient, without more, to establish negligence on the part of the driver, as the Florida Supreme Court announced in Rivers:

> Ruling out stops of extraordinary violence, not incidental to ordinary travel, as inapplicable to the stop which occurred here, the sudden stopping of the bus was not a basis for a finding that the bus was negligently operated, in the absence of other evidence, relating to the stop, of some act of commission or omission by the driver which together with the 'sudden' stop would suffice to show a violation of the carrier's duty. This is so because a sudden or abrupt stop, which could be the result of negligent operation, could as well result from conditions and circumstances making it entirely proper and free of any negligence.

Id. (emphasis added; reinstating directed verdict in favor of defense; quoting Blackman v. Miami Transit Co., 125 So. 2d 128, 130 (Fla. 3d DCA 1960)).

Here, the evidence establishes that the stop in question, while sudden and unexpected, was not extraordinarily violent and was incidental to ordinary travel, inasmuch as making a sudden stop in traffic, unexpectedly, is commonly understood to be one of the recurring inconveniences (and risks) of driving a motor vehicle. The evidence, moreover, does not establish that the driver failed to pay attention to his surroundings; rather, as the videos show, Mr. Arrieta reacted prudently and reasonably to an unexpected situation, namely the slowing of the SUV (which had just pulled ahead of the

bus) to avoid hitting a jaywalker who was standing in the middle of the road, in traffic.

The question whether the driver should have waited for Ms. Acosta to take a seat before putting the bus in motion is somewhat closer. Florida law, however, does not generally require that a driver wait for passengers to be seated before proceeding, although such a duty might arise where the driver prevents the passenger from taking a seat, Ginn v. Broward Cnty. Transit, 396 So. 2d 804, 806 (Fla. 4th DCA 1981), or reasonably could have anticipated the need to make a sudden stop, Metro. Dade Cnty. V. Asusta, 359 So. 2d 58, 60 (Fla. 3d DCA 1978). Indeed, courts have entered judgments as a matter of law against plaintiffs who have fallen on moving buses while on their way to a seat. See, e.g., Peterson v. Cent. Fla. Reg'l Transp. , 769 So. 2d 418, 421 (Fla. 5th DCA 2000)(affirming directed verdict in favor of bus operator, where plaintiff, who was carrying a large, rain-soaked bag, was injured in fall on bus while walking down a wet aisle to take a seat in the back); Artigas v. Allstate Ins. Co., 541 So. 2d 739, 740(Fla. 3d DCA 1989)(affirming summary judgment in favor of bus operator because, although plaintiff had fallen after boarding bus while on her way to seat, standard of care was not violated); Miami Transit Co. v. Ford, 159 So. 2d 261 (Fla. 3d DCA 1964)(bus operator entitled to JNOV where plaintiff, who had been proceeding to a seat, fell when bus made a sudden, but nonviolent, stop).

Claimants argue that the MTA's Procedures Manual required the driver to wait for Ms. Acosta to take a seat before starting to move, but this is not accurate. The manual requires the driver to wait only when the passenger is "an elderly person, customer with a disability, a person holding a child, or a person with arms full of packages." Ms. Acosta was none of these. Otherwise, the driver is instructed to "be careful not to make a sudden start or stop" when passengers are standing in the aisle or walking to a seat. Here, the evidence fails to prove that the driver was not being careful; rather, Mr. Arrieta was required to stop suddenly because of an unexpected situation over which he had no control and could not reasonably have anticipated. In any event, the Procedures Manual does not fix the standard of care. See Artigas, 541 So. 2d at 740 n.1.

Based on the foregoing legal principles, as applied to the evidence presented in the case, the undersigned makes the ultimate determination that the driver was not negligent, in that

he did not breach the standard of care owed to a passenger when he stopped his bus to avoid rear-ending an SUV, which had slowed suddenly to avoid striking a jaywalker who was standing in the middle of traffic.

ATTORNEYS FEES: Section 768.28(8), Florida Statutes, provides that "[n]o attorney may charge, demand, receive, or collect, for services rendered, fees in excess of 25 percent of any judgment or settlement." Claimants' attorney, Judd G. Rosen, Esquire, has submitted an affidavit attesting that all attorney's fees, lobbying fees, and costs will be paid in accordance with the limitations specified in the claim bill.

SPECIAL ISSUES: If enacted in its current form, the claim bill would direct that the entire judgment amount of $6 million be paid to Ms. Acosta's children. Thus, the bill needs to be amended to conform to the parties' settlement agreement, pursuant to which claimants have agreed to accept the smaller sum of $940,000.

At the time of her death in November 2004, Ms. Acosta was a citizen of Venezuela. She had come into the U.S. in July 2003 on a Non-Immigrant B2 (Visitor for Pleasure) Visa, which expired on January 22, 2004.

Monica and Luis Acosta are citizens of Venezuela. Monica Cantillo Acosta, who was in the U.S. on a Non-Immigrant B2 (Visitor for Pleasure) Visa for some period of time, had returned to Venezuela to attend school before her mother's death, apparently without having overstayed her visa. Luis Acosta, who was a teenager at the time of his mother's death, was in the U.S. in November 2004 on a Non-Immigrant B2 (Visitor for Pleasure) Visa, which had expired on June 18, 2004.

GENERAL CONCLUSIONS: This sad case arises out of a freak accident, which tragically cost Ms. Acosta her life. Clearly her children have suffered a grievous loss—one for which, in a perfect world, they would be richly compensated. The problem here is that the party who is mostly to blame for Ms. Acosta's death, the negligent jaywalker, was not identified. Nor was the driver of the SUV identified; yet that person, too, rightfully bears a smaller, but nontrivial, share of the fault. Although the bus driver's (and through him the county's) fair share of the blame falls in the range from 0 percent to 5 percent (and at the bottom end of

the range, in the undersigned's estimation), the jury decided to make the county pay the entire loss, assigning 100 percent of the fault to the bus driver. This was unfair and unsupportable based on the facts and law. The county's financial responsibility to the plaintiffs should not exceed $300,000 (5 percent of $6 million). Having paid $200,000, the county, at a minimum, already has satisfied two-thirds of its maximum liability—and probably has overpaid.

That said, the county did agree to support a claim bill in the amount of $940,000. This, in itself, is a compelling reason to support the bill, and should be given great weight. Nevertheless, the undersigned concludes that, on balance, the present settlement, if consummated via approval of this claim bill, would not be a responsible use of taxpayer money.

RECOMMENDATIONS: For the reasons set forth above, I recommend that Senate Bill 50 (2012) be reported UNFAVORABLY.

Respectfully submitted,

John G. Van Laningham
Senate Special Master

cc: Senator Ellyn Setnor Bogdanoff
Debbie Brown, Interim Secretary of the Senate
Counsel of Record

By Senator Legg

17-00069-15 201564__

A bill to be entitled

An act for the relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta, the surviving children of Nhora Acosta, by Miami-Dade County; providing for an appropriation to compensate them for the wrongful death of their mother, Ms. Acosta, due to injuries sustained as a result of the negligence of a Miami-Dade County bus driver; providing a limitation on the payment of fees and costs; providing an effective date.

WHEREAS, on November 12, 2004, at approximately 4:16 p.m., Nhora Acosta entered Miami-Dade County bus number 04142 at a stop on SW 8th Street in Miami, paid the driver, and tried to find a seat on the crowded bus, and

WHEREAS, while Ms. Acosta walked toward the rear of the bus in search of a seat, the bus driver, ignoring her safety and failing to appropriately anticipate the stop-and-go traffic patterns on the busy street, accelerated so quickly that, in order to avoid a collision with another vehicle, he suddenly slammed on the brakes, and

WHEREAS, the sudden change in velocity caused Ms. Acosta to fall and strike her head on an interior portion of the bus, and

WHEREAS, as a result of the fall, Ms. Acosta suffered a severe closed head injury and massive brain damage, including a right subdural hemorrhage, a left dural hemorrhage, diffused cerebral edema, and basilar herniations, and

WHEREAS, Ms. Acosta was rushed to the trauma resuscitation bay at Jackson Memorial Hospital in a comatose state, was placed

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on a ventilator, underwent various procedures to no avail, and was pronounced dead at 2:05 p.m. the next day, and

WHEREAS, Ms. Acosta was a 54-year-old single mother of two children, Monica and Luis, who had been raised exclusively by their mother, and because of her death, her children were left orphaned, and

WHEREAS, Monica and Luis loved their mother, their only parent, dearly and have lost her support, love, and guidance and have suffered intense mental pain due to her untimely death, as a result of the negligence of the Miami-Dade bus driver, and

WHEREAS, on November 5, 2007, a Miami-Dade County jury rendered a verdict and found the Miami-Dade County bus driver 100 percent negligent and responsible for the wrongful death of Ms. Acosta, and determined the damages of Monica and Luis to be $3 million each, and

WHEREAS, the parties have subsequently settled this matter for $1.14 million, and Miami-Dade County has paid the claimants $200,000 under the statutory limits of liability set forth in s. 768.28, Florida Statutes, NOW, THEREFORE,

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

Section 1. The facts stated in the preamble to this act are found and declared to be true.

Section 2. Miami-Dade County is authorized and directed to appropriate from funds of the county not otherwise appropriated and to draw a warrant in the sum of $470,000, payable to Monica Cantillo Acosta, and a warrant in the sum of $470,000, payable to Louis Alberto Cantillo Acosta, as compensation for the

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

wrongful death of their mother, Nhora Acosta.

Section 3. The amount paid by Miami-Dade County pursuant to s. 768.28, Florida Statutes, and the amounts awarded under this act are intended to provide the sole compensation for all present and future claims arising out of the factual situation described in this act which resulted in the death of Ms. Acosta. The total amount paid for attorney fees, lobbying fees, costs, and other similar expenses relating to this claim may not exceed 25 percent of the total amount awarded under this act.

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Education Pre-K - 12, Chair
Ethics and Elections, Vice Chair
Appropriations Subcommittee on Education
Fiscal Policy
Government Oversight and Accountability
Higher Education

SENATOR JOHN LEGG
17th District

Legg.John.web@FLSenate.gov

February 11, 2015

The Honorable Miguel Diaz de la Portilla
Committee on Judiciary Chair
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

RE: SB 64 - Relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta by Miami-Dade County

Dear Chair Diaz de la Portilla:

SB 64 has been referred to your committee. I respectfully request that it be placed on the Committee on Judiciary Agenda, at your convenience. Your leadership and consideration are appreciated.

Sincerely,

John Legg
State Senator, District 17

cc: Tom Cibula, Staff Director

JL/jb

REPLY TO:
☐ 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

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

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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Government Oversight and Accountability
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March 5, 2015

The Honorable Miguel Diaz de la Portilla
Committee on Judiciary Chair
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 0064 - Relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta by Miami-Dade County

Dear Chair Diaz de la Portilla:

SB 0064 - Relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta by Miami-Dade County has been referred to your committee. I respectfully request that it be placed on the Committee on Judiciary Agenda, at your convenience. Your leadership and consideration are appreciated.

Sincerely,

John Legg
State Senator, District 17

cc: Tom Cibula, Staff Director

JL/jb

REPLY TO:
❒ 262 Crystal Grove Boulevard, Lutz, Florida 33548 (813) 909-9919
❒ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Education Pre-K - 12, Chair
Ethics and Elections, Vice Chair
Appropriations Subcommittee on Education
Fiscal Policy
Government Oversight and Accountability
Higher Education

SENATOR JOHN LEGG
17th District

Legg.John.web@FLSenate.gov

April 6, 2015

The Honorable Miguel Diaz de la Portilla
Senate Committee on Judiciary, Chair
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Diaz de la Portilla:

Senate Bill 64, related to Relief of Monica Cantillo Acosta and Luis Alberto Cantillo Acosta by Miami-Dade County, is on the Committee on Judiciary agenda for April 7, 2015. I will be at the Committee on Ethics and Elections meeting and I will be unable to attend.

Please recognize my Legislative Assistant, Jim Browne, to present SB 64 on my behalf. Please feel free to contact me if you have any questions.

Sincerely,

John Legg
State Senator, District 17

cc: Tim Cibula, Staff Director
Shirley Proctor, Administrative Assistant

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☐ 316 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5017

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

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 312
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senators Detert and Gaetz
SUBJECT:	Restitution for Juvenile Offenses
DATE:	April 6, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dugger	Cannon	CJ	**Favorable**
2.	Preston	Hendon	CF	**Fav/CS**
3.	Brown	Cibula	JU	**Pre-meeting**
4.			FP	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 312 adopts a uniform set of conditions of restitution for children whose criminal cases are disposed of in delinquency court. The same conditions apply regardless of whether the child is adjudicated delinquent or adjudication is withheld.

The bill also revises provisions on parental liability for restitution by:

- Absolving a parent or guardian of liability if the court finds that the current offense is the child's first referral to delinquency court; and
- Authorizing liability to be imposed only on parents and guardians who have current custody and parental responsibility of a child who caused a loss or damage; and
- Authorizing payment plans for restitution by parents who are unable to afford a single, lump-sum payment.

The bill, however, provides that the following entities are not liable for damages or losses caused by child: the Department of Children and Families, a foster parent, the community-based care lead agency supervising placement of the child, or a residential child-caring agency or family foster home.

II. Present Situation:

Restitution

Juvenile Cases in which the Court enters an Adjudication of Delinquency

A court may order children who are adjudicated delinquent of a crime into a probation program.[1] If the court does order probation for the child, the probation program ***must*** include a penalty component such as:

- Restitution in money or in kind;
- Community service;
- A curfew;
- Revocation or suspension of the child's driver license; or
- Other appropriate punishment that is non-residential.[2]

The court may alternatively order restitution at a disposition hearing as part of community-based sanctions or before the child's release from a commitment program.[3]

The court determines the amount and manner of restitution.[4] In so doing, the court may order the child to pay restitution to the victim for any damage[5] or loss caused by the child's offense.[6] The amount of restitution ordered is limited to an amount that the child and the parent or guardian could reasonably be expected to pay.[7]

Before entering an order of restitution, the court must first conduct a restitution hearing addressing the child's ability to pay and the amount of restitution to which the victim is entitled.[8] A restitution hearing is not required if the child previously entered into an agreement to pay[9] or has waived his or her right to attend a restitution hearing.[10] If restitution is ordered by the court, the amount of restitution may not exceed an amount the child or his parents or guardian[11] can reasonably be expected to pay.[12]

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[1] Section 985.435(1), F.S.
[2] Section 985.435(2), F.S.
[3] Section 985.437(1), F.S.
[4] *Id.*
[5] "Any damage" has been interpreted by Florida's courts to include damage for pain and suffering, *C.W. v. State*, 655 So. 2d 87, 89 (Fla. 1995). "Pain and suffering has long been recognized as a compensable damage in Florida."
[6] The damage or loss must be directly or indirectly related to the child's offense or criminal episode, *L.R.L. v. State*, 9 So. 3d 714 (Fla. 2d DCA 2009).
[7] Section 985.437(2), F.S.
[8] *J.G. v. State*, 978 So. 2d 270, 272 (Fla. 4th DCA 2008). If a court intends to establish an amount of restitution based solely on evidence adduced at a hearing of a charge of delinquency, the juvenile must be given notice.
[9] *T.P.H. v. State*, 739 So. 2d 1180, 1181 (Fla. 4th DCA 1999).
[10] *T.L. v. State*, 967 So. 2d 421, 421 (Fla. 1st DCA 2007).
[11] Section 985.03(28), F.S., defines a "legal custody or guardian" as a legal status created by a court order or letter of guardianship which vests in a custodian of the person or guardian, as an agency or individual, the right to have physical custody of the child and the right and duty to protect, train, and discipline the child and provide food, shelter, education, and ordinary medical, dental, psychiatric, and psychological care.
[12] Section 985.437(2), F.S.

Restitution may be satisfied by monetary payments, with a promissory note cosigned by the child's parent or guardian, or in kind.[13] However, a parent or guardian may be absolved of liability for restitution in his or her child's criminal case if, after a hearing, the court finds that the parent or guardian has made diligent and good faith efforts to prevent the child from delinquency.[14]

The clerk of the circuit court receives and dispenses restitution payments. If restitution is not made, the clerk must notify the court.[15] The Department of Juvenile Justice (DJJ) monitors restitution payments for children under the supervision of the DJJ.[16] The court may retain jurisdiction over a child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or until the court orders otherwise.[17] According to the DJJ, many jurisdictions do not terminate the department's supervision until the child's restitution obligation is paid.[18]

If a child or parent fails to pay court-ordered restitution, a civil lien may be placed upon the real property of the child or parent.[19] The court may transfer a restitution order to a collection court or a private collection agent to collect unpaid restitution.[20]

Juvenile Cases in which the Court enters a Withheld of Adjudication

If a court withholds an adjudication of delinquency for a child charged with a crime, the court may still order the child into a probation program. However, unlike cases in which a child is adjudicated delinquent, a court is not required to order a penalty as a condition of a program if adjudication is withheld. Nevertheless, penalties may include:

- Restitution, in money or in kind;
- Community service;
- A curfew;
- Urine monitoring;
- Revocation or suspension of the driver license of the child; or
- Other appropriate punishment that is nonresidential.[21]

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[13] Section 985.437(2), F.S. Similar to the process for juveniles, a parent or guardian cannot be ordered to pay restitution for offenses committed by their minor child without the court providing the parent meaningful notice, an opportunity to be heard, and a determination of the parents' ability to pay. *See S.B.L. v. State*, 737 So. 2d 1131, 1132-33 (Fla. 1st DCA 1999) (holding that the trial court violated the mother's due process right by ordering her to pay restitution without affording her meaningful opportunity to be heard at the restitution hearing); *A.T. v. State*, 706 So. 2d 109, 109 (Fla. 2d DCA 1998) (trial court erred by ordering the juvenile and her mother to pay restitution without making a determination of either's ability to do so); and *C.D.D. v. State*, 684 So. 2d 866, 867 (Fla. 2nd DCA 1996) (holding that the trial court was required to consider the juvenile's and mother's ability to pay before imposing a restitution order).

[14] Section 985.437(4), F.S.

[15] Section 985.437(3), F.S.

[16] Department of Juvenile Justice, *2015 Bill Analysis for SB 312* (on file with the Senate Judiciary Committee).

[17] Section 985.437(5), F.S.

[18] Department of Juvenile Justice, *supra* note 16, at 2.

[19] Section 985.0301(5)(d), F.S., provides that the terms of restitution orders in juvenile criminal cases are subject to s. 775.089(5), F.S. That section provides that a restitution order may be enforced in the same manner as a judgment in a civil action.

[20] Section 985.045(5), F.S.

[21] Section 985.35(4)(a), F.S.

III. Effect of Proposed Changes:

This bill provides the same conditions of restitution for cases in which a child is adjudicated delinquent as for cases in which adjudication is withheld.

The court is authorized to set up a payment plan for restitution if the child and the parent or guardian are unable to satisfy restitution in a lump-sum payment. Allowing children and parents to pay restitution through a payment plan may make it more likely that a victim will be fully compensated.

The bill provides that responsibility for restitution may be imposed only on parents or guardians who have current custody and parental responsibility of the child who caused the damages or losses. However, these entities and individuals who otherwise might be a child's guardian are not liable for restitution: the DCF, a foster parent with whom the child is placed, the community-based care lead agency supervising the placement of the child pursuant to a contract with the DCF, or a residential child-caring facility or family foster home.

Under current law, a parent or guardian who has made diligent and good faith efforts to prevent a child's delinquency are absolved from liability for restitution. Under the bill, this ground for avoiding liability is limited to circumstances in which the child is making his or her first appearance to the delinquency system. However, a parent or guardian is not liable for damages or losses if a parent or guardian is also the victim.

This bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 10 of the Florida Constitution.

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:

This bill may provide greater potential for victims to receive all or a portion of restitution. Parents ordered to pay restitution on behalf of a child may avoid a civil lien if they cannot pay restitution in a lump-sum as the bill authorizes payment plans.

C. Government Sector Impact:

The Office of the State Courts Administrator indicates that judicial or workload impact cannot be determined. However, any increase in the number of hearings to impose restitution will likely result in additional hearings to address non-payment of restitution.[22]

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 985.35, 985.437, and 985.513.

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 Children, Families, and Elder Affairs on March 26, 2015:

- Adds that facilities registered under s. 409.176, F.S., are not considered a guardian for purposes of being responsible for restitution.
- Requires that the court may only order restitution to be paid by parents or guardians who have current custody or parental responsibility.

B. Amendments:

None.

[22] Office of the State Courts Administrator, *2015 Judicial Impact Statement for SB 312* (on file with the Senate Committee on Judiciary).

By the Committee on Children, Families, and Elder Affairs; and Senators Detert and Gaetz

586-02928-15 2015312c1

A bill to be entitled

An act relating to restitution for juvenile offenses; amending s. 985.35, F.S.; conforming provisions to changes made by the act; amending s. 985.437, F.S.; requiring a child's parent or guardian, in addition to the child, to make restitution for damage or loss caused by the child's offense; providing for payment plans in certain circumstances; authorizing the parent or guardian to be absolved of liability for restitution in certain circumstances; authorizing the court to order restitution to be paid only by the parents or guardians who have current custody and parental responsibility of the child; specifying that the Department of Children and families, foster parents, a facility registered under s. 409.176, F.S., and specified agencies contracted with the department are not guardians for purposes of restitution; amending s. 985.513, F.S.; removing duplicative provisions authorizing the court to require a parent or guardian to be responsible for any restitution ordered against the child; providing an effective date.

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

Section 1. Paragraph (a) of subsection (4) of section 985.35, Florida Statutes, is amended to read:

985.35 Adjudicatory hearings; withheld adjudications; orders of adjudication.—

586-02928-15 2015312c1

(4) If the court finds that the child named in the petition has committed a delinquent act or violation of law, it may, in its discretion, enter an order stating the facts upon which its finding is based but withholding adjudication of delinquency.

(a) Upon withholding adjudication of delinquency, the court may place the child in a probation program under the supervision of the department or under the supervision of any other person or agency specifically authorized and appointed by the court. The court may, as a condition of the program, impose as a penalty component restitution in money or in kind to be made by the child and the child's parent or guardian as provided in s. 985.437, community service, a curfew, urine monitoring, revocation or suspension of the driver license of the child, or other nonresidential punishment appropriate to the offense, and may impose as a rehabilitative component a requirement of participation in substance abuse treatment, or school or other educational program attendance.

Section 2. Present subsection (5) of section 985.437, Florida Statutes, is renumbered as subsection (7), subsections (1), (2), and (4) are amended, and new subsections (5) and (6) are added to that section, to read:

985.437 Restitution.—

(1) Regardless of whether adjudication is imposed or withheld, the court that has jurisdiction over a ~~an adjudicated delinquent~~ child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing, order the child and the child's parent or guardian to make restitution in the manner provided in this section. This order shall be part of the child's probation

program to be implemented by the department or, in the case of a committed child, as part of the community-based sanctions ordered by the court at the disposition hearing or before the child's release from commitment.

(2) If the court orders restitution, the court shall ~~may~~ order the child and the child's parent or guardian to make restitution in money, through a promissory note ~~cosigned by the child's parent or guardian~~, or in kind for any damage or loss caused by the child's offense in a reasonable amount or manner to be determined by the court. When restitution is ordered by the court, the amount of restitution may not exceed an amount the child and the parent or guardian could reasonably be expected to pay or make. If the child and the child's parent or guardian are unable to pay the restitution in one lump-sum payment, the court may set up a payment plan that reflects their ability to pay the restitution amount.

(4) The parent or guardian may be absolved of liability for restitution under this section if:

(a) After a hearing, the court finds that it is the child's first referral to the delinquency system and ~~A finding by the court, after a hearing,~~ that the parent or guardian has made diligent and good faith efforts to prevent the child from engaging in delinquent acts; or

(b) The victim entitled to restitution as a result of damage or loss caused by the child's offense is that child's ~~absolves the~~ parent or guardian ~~of liability for restitution under this section~~.

(5) The court may only order restitution to be paid by the parents or guardians who have current custody and parental

responsibility.

(6) For purposes of this section, the Department of Children and Families, a foster parent with whom the child is placed, or the community-based care lead agency supervising the placement of the child pursuant to a contract with the Department of Children and Families, or a facility registered under s. 409.176 is not considered a guardian responsible for restitution for the delinquent acts of a child who is found to be dependent as defined in s. 39.01(15).

Section 3. Subsection (1) of section 985.513, Florida Statutes, is amended to read:

985.513 Powers of the court over parent or guardian at disposition.—

(1) The court that has jurisdiction over an adjudicated delinquent child may, by an order stating the facts upon which a determination of a sanction and rehabilitative program was made at the disposition hearing, ~~:~~

~~(a)~~ order the child's parent or guardian, together with the child, to render community service in a public service program or to participate in a community work project. In addition to the sanctions imposed on the child, the court may order the child's parent or guardian to perform community service if the court finds that the parent or guardian did not make a diligent and good faith effort to prevent the child from engaging in delinquent acts.

~~(b) Order the parent or guardian to make restitution in money or in kind for any damage or loss caused by the child's offense. The court may also require the child's parent or legal guardian to be responsible for any restitution ordered against~~

~~the child, as provided under s. 985.437. The court shall determine a reasonable amount or manner of restitution, and payment shall be made to the clerk of the circuit court as provided in s. 985.437.~~ The court may retain jurisdiction, as provided under s. 985.0301, over the child and the child's parent or legal guardian whom the court has ordered to pay restitution until the restitution order is satisfied or the court orders otherwise.

Section 4. This act shall take effect July 1, 2015.

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

The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 26, 2015

I respectfully request that **Senate Bill #312**, relating to Restitution for Juvenile Offenses, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Senator Nancy C. Detert
Florida Senate, District 28

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 736
INTRODUCER:	Regulated Industries Committee and Senators Stargel and Detert
SUBJECT:	Residential Properties
DATE:	April 6, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Davis	Cibula	JU	**Pre-meeting**
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 736 revises requirements for estoppel certificates for condominium, cooperative, and homeowners' associations. When an ownership interest in a condominium unit, cooperative unit, or parcel in a homeowners' association is transferred, the new owner is jointly and severally liable with the previous owner for unpaid assessments owed to a condominium or homeowners' association. Unpaid assessments may also become a lien on the property. To protect against undisclosed financial obligations and to transfer title that is free of any lien or encumbrance, buyers may request that the seller provide an estoppel certificate from the condominium or homeowners' association. An estoppel certificate certifies the amount of any total debt owed to the association for unpaid monetary obligations by a unit or parcel owner as of a specified date.

The bill:

- Reduces the period of time in which an association must respond to a request for an estoppel certificate from 15 days to 10 days;
- Requires that estoppel certificates be delivered by mail, hand, or electronic means, and dated as of the date it is delivered and be valid for 30 days;
- Requires that estoppel certificates state all assessments and other moneys owed to the association by the unit owner, as reflected in the official records of the association, through at least 30 days after the date of the estoppel certificate;
- Provides that an association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person and their successors and assigns who in good faith rely upon the certificate, or if the association fails to respond to a written request for a certificate.

The bill deletes the right of condominium unit owners and parcel owners in a homeowners' association to compel compliance with the provisions governing the issuance of an estoppel by bringing a summary procedure pursuant to s. 51.011, F.S.

For cooperative associations, the bill authorizes the cooperative associations to charge a fee for the estoppel certificate if the fee is established by a written resolution adopted by the board or provided by a written management, book, keeping, or maintenance contract. This provision is comparable to authority provided to condominium and homeowners' associations.

II. Present Situation:

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."[1] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[2] A declaration is like a constitution in that it:

> creates the condominium and 'strictly governs the relationships among the condominium units 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.[3]

A declaration "may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property."[4] A declaration of condominium may be amended as provided in the declaration.[5] If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of the owners of not less than two-thirds of the units.[6] Condominiums are administered by a board of directors referred to as a "board of administration."[7]

Section 718.103(3), F.S., defines the term "association property" to mean:

> that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.

Section 718.103(8), F.S., defines the term "common elements" to mean the portions of the condominium property not included in the units.

Section 718.103(13), F.S., defines the term "condominium property" to mean:

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[1] Section 718.103(11), F.S.
[2] Section 718.104(2), F.S.
[3] *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).
[4] Section 718.104(5), F.S.
[5] See s. 718.110(1)(a), F.S.
[6] Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.
[7] Section 718.103(4), F.S.

> the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

Section 718.103(16), F.S., defines a developer as one "who creates a condominium or offers condominium [units] for sale or lease in the ordinary course of business . . . ." There are two classes of developers: those who create the condominium by executing and recording the condominium documents and those who offer condominium units for sale or lease in the ordinary course of business. Current law excludes a bulk assignee and a bulk buyer from the definition of developer.

Cooperative Associations

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

> that 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 cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.[8]

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 the associations to perform their functions.[9]

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."[10] 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.[11]

[8] *See* ss. 719.106(1)(g) and 719.107, F.S.
[9] *See* s. 720.302(1), F.S.
[10] Section 720.301(9), F.S.
[11] Section 720.302(5), F.S.

Homeowners' associations are administered by a board of directors whose members are elected.[12] 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.[13]

Assessments and Foreclosures

The liability provisions in condominium, cooperative, and homeowners' associations for unpaid assessments for present and previous unit and parcel owners are comparable.

Section 718.103(1), F.S., defines the term "assessment" to mean "a share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner."[14]

"Special assessment" is defined to mean "any assessment levied against a unit owner other than the assessment required by a budget adopted annually."[15]

An owner is jointly and severally liable with the previous owner for all unpaid assessments that come due up to the time of transfer of title.[16] This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.[17]

In a condominium association, if a first mortgagee, (e.g., the mortgage lending bank) or its successor or assignee, acquires title to a condominium unit by foreclosure or by deed in lieu of foreclosure, the first mortgagee's liability for unpaid assessments is limited to the amount of assessments that came due during the 12 months immediately preceding the acquisition of title or one percent of the original mortgage debt, whichever is less.[18] However, this limitation applies only if the first mortgagee joined the association as a defendant in the foreclosure action.[19] This gives the association the right to defend its claims for unpaid assessments in the foreclosure proceeding.

Section 720.3085(2), F.S., provides a comparable limitation of liability relating to parcels in homeowners' associations. Chapter 719, F.S., does not provide a comparable provision for cooperative associations.

Regarding the accrual of interest on unpaid assessments in condominium, cooperative, and homeowners' associations, unpaid assessments and installments on assessments accrue interest at

[12] *See* ss. 720.303 and 720.307, F.S.
[13] *See* ss. 720.301 and 720.303, F.S.
[14] *See also* s. 719.103(1), F.S., for a comparable definition of "assessment" in a cooperative association, and s. 720.301(1), F.S., for a comparable definition of "assessment" in a homeowners' association.
[15] Section 718.103(24), F.S.; *see also* s. 719.103(23), F.S., for a comparable definition of "assessment" in a cooperative association,
[16] Section 718.116(1)(a), F.S., s. 719.108(1), F.S., and s. 720.3085(2)(b), F.S.
[17] *Id.* The term "without prejudice" means "without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party." BLACK'S LAW DICTIONARY 770 (2d pocket ed. 2001).
[18] Sections 718.116(1)(b), F.S.
[19] *Id.*

the rate provided in the governing documents from the due date until paid. The rate may not exceed the rate allowed by law.[20] If no rate is specified in the declaration, the interest accrues at the rate of 18 percent per year. The association may also charge an administrative late fee of up to the greater of $25 or 5 percent of each installment of the assessment for each delinquent installment for which the payment is late. Payments are applied first to the interest accrued, then the administrative late fee, then to any reasonable costs and attorney fees incurred in collection, and then to the delinquent assessment.[21]

Estoppel Certificates

A community association is required to keep accounting records for the association and separate accounting records.[22] All accounting records must be kept for at least 7 years. The accounting records must be accurate, itemized, and detailed records of all receipts and expenditures. They must contain 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.[23]

Within 15 days after receiving a written request from an owner or his or her designee, or a mortgagee or his or her designee, the association is required to provide a certificate signed by an officer or agent of the association stating all assessments and other moneys owed to the association by the owner with respect to the unit or parcel.[24]

The certificate protects any person other than the owner who relies upon it.[25]

The authority to charge a fee for the certificate must be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract. The fee is payable upon the preparation of the certificate.

In a condominium or homeowners' association, if the certificate is requested in conjunction with the sale or mortgage of a unit but the closing does not occur, the preparer of the certificate must refund the fee to a payor that is not a unit-owner within 30 days after receipt of the request for refund. A written request for a refund must be made no later than 30 days after the closing date for which the certificate was sought and include reasonable documentation that the sale did not occur.[26]

The refund is the obligation of the owner, and the association may collect it from that owner in the same manner as an assessment.[27]

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[20] Section 687.02(1), F.S., prohibits as usurious interest rates that are higher than the equivalent of 18 percent per annum simple interest.
[21] See s. 718.116(3), F.S., s. 719.108(3), F.S., and s. 720.3085(3), F.S.
[22] Section 718.111(12)(a)11, s. 719.104(2)(a)9, F.S., and s. 720.303.(4)(j), F.S.
[23] *Id.*
[24] Section 718.116(8), F.S., s. 719.108(6), F.S., and s. 720.30851, F.S.
[25] Section 718.116(8)(a), F.S., s. 719.108(6), F.S., and s. 720.30851(1), F.S.
[26] Section 718.116(8)(d), F.S., and s. 720.30851(3), F.S.
[27] Section 718.116(8)(d), F.S., and s. 720.30851(3), F.S.

After a series of public meetings in 2014, the Community Association Living Study Council,[28] by unanimous vote, made the following recommendations to the Legislature:

- That a reasonable cap be established for estoppel certificate fees and that such fees be tiered;
- The amount of the fee should depend on whether or not the owner is current in fees, delinquent in fees, or if it is a bulk purchase.[29]

A condominium unit or parcel owner in a homeowners' association may compel compliance with the provisions governing the issuance of an estoppel certificate from a homeowners' or condominium association by bringing a summary procedure pursuant to s. 51.011, F.S.[30] The prevailing party is entitled to recover reasonable attorney fees.[31] Current law does not provide a comparable provision for cooperative associations.

Cooperatives - Estoppel Certificates

Section 719.108(6), F.S., F.S., provides that, within 15 days after request by a unit owner or mortgagee, the association is required to provide a certificate stating all assessments and other moneys owed to the association by the unit owner with respect to the cooperative parcel. It provides that "any person other than the unit owner who relies upon such certificate shall be protected thereby." It permits the association or its authorized agent to charge a reasonable fee for the preparation of the certificate.

III. Effect of Proposed Changes:

The bill amends ss. 718.116(8), 719.108(6), and 720.30851, F.S., to revise the requirements for estoppel certificates issued by condominium, cooperative, and homeowners' associations.

Form and Delivery of Estoppel Certificates

The bill reduces the time period in which an association must respond to a request for an estoppel certificate from 15 days to 10 days.

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[28] The Community Association Living Study Council was created by the Legislature in 2008 to receive input from the public regarding issues of concern with respect to community association living and to advise the Legislature concerning revisions and improvements to the laws relating to community associations. The council consisted of 7 members appointed by the President of the Senate, the Speaker of the House of Representatives, and the Governor. An ex officio nonvoting member was appointed by the Director of the Division of Florida Condominiums, Timeshares, and Mobile Homes. The Council was abolished by the Legislature in 2014. *See* ch. 2014-133, s. 12, Laws of Fla.

[29] *See* Community Association Living Study Council, *Final Report*, March 31, 2014, *available at* http://www.myfloridalicense.com/dbpr/lsc/documents/2014CALSCReport.pdf.

[30] Sections 718.116(8)(b) and 720.30851(2), F.S.; Section 51.011, F.S., specifies a summary procedure for actions that specifically provide for this procedure by statute or rule. Under the summary procedure, all defenses of law or fact are required to be contained in the defendant's answer which must be filed within five days after service of process of the plaintiff's complaint. If the answer incorporates a counterclaim, the plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and serve it within five days after service of the counterclaim. (Fla. R. Civ. Pro. 1.140, requires an answer, including any counterclaims, within 20 days after service of the complaint.) No other pleadings are permitted, and all defensive motions, including motions to quash, are heard by the court prior to trial. Postponements are not permitted for discovery and the procedure also provides for an immediate trial, if requested.

[31] *Id.*

The bill requires that estoppel certificates from condominium and homeowners' associations:

- Be delivered by mail, hand, or electronic means;
- Be dated as of the date it is delivered;
- Be valid for at least 30 days; and
- State all assessments and other moneys owed to the association by the unit owner with respect to the unit, as reflected in the official records of the association, through at least 30 days after the date of the estoppel certificate.

The requirement that the estoppel certificate be dated as of the date delivered is unclear. It is not clear whether the applicable date is the date the certificate is sent or the date the certificate is received.

The bill provides that an association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person, and from that person's successors and assigns, who in good faith rely upon the certificate.

The bill deletes the provisions in ss. 718.116(8)(b) and 720.30851(2), F.S., which permit condominium unit owners and parcel owners in a homeowners' association to compel the issuance of an estoppel certificate by bringing a summary procedure pursuant to s. 51.011, F.S. However, the summary procedure is no longer necessary as an enforcement mechanism because, under the bill, the association waives any claim from any person, and from that person's successors and assigns, if it fails to deliver an estoppel certificate upon a written request from a unit owner or his or her designee, or a unit mortgagee or his or her designee, or any person and their successors and assigns who would have in good faith relied upon that certificate had it been so delivered.

The bill provides that when an estoppel certificate is requested in conjunction with the sale or refinancing of a unit or parcel, the fee and any supplemental fees are due and payable to an association no earlier than the closing and must be paid from the closing settlement proceeds. The bill prohibits the preparation and delivery of the estoppel certificate to be contingent on the payment of any other fees. The bill maintains the requirement in current law that, if the sale does not occur, the fee is the obligation of the owner and may be collected by an association in the same manner as an assessment. However, the bill increases from 30 days to 60 days after the delivery of the estoppel certificate for the sale to occur in order for the unit or parcel owner not to be obligated to pay the fee for the estoppel certificate if the sale does not occur.

The bill creates s. 719.108(6)(d), F.S., to authorize the cooperative associations to charge a fee for the estoppel certificate if the fee is established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract. This provision is comparable to authority provided to condominium and homeowners' associations in ss. 718.116(8)(d) and 720.30851(4), F.S., respectively.

Effective Date

The bill takes effect July 1, 2015.

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:

The bill authorizes cooperative associations to charge a fee for the estoppel certificate if the fee is established by a written resolution adopted by the board or provided by a written management, book, keeping, or maintenance contract.

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: 718.116, 719.108 and 720.30851.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

CS by Regulated Industries on March 24, 2015:

The committee substitute (CS):

- Amends s. 719.108(6), F.S., to provide for the issuance of estoppel certificates by cooperative associations in the same manner as provided in the bill for condominium and homeowners' associations;
- Amends ss. 718.116(8) and 720.30851, F.S., to provide that the moneys owed are as reflected in the records maintained pursuant to ss. 718.111(12) and 720.303 (4), F.S., respectively;
- Amends s. 718.116(8)(a) and (b), F.S., and s. 720.30851(1), F.S., to provide that any waiver of claim extends to the successor and assigns of any person who in good faith relied on an estoppel certificate;
- Does not amend ss. 718.116(8)(b) and 720.30851(2), F.S., to provide that the waiver includes any claim for its lien against the unit or parcel, and any moneys owed to the association by the unit owner or parcel owner with respect to the unit or parcel for 40 days after the date of receipt of the request;
- Amends ss. 718.116(8)(c) and 720.30851(3), F.S., to decrease the time from 120 days to 60 days after the delivery of the estoppel certificate for the sale to occur in order for the unit or parcel owner not to be obligated to pay the fee for the estoppel certificate if the sale does not occur;
- Does not amend ss. 718.116(8)(c) and 720.30851(3), F.S., to provide a maximum fee of $100 for the preparation and delivery of an estoppel certificate, and maximum fees of up to $50 for specified events;
- Does not create ss. 718.116(8)(d) and 720.30851(4), F.S., to provide maximum fee amounts for simultaneous requests for the estoppel certificate for multiple units owned by the unit or parcel owner when there are no past due monetary obligations; and
- Creates s. 718.108(6)(d), F.S., to authorize the cooperative association to charge a fee for the estoppel certificate if the fee is established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Stargel) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Subsection (8) of section 718.116, Florida Statutes, is amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.—

(8) An association shall issue an estoppel certificate to a unit owner or the unit owner's designee or a unit mortgagee or the unit mortgagee's designee within 10 business ~~15~~ days after

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receiving a written request for the certificate. The estoppel certificate must be delivered by mail, by hand delivery, or by electronic means to the requester on the date of issuance.

(a) The estoppel certificate must contain all of the following:

1. The date of issuance.

2. The amount of all assessments and other moneys owed to the association by the unit owner for a specific unit on the date of issuance. This amount is limited to amounts authorized by statute to be recorded in the official records of the association under s. 718.111(12).

3. The amount of any additional assessments and other moneys that are scheduled to become due for each day after the date of issuance for the 30-day or 35-day effective period of the estoppel certificate. This amount is limited to amounts authorized by statute to be recorded in the official records of the association under s. 718.111(12). In calculating the amounts that are scheduled to become due, the association may assume that any delinquent amounts will remain delinquent during the effective period of the estoppel certificate.

4. The amount of any fee charged by the association for preparing and delivering the estoppel certificate. This fee is in addition to any other amounts on the estoppel certificate.

5. The signature of an officer or agent of the association.

(b) An estoppel certificate that is delivered on the date of issuance has a 30-day effective period. An estoppel certificate that is mailed to the requester has a 35-day effective period.

(c) An association waives the right to collect any moneys

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owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from the person's successors and assigns. ~~therefor from a unit owner or his or her designee, or a unit mortgagee or his or her designee, the association shall provide a certificate signed by an officer or agent of the association stating all assessments and other moneys owed to the association by the unit owner with respect to the condominium parcel.~~

~~(a) Any person other than the owner who relies upon such certificate shall be protected thereby.~~

(d)~~(b)~~ A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this subsection, and in any such action the prevailing party is entitled to recover reasonable attorney ~~attorney's~~ fees.

(e)1.~~(c)~~ Notwithstanding any limitation on transfer fees contained in s. 718.112(2)(i), an ~~the~~ association or its ~~authorized~~ agent may charge a ~~reasonable~~ fee, not to exceed its reasonable costs to prepare and deliver ~~for the preparation of~~ the estoppel certificate. However, the fee for the estoppel certificate may not exceed $100 if on the date the certificate is issued, there are no delinquent amounts owed to the association for the applicable unit. If delinquent amounts are owed to the association for the applicable unit, the fee for the estoppel certificate may not exceed $300. The association may not charge a fee for an estoppel certificate that is issued more than 10 business days after it receives the request for the certificate. ~~The amount of the fee must be included on the certificate.~~

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2. If the estoppel certificate is requested in conjunction with the sale or refinancing of a unit, the fee for the certificate shall be paid to the association from the closing or settlement proceeds. If the closing does not occur within 60 days after the issuance of the estoppel certificate, the fee for the certificate is the obligation of the unit owner, and the association may collect the fee in the same manner as an assessment against the unit. An association may not require the payment of any other fees as a condition for the preparation or delivery of an estoppel certificate.

(f) ~~(d)~~ The authority to charge a fee for the estoppel certificate must ~~shall~~ be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract ~~and is payable upon the preparation of the certificate~~. ~~If the certificate is requested in conjunction with the sale or mortgage of a unit but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the unit owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the unit owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section.~~

Section 2. Subsection (6) of section 719.108, Florida Statutes, is amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

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(6) An association shall issue an estoppel certificate to a unit owner or the unit owner's designee or a unit mortgagee or the unit mortgagee's designee within 10 business ~~15~~ days after receiving a written request for the certificate. The estoppel certificate must be delivered by mail, by hand delivery, or by electronic means to the requester on the date of issuance.

(a) The estoppel certificate must contain all of the following:

1. The date of issuance.

2. The amount of all assessments and other moneys owed to the association by the unit owner for a specific unit on the date of issuance. This amount is limited to the amounts authorized to be recorded in the official records of the association under s. 719.104(2).

3. The amount of any additional assessments and other moneys that are scheduled to become due for each day after the date of issuance for the 30-day or 35-day effective period of the estoppel certificate. This amount is limited to the amounts authorized to be recorded in the official records of the association under s. 719.104(2). In calculating the amounts that are scheduled to become due, the association may assume that any delinquent amounts will remain delinquent during the effective period of the estoppel certificate.

4. The amount of any fee charged by the association for preparing and delivering the estoppel certificate. This fee is in addition to any other amounts on the estoppel certificate.

5. The signature of an officer or agent of the association.

(b) An estoppel certificate that is delivered on the date of issuance has a 30-day effective period. An estoppel

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certificate that is mailed to the requester has a 35-day effective period.

(c) An association waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from that person's successors and assigns.

(d) A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this subsection, and in any such action the prevailing party is entitled to recover reasonable attorney fees. ~~by a unit owner or mortgagee, the association shall provide a certificate stating all assessments and other moneys owed to the association by the unit owner with respect to the cooperative parcel. Any person other than the unit owner who relies upon such certificate shall be protected thereby.~~

(e)1. Notwithstanding any limitation on transfer fees contained in s. 719.106(1)(i), an ~~the~~ association or its authorized agent may charge a ~~reasonable~~ fee, not to exceed its reasonable costs to prepare and deliver ~~for the preparation of~~ the estoppel certificate. However, the fee for the estoppel certificate may not exceed $100 if on the date the certificate is issued, there are no delinquent amounts owed to the association for the applicable unit. If delinquent amounts are owed to the association for the applicable unit, the fee for the estoppel certificate may not exceed $300. The association may not charge a fee for an estoppel certificate that is issued more than 10 business days after it receives a request for the certificate.

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2. If the estoppel certificate is requested in conjunction with the sale or refinancing of a unit, the fee for the certificate shall be paid to the association from the closing or settlement proceeds. If the closing does not occur within 60 days after the issuance of the estoppel certificate, the fee for the certificate is the obligation of the unit owner, and the association may collect the fee in the same manner as an assessment against the unit. An association may not require the payment of any other fees as a condition for the preparation or delivery of an estoppel certificate.

(f) The authority to charge a fee for the estoppel certificate must be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract.

Section 3. Section 720.30851, Florida Statutes, is amended to read:

720.30851 Estoppel certificates.—An association shall issue an estoppel certificate to a parcel owner or the parcel owner's designee or a mortgagee or the mortgagee's designee within 10 business ~~15~~ days after receiving a written request for the certificate. The estoppel certificate must be delivered by mail, by hand delivery, or by electronic means to the requester on the date of issuance.

(1) The estoppel certificate must contain all of the following:

(a) The date of issuance.

(b) The amount of all assessments and other moneys owed to the association by the parcel owner for a specific parcel as recorded on the date of issuance. This amount is limited to

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amounts authorized by statute to be recorded in the official records of the association under s. 720.303(4).

(c) The amount of any additional assessments and other moneys that are scheduled to become due for each day after the date of issuance for the 30-day or 35-day effective period of the estoppel certificate. This amount is limited to amounts authorized by statute to be recorded in the official records of the association under s. 720.303(4). In calculating the amounts that are scheduled to become due, the association may assume that any delinquent amounts will remain delinquent during the effective period of the estoppel certificate.

(d) The amount of any fee charged by the association for preparing and delivering the estoppel certificate. This fee is in addition to any other amounts on the certificate.

(e) The signature of an officer or agent of the association.

(2) An estoppel certificate that is delivered on the date of issuance has a 30-day effective period. An estoppel certificate that is mailed to the requester has a 35-day effective period.

(3) An association waives the right to collect any moneys owed in excess of the amounts specified in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from that person's successors and assigns. ~~the date on which a request for an estoppel certificate is received from a parcel owner or mortgagee, or his or her designee, the association shall provide a certificate signed by an officer or authorized agent of the association stating all assessments and other moneys owed to the association by the~~

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~~parcel owner or mortgagee with respect to the parcel. An association may charge a fee for the preparation of such certificate, and the amount of such fee must be stated on the certificate.~~

~~(1) Any person other than a parcel owner who relies upon a certificate receives the benefits and protection thereof.~~

(4)~~(2)~~ A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this section, and the prevailing party is entitled to recover reasonable attorney ~~attorney's~~ fees.

(5)(a) An association or its agent may charge a fee, not to exceed its reasonable costs to prepare and deliver the estoppel certificate. However, the fee for the estoppel certificate may not exceed $100 if on the date the certificate is issued, there are no delinquent amounts owed to the association for the applicable parcel. If delinquent amounts are owed to the association for the applicable parcel, the fee for the certificate may not exceed $300. The association may not charge a fee for an estoppel certificate that is issued more than 10 business days after it receives the request for the certificate.

(b) If the estoppel certificate is requested in conjunction with the sale or refinancing of a parcel, the fee for the certificate shall be paid to the association from the closing or settlement proceeds. If the closing does not occur within 60 days after the issuance of the estoppel certificate, the fee for the certificate is the obligation of the parcel owner, and the association may collect the fee in the same manner as an assessment against the parcel. An association may not require the payment of any other fees as a condition for the preparation

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or delivery of an estoppel certificate.

(6)~~(3)~~ The authority to charge a fee for the estoppel certificate must ~~shall~~ be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract ~~and is payable upon the preparation of the certificate~~. ~~If the certificate is requested in conjunction with the sale or mortgage of a parcel but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the parcel owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the parcel owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section.~~

Section 4. This act shall take effect July 1, 2015.

========== 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 residential properties; amending ss. 718.116, 719.108, and 720.30851, F.S.; revising requirements relating to the issuance of an estoppel certificate to specified persons; requiring that an estoppel certificate contain certain information; providing an effective period for a certificate based


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upon the date of issuance and form of delivery; providing that the association waives a specified claim against a person or such person's successors or assigns who rely on the certificate in good faith; authorizing a summary proceeding to be brought to compel an association to prepare or deliver an estoppel certificate; specifying the maximum amounts an association may charge for an estoppel certificate; providing that the authority to charge a fee for the estoppel certificate must be established by a specified written resolution or provided by a written management, bookkeeping, or maintenance contract; deleting obsolete provisions; conforming provisions to changes made by the act; providing an effective date.

By the Committee on Regulated Industries; and Senators Stargel and Detert

580-03231-15 2015736c1

A bill to be entitled

An act relating to residential properties; amending ss. 718.116, 719.108, and 720.30851, F.S.; providing requirements relating to the request for an estoppel certificate by a unit or parcel owner or a unit or parcel mortgagee; providing that the association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate under certain conditions; providing that the association waives any claim against a person or entity who would have relied in good faith upon the estoppel certificate under certain conditions; deleting provisions regarding expedited court action to compel issuance of an estoppel certificate; providing an effective date.

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

Section 1. Subsection (8) of section 718.116, Florida Statutes, is amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.—

(8) Within 10 ~~15~~ days after receiving a written request for an estoppel certificate ~~therefor~~ from a unit owner or his or her designee, or a unit mortgagee or his or her designee, the association shall deliver by mail, hand, or electronic means an estoppel ~~provide a~~ certificate signed by an officer or agent of the association. The estoppel certificate must be dated as of the date it is delivered, must be valid for at least 30 days,

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and must state ~~stating~~ all assessments and other moneys owed to the association by the unit owner with respect to the unit, as reflected in records maintained pursuant to s. 718.111(12), through a date that is at least 30 days after the date of the estoppel certificate ~~condominium parcel~~.

(a) An association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person who in good faith relies upon the estoppel certificate and from that person's successors and assigns ~~Any person other than the owner who relies upon such certificate shall be protected thereby~~.

(b) If an association receives a written request for an estoppel certificate from a unit owner or his or her designee, or a unit mortgagee or his or her designee, and fails to deliver an estoppel certificate as required by this section, the association waives, as to any person who would have in good faith relied on the estoppel certificate and as to that person's successors and assigns, any claim, including a claim for a lien against the unit, for any amounts owed to the association that should have been shown on the estoppel certificate ~~A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this subsection, and in any such action the prevailing party is entitled to recover reasonable attorney's fees~~.

(c) Notwithstanding any limitation on transfer fees contained in s. 718.112(2)(i), an ~~the~~ association or its ~~authorized~~ agent may charge a reasonable estoppel certificate ~~a reasonable~~ fee as determined by the cost of providing such information for the preparation and delivery of the estoppel

certificate. The amount of the estoppel certificate fee must be included on the estoppel certificate. If the estoppel certificate is requested in conjunction with the sale or refinancing of a unit, the estoppel certificate fee shall be due and payable no earlier than the closing of the sale or refinancing, and shall be paid from closing settlement proceeds. If the closing does not occur within 60 days after the date the estoppel certificate is delivered, the estoppel certificate fee is the obligation of the unit owner and the association may collect the estoppel certificate fee only in the same manner as an assessment against the unit owner as set forth in this section. The preparation and delivery of an estoppel certificate may not be conditioned upon the payment of any other fees.

(d) The authority to charge a fee for the estoppel certificate shall be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract ~~and is payable upon the preparation of the certificate~~. ~~If the certificate is requested in conjunction with the sale or mortgage of a unit but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the unit owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the unit owner, and the association may collect it from that owner in the same manner as an assessment as provided in this section.~~

Section 2. Subsection (6) of section 719.108, Florida Statutes, is amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

(6) Within 10 ~~15~~ days after receiving a written request for an estoppel certificate from ~~by~~ a unit owner or his or her designee, or a unit mortgagee or his or her designee, the association shall deliver by mail, hand, or electronic means an estoppel ~~provide a~~ certificate signed by an officer or agent of the association. The estoppel certificate must be dated as of the date it is delivered, must be valid for at least 30 days, and must state ~~stating~~ all assessments and other moneys owed to the association by the unit owner with respect to the cooperative parcel, as reflected in records maintained pursuant to s. 719.104(2), through a date that is at least 30 days after the date of the estoppel certificate.

(a) An association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person who in good faith relies upon the estoppel certificate, and from that person's successors and assigns ~~Any person other than the unit owner who relies upon such certificate shall be protected thereby~~.

(b) If an association receives a written request for an estoppel certificate from a unit owner or his or her designee, or a unit mortgagee or his or her designee, and fails to deliver an estoppel certificate as required by this section, the association waives, as to any person who would have in good faith relied on the estoppel certificate and as to that person's successors and assigns, any claim, including a claim for a lien against the unit, for any amounts owed to the association that should have been shown on the estoppel certificate.

(c) Notwithstanding any limitation on transfer fees contained in s. 719.106(1)(i), an ~~the~~ association or its ~~authorized~~ agent may charge a reasonable estoppel certificate ~~a reasonable~~ fee as determined by the cost of providing such information for the preparation and delivery of the estoppel certificate. The amount of the estoppel certificate fee must be included on the estoppel certificate. If the estoppel certificate is requested in conjunction with the sale or refinancing of a unit, the estoppel certificate fee shall be due and payable no earlier than the closing of the sale or refinancing, and shall be paid from closing settlement proceeds. If the closing does not occur within 60 days after the date the estoppel certificate is delivered, the estoppel certificate fee is the obligation of the unit owner and the association may collect the estoppel certificate fee only in the same manner as an assessment against the unit owner as set forth in this section. The preparation and delivery of an estoppel certificate may not be conditioned upon the payment of any other fees.

(d) The authority to charge a fee for the estoppel certificate shall be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract.

Section 3. Section 720.30851, Florida Statutes, is amended to read:

720.30851 Estoppel certificates.—Within 10 ~~15~~ days after receiving ~~the date on which~~ a written request for an estoppel certificate ~~is received~~ from a parcel owner or his or her designee, or a parcel mortgagee~~,~~ or his or her designee, the association shall deliver by mail, hand, or electronic means an

estoppel ~~provide a~~ certificate signed by an officer or ~~authorized~~ agent of the association. The estoppel certificate must be dated as of the date it is delivered, must be valid for at least 30 days, and must state ~~stating~~ all assessments and other moneys owed to the association by the parcel owner or parcel mortgagee with respect to the parcel, as reflected in records maintained pursuant to s. 720.303(4), through a date that is at least 30 days after the date of the estoppel certificate. ~~An association may charge a fee for the preparation of such certificate, and the amount of such fee must be stated on the certificate.~~

(1) An association waives the right to collect any moneys owed in excess of the amounts set forth in the estoppel certificate from any person who in good faith relies upon the estoppel certificate, and from that person's successors and assigns ~~Any person other than a parcel owner who relies upon a certificate receives the benefits and protection thereof~~.

(2) If an association receives a written request for an estoppel certificate from a parcel owner or his or her designee, or a parcel mortgagee or his or her designee, and fails to deliver an estoppel certificate as required by this section, the association waives, as to any person who would have in good faith relied on the estoppel certificate and as to that person's successors and assigns, any claim, including a claim for a lien against the parcel, for any amounts owed to the association that should have been shown on the estoppel certificate ~~A summary proceeding pursuant to s. 51.011 may be brought to compel compliance with this section, and the prevailing party is entitled to recover reasonable attorney's fees~~.

(3) An association or its agent may charge a reasonable estoppel certificate fee as determined by the cost of providing such information for the preparation and delivery of the estoppel certificate. The amount of the estoppel certificate fee must be included on the estoppel certificate. If the estoppel certificate is requested in conjunction with the sale or refinancing of a parcel, the estoppel certificate fee shall be due and payable no earlier than the closing of the sale or refinancing, and shall be paid from the closing settlement proceeds. If the closing does not occur within 60 days after the date the estoppel certificate is delivered, the estoppel certificate fee is the obligation of the parcel owner and the association may collect the estoppel certificate fee only in the same manner as an assessment against the parcel owner as set forth in s. 720.3085. The preparation and delivery of an estoppel certificate may not be conditioned upon the payment of any other fees.

(4) The authority to charge a fee for the estoppel certificate shall be established by a written resolution adopted by the board or provided by a written management, bookkeeping, or maintenance contract ~~and is payable upon the preparation of the certificate~~. ~~If the certificate is requested in conjunction with the sale or mortgage of a parcel but the closing does not occur and no later than 30 days after the closing date for which the certificate was sought the preparer receives a written request, accompanied by reasonable documentation, that the sale did not occur from a payor that is not the parcel owner, the fee shall be refunded to that payor within 30 days after receipt of the request. The refund is the obligation of the parcel owner,~~

~~and the association may collect it from that owner in the same manner as an assessment as provided in this section.~~

Section 4. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Higher Education, *Chair*
Appropriations Subcommittee on Education
Fiscal Policy
Judiciary
Military and Veterans Affairs, Space, and Domestic Security
Regulated Industries

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

April 1, 2015

The Honorable Miguel Diaz de la Portilla
Senate Judiciary Committee, Chair
406 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Diaz de la Portilla:

I am respectfully requesting that SB 736, related to *Residential Properties*, be placed on the committee agenda at your earliest convenience.

Thank you for your consideration and please do not hesitate to contact me should you have any questions.

Sincerely,

Kelli Stargel
State Senator, District 15

Cc: Tom Cibula/ Staff Director
Shirley Proctor/ AA

REPLY TO:
❒ 2033 East Edgewood Drive, Suite 1, Lakeland, Florida 33803
❒ 324 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5015

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

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	SB 796
INTRODUCER:	Senator Evers
SUBJECT:	Financial Reporting
DATE:	April 6, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Favorable**
2.	Caldwell	Cibula	JU	**Pre-meeting**
3.			RC	

I. Summary:

SB 796 deletes the provision that permits condominium, cooperative, and homeowners' associations operating fewer than 50 units or parcels, regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures in lieu of financial statements based on the amount of annual revenue.

II. Present Situation:

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."[1] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[2] A declaration is like a constitution in that it:

> Strictly 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.[3]

A declaration "may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property."[4] A declaration of condominium may be amended as provided in the declaration.[5] If the declaration does not

[1] Section 718.103(11), F.S.
[2] Section 718.104(2), F.S.
[3] *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).
[4] Section 718.104(5), F.S.
[5] See s. 718.110(1)(a), F.S.

provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.[6] Condominiums are administered by a board of directors referred to as a "board of administration."[7]

Cooperative Associations

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

> that 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 cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.[8]

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.[9]

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."[10] 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.[11]

Homeowners' associations are administered by a board of directors whose members are elected.[12] 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.[13]

---

[6] Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.
[7] Section 718.103(4), F.S.
[8] *See* ss. 719.106(1)(g) and 719.107, F.S.
[9] *See* s. 720.302(1), F.S.
[10] Section 720.301(9), F.S.
[11] Section 720.302(5), F.S.
[12] *See* ss. 720.303 and 720.307, F.S.
[13] *See* ss. 720.301 and 720.303, F.S.

Financial Reporting for Community Associations

Sections 718.111(13), 719.104(4), and 720.303(7), F.S., set forth the financial reporting responsibilities of condominium, cooperative, and homeowners' associations. Associations have 90 days after the end of the fiscal year to prepare and complete a financial report for the preceding fiscal year. The type of financial statements or information that must be provided is based on the association's total annual revenues.

If the association has a total annual revenue of $150,000 or more, but less than $300,000, the association must prepare compiled financial statements.[14] If the association has a total annual revenue of at least $300,000 and not less than $500,000, the association must prepare reviewed financial statements.[15] If the total annual revenue is $500,000 or more, the association must prepare audited financial statements.[16] If the total annual revenue is less than $150,000, then a report of cash receipts must be prepared.[17]

An association having fewer than 50 units ("parcels" for homeowners' associations), regardless of annual revenue, may prepare a report of cash receipt and expenditures instead of financial statements, unless the governing documents provide otherwise.[18]

In a condominium association, the board may use a higher level of reporting without a meeting or approval of the membership. It may not use a lower level of reporting without a majority of the voting interests present at a properly called meeting of the association.[19]

In cooperative and homeowners' association, upon a petition by 20 percent of the voting interests in the association, the level of reporting may be increased or decreased after a majority vote of the voting interests.[20]

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums and cooperatives are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) in accordance with ch. 718, F.S., and ch. 719, F.S. The division is afforded complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., and ch. 719, F.S., with respect to associations that are still under developer

[14] 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 Generally Accepted Accounting Principles (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).
[15] 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.*
[16] An audited financial statement by a CPA verifies the accuracy and completeness of the audited entities records in accordance with GAAP. *Id.*
[17] Sections 718.111(13)(a), 719. 104(4)(b), and 720.303(7)(a), F.S.
[18] Sections 718.111(13)(b)2., 719. 104(4)(c)2., and 720.303(7)(b)2., F.S.
[19] Sections 718.111(13)(c) and (d), F.S.
[20] Sections 719.104(4)(d) and (e), and 720.303(7)(c) and (d), F.S.

control.[21] The division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover control to the association, pursuant to s. 718.301, F.S., and s. 719.301, F.S., respectively.[22] After control of the condominium or cooperative 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.[23]

As part of the division's authority to investigate complaints, s. 718.501(1), F.S., and s. 719.501(1), F.S., authorize the division to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

The division's jurisdiction regarding homeowners' associations is limited to conducting binding arbitration upon a petition resolve election recall disputes.[24]

III. Effect of Proposed Changes:

The bill repeals the provisions in ss. 718.111(13)(b)2., 719. 104(4)(c)2., and 720.303(7)(b)2., F.S., which provide that an association operating fewer than 50 units ("parcels" for homeowners' associations), regardless of the association's annual revenues, must prepare a report of cash receipts and expenditures in lieu of the financial statements based on the amount of annual revenue.

The bill takes effect July 1, 2015.

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.

[21] Section 718.501(1), F.S., s. 719.501(1), F.S.
[22] *Id.*
[23] *Id.*
[24] *See* ss. 720.303(10)(d) and 720.311(1), F.S.

B. Private Sector Impact:

Condominium, cooperative, and homeowners' associations of 50 units or parcels may incur additional expense if required to prepare financial statements based on the amount of annual revenue instead of a report of cash receipts.

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, 719.104, and 720.303.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Evers

2-00735-15 2015796__

A bill to be entitled

An act relating to financial reporting; amending ss. 718.111, 719.104, and 720.303, F.S.; deleting provisions with respect to the preparation by certain condominium associations, cooperative associations, and homeowners' associations of annual reports of cash receipts and expenditures in lieu of certain financial statements; providing an effective date.

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

Section 1. Paragraph (b) of subsection (13) of section 718.111, Florida Statutes, is amended to read:

718.111 The association.—

(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 financial report or a notice that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner. The division shall adopt rules setting forth uniform accounting principles and standards

2-00735-15 2015796__

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:

(b)1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

~~2. An association that operates fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a).~~

2.~~3.~~ A report of cash receipts and disbursements must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional and management fees and expenses, taxes, costs for recreation facilities, expenses for refuse collection and utility services, expenses for lawn care, costs for building maintenance and repair, insurance costs, administration and salary expenses, and reserves accumulated and expended for capital expenditures,

deferred maintenance, and any other category for which the association maintains reserves.

Section 2. Paragraph (c) of subsection (4) of section 719.104, Florida Statutes, is amended to read:

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

(4) FINANCIAL REPORT.—

(c)1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

~~2. An association in a community of fewer than 50 units, regardless of the association's annual revenues, shall prepare a report of cash receipts and expenditures in lieu of the financial statements required by paragraph (b), unless the declaration or other recorded governing documents provide otherwise.~~

2.~~3.~~ A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves, if maintained by the association.

Section 3. Paragraph (b) of subsection (7) of section 720.303, Florida Statutes, is amended to read:

720.303 Association powers and duties; meetings of board;

official records; budgets; financial reporting; association funds; recalls.—

(7) FINANCIAL REPORTING.—Within 90 days after the end of the fiscal year, or annually on the date provided in the bylaws, the association shall prepare and complete, or contract with a third party 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, within the time limits set forth in subsection (5), provide each member with a copy of the annual financial report or a written notice that a copy of the financial report is available upon request at no charge to the member. Financial reports shall be prepared as follows:

(b)1. An association with total annual revenues of less than $150,000 shall prepare a report of cash receipts and expenditures.

~~2. An association in a community of fewer than 50 parcels, regardless of the association's annual revenues, may prepare a report of cash receipts and expenditures in lieu of financial statements required by paragraph (a) unless the governing documents provide otherwise.~~

2.~~3.~~ A report of cash receipts and disbursement must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to, the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation

facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves if maintained by the association.

Section 4. This act shall take effect July 1, 2015.

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 Judiciary

BILL:	SB 1528
INTRODUCER:	Senator Evers
SUBJECT:	Commission on Federalism
DATE:	April 6, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	**Pre-meeting**
2.			GO	
3.			RC	

I. Summary:

SB 1528 creates a seven-member Commission on Federalism. The commission begins meeting in January 2016 and is authorized to evaluate any federal action to determine if it violates the principle of federalism. If the commission determines that a violation has occurred, specific follow-up actions are authorized to gather additional information or communicate the commission's concerns. The commission is authorized to recommend to the Governor that he or she call a special session of the Legislature to respond to the evaluated law.

The commission is required to maintain on the Legislature's website each federal law evaluated, any action taken, and any response received by a federal government entity. The commission is required to electronically submit a report to the Governor and Legislature twice each year.

II. Present Situation:

In colonial America, the individual states existed separately and before the federal government was formed. Through the United States Constitution the states delegated power to the federal government while reserving power to themselves at the same time. The defining line between state and federal power is the Tenth Amendment to the United States Constitution, which provides:

> The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.[1]

This division of authority between the federal and state governments is known as federalism. Certain limited powers are entrusted solely to the Federal Government while other powers are reserved to the states, and yet other powers may be exercised concurrently by the state and

[1] U.S. Const. amend. X.

federal governments.[2] The concept of dual sovereignty, or two governments existing within the same territorial boundaries, has been the subject of much discussion, disagreement, and litigation.

James Madison noted, in discussing the dual establishment of a federal government and state governments, that a "double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself."[3]

Federalism, however, has often led to differing opinions as to whether one government is encroaching upon the powers held by the other government. The U.S. Supreme Court has stated:

> One fairly can dispute whether our federalist system has been quite as successful in checking government abuse as Hamilton promised, but there is no doubt about the design. If this "double security" is to be effective, there must be a proper balance between the States and the Federal Government. These twin powers will act as mutual restraints only if both are credible. In the tension between federal and state power lies the promise of liberty.[4]

The state does not currently have a formal mechanism for measuring whether federal laws encroach upon the state's sovereign authority.

III. Effect of Proposed Changes:

This bill creates the Commission on Federalism to evaluate whether a federal law is properly authorized under the United States Constitution or whether it violates the principle of federalism.

Meeting Requirements

The commission is required to hold its initial meeting in January 2016 and meet six times annually unless additional meetings are approved by the President of the Senate and the Speaker of the House of Representatives. Staff will be assigned by those leaders to assist the commission.

Membership

The seven members of the commission are:

- The President of the Senate or his or her designee, who will be the co-chair of the commission;
- A Senate member appointed by the President of the Senate;
- The Speaker of the House of Representatives or his or her designee, who will also serve as co-chair;
- Two members of the House of Representatives who will be appointed by the Speaker;
- The Minority Leader of the Senate or his or her designee; and

[2] 16A AM. JUR. 2D CONSTITUTIONAL LAW s. 214 (2015).

[3] *The Federalist No. 51*, p. 57 B. F. Wright ed. 1961. In this paper, Madison wrote to the people of New York defending the checks and balances system in the Constitution.

[4] *Gregory v. Ashcroft*, 501 U.S. 452, 459 (1991).

- The Minority Leader of the House of Representatives or his or her designee.

If a vacancy occurs, it shall be filled in the same manner as the original appointment. Members are entitled to receive reimbursement for per diem and travel expenses as provided by statute.

Duties

If a majority of the commission agrees, it may evaluate a federal law. To facilitate its evaluation, the commission is authorized to request pertinent information from a member of the Florida Congressional Delegation. If a majority of the commission determines that a federal law, agency, policy, mandate, or executive order is not authorized under the doctrine of federalism, a co-chair may:

- Request information about the law or assistance from the Florida Congressional Delegation in communicating with a federal government entity about the federal law;
- Give written notice of an evaluation of the law to the federal entity responsible for adopting or administering the law and request that the government entity respond to the commission's evaluation by a specific date;
- Request a meeting, either in person or by electronic means, with the federal government entity responsible or a member of Congress to discuss the evaluated law and a possible remedy;
- Correspond with another state's presiding legislative officers or with a government entity of another state which has similar powers and duties of the commission and coordinate the evaluation of and a response to the federal law.

If a majority of the commission agrees, it may recommend to the Governor that he or she call a special session to respond to the evaluated law.

The commission is required to maintain on the Legislature's website the following information:

- Each federal law evaluated by the commission;
- Any action taken by a co-chair upon the finding that a federal law, agency, policy, mandate, or executive order is not an authorized federal action; and
- Any response to an evaluation received from a federal government entity, official, or employee.

Evaluation

When evaluating a federal law, the commission must determine whether the law:

- Is authorized by any of the express enumerated powers contained in the United States Constitution and amendments; or
- Violates the principle of federalism, based upon specified criteria.

Sources

When evaluating a federal law, the commission must rely on:

- The text of the United States Constitution and ratified amendments;
- The meaning of the text of the United States Constitution and amendments ratified at the time of drafting and ratification; and

- A primary source document directly relevant to the drafting, ratification, or initial implementation of the United States Constitution and duly ratified amendments or a primary source document created by a person who was directly involved in the drafting, adoption, ratification, or initial implementation of the Constitution and duly ratified amendments.

The commission may rely on other relevant sources such as federal court decisions, but is not bound by a federal court opinion.

Reporting Requirement

The commission must electronically submit a report to the Governor and the Legislature on or by May 20 and October 20 of each year. The report must summarize any lawful action taken by the commission and any action taken by or communication received from the following persons or entities in response to an action by the commission:

- A member of the Florida Congressional Delegation;
- A congressional member from another state; or
- A federal government entity, official, or employee.

Effective Date

The bill takes effect on July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to have an impact on cities or counties and as such, does not appear to be a mandate for constitutional purposes.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

There appears to be a drafting inconsistency in the scope of material that the commission may review. In section (3), Duties, the commission is authorized in paragraph (3)(a) to evaluate "a federal law" when agreed to by a majority of the commission. In paragraph (3)(c), however, a reference is made to the commission finding that "a federal law, agency, policy, mandate, or executive order" is not authorized. The scope of paragraph (3)(a) seems to be more restrictive in what the commission may evaluate than what is listed in paragraph (3)(c).

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 11.9006, Florida Statutes.

IX. Additional Information:

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

None.

B. Amendments:

None.

By Senator Evers

2-00203-15 20151528__

A bill to be entitled

An act relating to the Commission on Federalism; creating s. 11.9006, F.S.; creating the Commission on Federalism; providing for the membership, meetings, and staff support of the commission; authorizing members to be reimbursed for per diem and travel expenses; providing duties of the commission; providing criteria to evaluate a federal law; specifying what sources the commission may rely on in an evaluation of a federal law; requiring the commission to submit biannual reports to the Governor and the Legislature; providing report requirements; providing an effective date.

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

Section 1. Section 11.9006, Florida Statutes, is created to read:

11.9006 Commission on Federalism.—

(1) CREATION.—The Commission on Federalism is created. The commission shall hold its first meeting in January 2016, and shall meet six times each calendar year unless additional meetings are approved by the President of the Senate and the Speaker of the House of Representatives. The President of the Senate and the Speaker of the House of Representatives shall assign staff to assist the commission.

(2) MEMBERSHIP.—

(a) The commission is composed of seven members, as follows:

2-00203-15 20151528__

1. The President of the Senate or his or her designee, who shall serve as co-chair;

2. A member of the Senate appointed by the President of the Senate;

3. The Speaker of the House of Representatives or his or her designee, who shall serve as co-chair;

4. Two members of the House of Representatives appointed by the Speaker of the House of Representatives;

5. The Minority Leader of the Senate or his or her designee; and

6. The Minority Leader of the House of Representatives or his or her designee.

(b) A vacancy on the commission shall be filled in the same manner as the original appointment.

(c) Members of the commission are entitled to receive reimbursement for per diem and travel expenses pursuant to s. 112.061.

(3) DUTIES.—

(a) The commission may evaluate a federal law when such action is agreed to by a majority of the commission.

(b) The commission may request information regarding a federal law from a member of Florida's Congressional Delegation to facilitate this evaluation.

(c) If a majority of the commission finds that a federal law, agency, policy, mandate, or executive order is not authorized by the powers delegated to the Federal Government or any of its agencies under the United States Constitution or violates the principle of federalism as described in subsection (4), a co-chair of the commission may:

1. Request information about the federal law or assistance from a member of Florida's Congressional Delegation in communicating with a federal government entity regarding the federal law;

2. Give written notice of an evaluation of the federal law to the federal government entity responsible for adopting or administering the evaluated law and request that the federal government entity respond to the commission's evaluation by a specific date;

3. Request a meeting, conducted in person or by electronic means, with the responsible federal government entity or any member of Congress to discuss the evaluated law and any possible remedy; or

4. Correspond with the presiding officers of the legislative branch of another state or with a government entity of another state which has powers and duties that are similar to those of the commission to discuss and coordinate the evaluation of and response to the federal law.

(d) If agreed upon by a majority vote, the commission may recommend to the Governor that he or she call a special session of the Legislature to respond to the evaluated law.

(e) The commission shall maintain the following information on the website of the Florida Legislature:

1. Each federal law evaluated by the commission;

2. Any action taken by a co-chair of the commission under paragraph (c); and

3. Any response to an evaluation received from a federal government entity, official, or employee.

(4) EVALUATION.—The commission shall determine whether a

federal law evaluated by the commission:

(a) Is authorized by any of the express enumerated powers contained in the United States Constitution and duly ratified amendments.

(b) Violates the principle of federalism by:

1. Affecting the distribution of power and responsibility between the state and federal governments;

2. Limiting the policymaking discretion of the state;

3. Affecting a power or a right reserved to the state or its residents by the Ninth Amendment or the Tenth Amendment to the United States Constitution; and

4. Affecting the sovereignty rights and interests of the state or a political subdivision to provide for the health, safety, and welfare and to promote the prosperity of the residents in the state or the political subdivision.

(5)(a) SOURCES.—In evaluating a federal law, the commission shall rely on:

1. The text of the United States Constitution and duly ratified amendments.

2. The meaning of the text of the United States Constitution and duly ratified amendments at the time of drafting and ratification.

3. A primary source document that is directly relevant to the drafting, ratification, or initial implementation of the United States Constitution and duly ratified amendments or created by a person directly involved in the drafting, adoption, ratification, or initial implementation of the United States Constitution and duly ratified amendments.

(b) The commission may rely on other relevant sources,

including federal court decisions. However, the commission's evaluation of a federal law is not bound by a holding by a federal court.

(6) REPORT REQUIREMENT.—On or by May 20 and October 20 of each year, the commission shall electronically submit a report to the Governor and the Legislature which summarizes the following:

(a) Action taken by the commission in accordance with this section.

(b) Action taken by, or communication received from, the following in response to a request, inquiry, or any other action taken by the commission:

1. A member of Florida's Congressional Delegation;

2. A member of Congress from another state; or

3. A federal government entity, official, or employee.

Section 2. This act shall take effect July 1, 2015.

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 Judiciary

BILL:	CS/SB 912
INTRODUCER:	Environmental Preservation and Conservation Committee and Senator Bean
SUBJECT:	Recycled and Recovered Materials
DATE:	April 6, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gudeman	Uchino	EP	**Fav/CS**
2.	Procaccini	Cibula	JU	**Pre-meeting**
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 912 provides relief from liability for a person that sells, transfers, or arranges for the transfer of recycled and recovered materials to a facility owned or operated by another person for the purpose of reclamation, recycling, manufacturing, or reuse of the materials. The bill defines "recycled and recovered materials" and provides the applicable dates for a cause of action.

II. Present Situation:

Section 403.727, F.S., provides the violations, defenses, penalties, and remedies for violations under Part IV of ch. 403, F.S. The law provides specific penalties for hazardous waste generators, transporters, or facility owners or operators that do not comply with the law, operate without a permit, do not comply with a valid permit, cause a hazard to occur or continue to occur, or do not properly disclose the characteristics of the hazardous waste. The law specifies that the owner or operator of a facility, a person who owned or operated a facility at the time a hazardous substance was disposed of, the person who arranged for the transport or disposal of the hazardous substance, and any person that accepts any hazardous substance for transport or disposal is liable for the costs associated with the damage and remediation of the hazardous substance as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.[1]

[1] Pub. L. No. 96-510, s. 94 stat. 2767 (1980).

Section 403.727, F.S., provides defenses of liability for a person who may be in violation of the law including an act of war, an act of government, an act of God, and an act or omission by a third party. In addition, a generator or transporter of hazardous waste that complies the law and contracts for the disposal of hazardous wastes with a licensed facility is relieved from liability for the hazardous wastes upon receipt of the certificate of disposal. A generator of hazardous waste that contracts for the transport of hazardous waste is relieved of liability to the extent that the liability is covered by the insurance or bond of the transporter.

The Comprehensive Environmental Response, Compensation, and Liability Act

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) was enacted by Congress on December 11, 1980. The law provides broad federal authority to respond to releases or threatened release of hazardous substances that may endanger public health or the environment. CERCLA establishes prohibitions and requirements for closed and abandoned hazardous waste sites, makes responsible persons liable for the release of hazardous waste, and establishes a trust fund to provide for cleanup if a responsible party cannot be identified.[2]

The Superfund Recycling Equity Act of 1999 generally exempts generators and transporters of recyclable materials from liability under CERCLA.[3] The law reduces waste and promotes natural resource conservation by promoting the reuse and recycling of scrap material.[4] However, the transporter may be liable under CERCLA if the transporter fails to use reasonable care with the management and handling of recycled and recovered material.[5] Whether a transporter uses reasonable care is based upon the following criteria:

- The price paid in the recycling transaction;
- The ability of an individual to detect the nature of the consuming facility's operations; and
- The history and current compliance of the facility with state, federal, or local environmental laws and statues in the handling, processing, reclamation, or other management activity associated with recyclable materials.[6]

III. Effect of Proposed Changes:

The bill amends s. 403.727, F.S., to provide relief from liability to any person that sells, transfers, or arranges for the transfer of recycled and recovered materials to a facility owned or operated by another person for the purpose of reclamation, recycling, manufacturing, or reuse, and the hazardous substance is released or threatened to be released from the receiving facility.

The relief from liability does not apply if the person fails to exercise reasonable care in managing and handling the recycled and recovered material. It also does not apply if the arrangement for the reclamation, recycling, manufacturing, or reuse of the material was not expected to be legitimate based on the information available to the person at the time of the arrangement.

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[2] *Id*.
[3] Pub. L. 106-113, s. 127 stat. 9627 (1999).
[4] Dept. of Energy, *Office of Health Safety and Security, CERCLA*, http://homer.ornl.gov/sesa/environment/policy/cercla.html (last visited April. 3, 2015).
[5] 42 U.S.C. s. 9627(c)
[6] *Id.*

The bill defines "recycled and recovered material" as scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber (other than whole tires), scrap metal, or spent lead-acid or nickel-cadmium batteries, or other spent batteries. The bill specifies the term includes minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use before becoming scrap. The term does not include hazardous waste.

The bill specifies that the relief from liability applies to causes of action accruing on or after July 1, 2015, and applies retroactively to causes of action accruing before July 1, 2015, for which a lawsuit has not been filed.

The bill provides an effective date of July 1, 2015.

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:

There is an indeterminate positive fiscal impact to a person released from liability that may have been liable for cleanup costs.

C. Government Sector Impact:

The state may incur the costs associated with the cost of cleanup if no viable responsible party exists as a result of the release of liability.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Part of the definition of "recycled and recovered materials" specifies it does not include hazardous waste. According to the DEP, it is unclear what this phrase adds to the meaning of recycled and recovered materials.[7]

The bill is similar in concept to the liability defense found in the Superfund Recycling Equity Act. The federal law is more specific on how the liability defense can be claimed and when an individual is excluded from relying on the defense. In order to qualify for the federal defense, persons who arrange for recycling are required to demonstrate they took reasonable care to determine the material was sent to a facility that was in compliance. The bill also requires reasonable care in the handling and management of recycled and recovered materials but is not as specific as federal law. It is not clear what a court may require to determine whether a person has failed to exercise reasonable care with respect to the management and handling of the recycled materials, or whether the arrangement for recycling was not reasonably expected to be legitimate.[8]

VIII. Statutes Affected:

This bill substantially amends section 403.727, 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 Environmental Preservation and Conservation on March 31, 2015:
The CS provides clarity by removing the conflicting "notwithstanding clause." It makes a technical correction to change the term "solid waste" to "hazardous substances."

B. Amendments:

None.

[7] DEP, *Senate Bill 914 Agency Analysis*, 3 (Feb. 25, 2015) (on file with the Senate Committee on Environmental Preservation and Conservation).
[8] *Id*.

By the Committee on Environmental Preservation and Conservation; and Senator Bean

592-03277-15 2015912c1

A bill to be entitled

An act relating to recycled and recovered materials; amending s. 403.727, F.S.; exempting a person who sells, transfers, or arranges for the transfer of recycled and recovered materials from liability for hazardous substances released or threatened to be released from the receiving facility or site under certain circumstances; defining the term "recycled and recovered materials"; providing retroactive application under certain circumstances; providing an effective date.

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

Section 1. Subsection (4) of section 403.727, Florida Statues, is amended, present subsection (8) of that section is redesignated as subsection (9), and a new subsection (8) is added to that section, to read:

403.727 Violations; defenses, penalties, and remedies.—

(4) In addition to any other liability under this chapter, and subject only to the defenses set forth in subsections (5), (6), ~~and~~ (7), and (8):

(a) The owner and operator of a facility;

(b) Any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substance was disposed of;

(c) Any person who, by contract, agreement, or otherwise, arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of

592-03277-15 2015912c1

hazardous substances owned or possessed by such person or by any other party or entity at any facility owned or operated by another party or entity and containing such hazardous substances; and

(d) Any person who accepts or has accepted any hazardous substances for transport to disposal or treatment facilities or sites selected by such person,

is liable for all costs of removal or remedial action incurred by the department under this section and damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing such injury, destruction, or loss resulting from the release or threatened release of a hazardous substance as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510.

(8) In order to promote the reuse and recycling of recovered materials and to remove potential impediments to recycling, a person who sells, transfers, or arranges for the transfer of recycled and recovered materials to a facility owned or operated by another person for the purpose of reclamation, recycling, manufacturing, or reuse of such materials is relieved from liability for hazardous substances released or threatened to be released from the receiving facility. This relief from liability does not apply if the person fails to exercise reasonable care with respect to the management and handling of the recycled and recovered materials, or if the arrangement for reclamation, recycling, manufacturing, or reuse of such materials was not reasonably expected to be legitimate based on

information generally available to the person at the time of the arrangement. For the purpose of this subsection, the term "recycled and recovered materials" means scrap paper; scrap plastic; scrap glass; scrap textiles; scrap rubber, other than whole tires; scrap metal; or spent lead-acid or nickel-cadmium batteries or other spent batteries. The term includes minor amounts of material incident to or adhering to the scrap material as a result of its normal and customary use before becoming scrap. The term does not include hazardous waste. This subsection applies to causes of action accruing on or after July 1, 2015, and applies retroactively to causes of action accruing before July 1, 2015, for which a lawsuit has not been filed.

Section 2. This act shall take effect July 1, 2015.

The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla, Chair
Committee on Judiciary

Subject: Committee Agenda Request

Date: March 31, 2015

I respectfully request that **Senate Bill #912**, relating to Recycled and Recovered Materials, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

Aaron Bean

Senator Aaron Bean
Florida Senate, District 4

File signed original with committee office

S-020 (03/2004)

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Judiciary

BILL:	CS/SB 1172
INTRODUCER:	Regulated Industries Committee and Senator Latvala
SUBJECT:	Termination of a Condominium Association
DATE:	April 6, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Caldwell	Cibula	JU	**Pre-meeting**
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1172 revises the requirements for the optional termination of condominiums.

Current law permits a condominium to be terminated at any time if a plan of termination is approved by 80 percent of the condominium's total voting interests and no more than 10 percent of the total voting interests reject the termination. The bill provides that, if more than 10 percent of the voting interests of a condominium reject a plan of termination, another termination may not be considered for 18 months.

The bill prohibits condominiums that have been created pursuant to the condominium conversion procedures in Part VI of ch. 718, F.S., from undertaking an optional plan of termination until 7 years after the conversion.

The bill provides the following conditions and limitations for the termination of a condominium if at the time the plan of termination is recorded at least 80 percent of the total voting interests are owned by a bulk owner which would be considered an insider under s. 726.102, F.S., and no sale of the terminated condominium property to an unrelated third party is contemplated:

- Unit owners must be allowed to retain possession of units and lease their former units;
- Any unit owner whose unit was granted homestead exemption must be paid a relocation payment equal to 1 percent of the termination proceeds allocated to the unit;
- Unit owners other than the developer must be paid at least 100 percent of the fair market value of their units as determined by one or more independent appraisers;

- Dissenting or objecting owners must be paid 110 percent of the purchase price, or 110 percent of fair market value, whichever is greater; and
- The outstanding first mortgages of all third-party unit owners must be satisfied in full.

The bill provides timeframes for objections to the plan of termination, including plans approved at a meeting and plans approved by a written consent or joinder.

The bill permits unit owners to contest a plan of termination by petitioning the Division of Florida Condominiums, Timeshares, and Mobile Homes for mandatory nonbinding arbitration. It deletes the unit owners' right to contest the plan of termination in a court by initiating a summary procedure pursuant to s. 51.011, F.S. It provides that unit owners may contest the fairness and reasonableness of the apportionment of the proceeds from the sale, that the first mortgages of unit owners will not be fully satisfied, or that the required vote was not obtained.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

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."[1] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[2] A declaration is like a constitution in that it:

> Strictly 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.[3]

A declaration "may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property."[4] A declaration of condominium may be amended as provided in the declaration.[5] If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not less than the owners of two-thirds of the units.[6] Condominiums are administered by a board of directors referred to as a "board of administration."[7]

Section 718.103(3), F.S., defines the term "association property" to mean:

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[1] Section 718.103(11), F.S.
[2] Section 718.104(2), F.S.
[3] *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).
[4] Section 718.104(5), F.S.
[5] *See* s. 718.110(1)(a), F.S.
[6] Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.
[7] Section 718.103(4), F.S.

> that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.

Section 718.103(8), F.S., defines the term "common elements" to mean the portions of the condominium property not included in the units.

Section 718.103(13), F.S., defines the term "condominium property" to mean:

> the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

Section 718.103(16), F.S., defines a developer as one "who creates a condominium or offers condominium [units] for sale or lease in the ordinary course of business . . . ." There are two classes of developers: those who create the condominium by executing and recording the condominium documents and those who offer condominium units for sale or lease in the ordinary course of business.

Section 718.103(10), F.S., defines "voting interests" to mean:

> the voting rights distributed to the association members pursuant to s. 718.104(4)(j).[8] In a multicondominium association, the voting interests of the association are the voting rights distributed to the unit owners in all condominiums operated by the association. On matters related to a specific condominium in a multicondominium association, the voting interests of the condominium are the voting rights distributed to the unit owners in that condominium.

Community Associations – Penalties and Suspension of Voting Right

Condominium associations may levy fines against members of the association who violate the association's rules or other governing documents.[9] After consideration by a committee of other members who are not board members or persons residing in the board member's household, the association may issue a fine that may not exceed $100 per violation, or $1000 in the aggregate. If a member is more than 90 days delinquent on a monetary obligation, which may include a fine, unpaid assessments, or other monetary obligation, the association may suspend the unit owner's right to use common elements, facilities, or areas and may also suspend his or her voting rights.[10]

[8] Section 718.104(4)(j), F.S., requires the declaration of condominium to include unit owners' membership and voting rights in the association.
[9] Section 718.303(3), F.S.
[10] *Id.*

Termination of a Condominium

Termination Because of Economic Waste or Impossibility

Section 718.117, F.S., provides for the termination of condominiums when the continued operation of the condominium would constitute economic waste or would be impossible to operate or reconstruct a condominium. To terminate the condominium, the required vote is the lesser of the lowest percentage of voting interests needed to amend the declaration or as otherwise provided in the declaration for termination of the condominium.[11] The criteria for economic waste or impossibility are:

- The total estimated cost of repairs necessary to restore the improvements to their former condition or bring them into compliance with applicable laws or regulations exceeds the combined fair market value of all units in the condominium after completion of the repairs; or
- It becomes impossible to operate or reconstruct a condominium in its prior physical configuration because of land-use laws or regulations.

If 75 percent or more of the condominium units are timeshare units, the condominium may be terminated by a plan of termination that is approved by 80 percent of the total voting interests of the association and the holders of 80 percent of the original principal amount of outstanding recorded mortgage liens of timeshare estates in the condominium, unless the declaration provides for a lower voting percentage.[12]

Optional Termination

Section 718.117(3), F.S., provides an optional termination procedure with a lower vote threshold. Regardless of whether continued operation would constitute economic waste or would be impossible, the condominium may be terminated if approved by at least 80 percent of the total voting interests of the condominium, provided that not more than 10 percent of the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objections thereto.

Exemption

Section 718.117(4), F.S., provides that a plan of termination is not an amendment subject to s. 718.110(4), F.S., which relates to amendments that may change the configuration or size of any unit in any material fashion, materially alter or modify the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses of the condominium and owns the common surplus of the condominium.

Plan of Termination

Section 718.117(9), F.S., provides the plan for termination must be a written document executed by unit owners having the requisite percentage of voting interests to approve the plan and by the termination trustee. The plan may provide that each unit owner retains the exclusive right of possession to the portion of the real estate that formerly constituted the unit, in which case the

[11] Section 718.117(2)(a), F.S.
[12] Section 718.117(2)(b), F.S.

plan must specify the conditions of possession.[13] In the case of a conditional termination, the plan must specify the conditions for termination. A conditional plan will not vest title in the termination trustee until the plan and a certificate executed by the association with the formalities of a deed have been recorded that confirm the conditions in the conditional plan have been satisfied or waived by the requisite percentage of the voting interests.[14] The provisions required in the plan of termination are provided in ss. 718.117(10) and (11), F.S.

The plan of termination must be recorded before it can take effect and is effective only when recorded or at a later date specified in the plan.

A plan of termination that fails to receive the required approval cannot be recorded and a new attempt to terminate the condominium may not be proposed at a meeting or by solicitation for joinder and consent for 180 days after the date that the failed plan of termination was first given to all unit owners.

Allocation of Proceeds of Sale of Condominium Property

Section 718.117(12), F.S, provides for the distribution of the proceeds of sale. Unless the declaration expressly provides for the allocation of the proceeds of sale of condominium property, the plan must first apportion the proceeds between the aggregate value of all units and the value of the common elements, based on their respective fair-market values immediately before the termination. The market values are to be determined by one or more independent appraisers selected by the association or termination trustee. The value of the common elements is to be paid to the owners according to their proportionate share in the common elements.

Right to Contest

Section 718.117(16), F.S., provides that a unit owner or lienor may contest a plan of termination by initiating a summary procedure pursuant to s. 51.011, F.S.,[15] within 90 days after the date the plan is recorded. If not contested within 90 days, a unit owner or lienor is barred from asserting or prosecuting a claim against the association, the termination trustee, any unit owner, or any successor in interest to the condominium property.

The person contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the unit owners was not fair and reasonable. The apportionment of sale proceeds is presumed fair and reasonable if it was determined pursuant to the methods prescribed in s. 718.117(12), F.S. The court is required to determine the rights and interests of the parties and order the plan of termination to be implemented if it is fair and reasonable. If the court determines that the plan of termination is not fair and reasonable, it may

[13] Section 718.117(11)(a), F.S.
[14] Section 718.117(11)(b), F.S.
[15] Section 51.011, F.S., specifies a summary procedure for actions that specifically provide for this procedure by statute or rule. Under the summary procedure, all defenses of law or fact are required to be contained in the defendant's answer which must be filed within 5 days after service of process of the plaintiff's complaint. If the answer incorporates a counterclaim, the plaintiff must include all defenses of law or fact in his or her answer to the counterclaim and serve it within 5 days after service of the counterclaim. (Fla. R. Civ. Pro. 1.140, requires an answer, including any counterclaims, within 20 days after service of the complaint.) No other pleadings are permitted, and all defensive motions, including motions to quash, are heard by the court prior to trial. Postponements are not permitted for discovery, and the procedure also provides for an immediate trial, if requested.

void the plan or may modify the plan to apportion the proceeds in a fair and reasonable manner. The prevailing party is entitled to recover reasonable attorney fees and costs.

Distressed Condominium Relief Act

The "Distressed Condominium Relief Act"[16] in Part VII of ch. 718, F.S., defines the extent to which successors to the developer, including the construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties. Enacted in 2010,[17] the act was intended to relieve developers, lenders, unit owners, and condominium associations from specified provisions of ch. 718, F.S., including warranty provisions, in order to enable economic opportunities for successor purchasers of distressed condominiums.[18]

Section 718.703(1), F.S., defines the term "bulk assignee" to mean 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, as a separate instrument recorded in the public records in the county where the condominium is located, or pursuant to a final judgment or certificate of title at a foreclosure sale.

Section 718.703(2), F.S., defines the term "bulk buyer" as 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 this section.

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 parcels are acquired prior to July 1, 2016. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums and cooperatives are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) in accordance with ch. 718, F.S., and ch. 719, F.S. The division is afforded complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., and ch. 719, F.S., with respect to associations that are still under developer control.[19] The division also has the authority to investigate complaints against developers involving improper turnover or failure to turnover control to the association, pursuant to ss. 718.301 and 719.301, F.S., respectively.[20] After control of the condominium or cooperative is transferred from the developer to the unit owners, the division's jurisdiction is limited to

[16] Sections 718.701 – 718.708, F.S.
[17] Chapter 2010-174, L.O.F.
[18] *See* s. 718.702, F.S.
[19] Section 718.501(1), F.S., s. 719.501(1), F.S.
[20] *Id.*

investigating complaints related to financial issues, elections, and unit owner access to association records.[21]

As part of the division's authority to investigate complaints, ss. 718.501(1) and 719.501(1), F.S., authorize the division to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

III. Effect of Proposed Changes:

The bill amends s. 718.117, F.S., to revise the requirements for the optional termination of condominiums.

Optional Termination

The bill amends s. 718.117(3)(a), F.S., to provide that, in a vote on a plan of termination, the total voting interests of the condominium include all voting interests[22] for the purpose of considering a plan of termination, and a voting interest of the condominium may not be suspended during the consideration of a plan of termination.

It provides that if more than 10 percent of the total voting interests of the condominium reject a plan of termination, another optional plan of termination may not be considered for 18 months after the date of rejection.

The bill deletes the provision in s. 718.117(3)(c), F.S., that optional termination provisions do not apply to condominiums in which 75 percent or more of the units are timeshare units.

Optional Terminations Following a Condominium Conversion

Section 718.117(3)(c), F.S., is created to prohibit a condominium that has been created pursuant to the condominium conversion procedures in Part VI of ch. 718, F.S.,[23] (conversion condominium) from undertaking an optional plan of termination until 7 years after the conversion.

Optional Terminations and Bulk Owners

Section 718.117(3)(d), F.S., is created and defines the term "bulk owner" to mean the single owner of such voting interests or an owner with a related entity or entities that would be considered insiders, as defined in s. 726.102, F.S.[24]

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[21] *Id.*

[22] Pursuant to s. 718.103(10), F.S., voting rights are those rights distributed to the unit owners in that condominium under the declaration of condominium.

[23] Part VI of ch. 718, F.S., provides the process for converting real property into the condominium form of ownership.

[24] Section 726.102, F.S., defines an "Insider" to include: "(a) If the debtor is an individual: 1. A relative of the debtor or of a general partner of the debtor; 2. A partnership in which the debtor is a general partner; 3. A general partner in a partnership described [above]. A corporation of which the debtor is a director, officer, or person in control; (b) If the debtor is a corporation: 1. A director of the debtor; 2. An officer of the debtor; 3. A person in control of the debtor; 4. A partnership in which the debtor is a general partner; 5. A general partner in a partnership described [above]. A relative of a general partner, director, officer, or person in control of the debtor. (c) If the debtor is a partnership: 1. A general partner in the debtor; 2. A

Sections 718.117(3)(d)1. – 5., F.S., are created to provide the conditions and limitation in a plan of termination of a condominium if at least 80 percent of the total voting interests at the time of recording the plan of termination are owned by a bulk owner. The conditions and limitations include the former unit owner's right to:

- Possess and lease the former unit;
- Relocation payments for homestead property;
- Compensation at fair market value as determined by an independent appraiser; and
- Mandated disclosures in the plan of termination.

Right of Possession and Lease Former Unit

Section 718.117(3)(d)1., F.S., provides procedures that permit a unit owner to maintain possession of his or her unit after a plan of termination has been approved. After the termination, if the units are offered for lease, each unit owner may lease his or her former unit and remain in possession of the unit for 12 months after the termination. The unit owner must make a written request to the termination trustee to rent the former unit. Any unit owner who fails to make a written request and sign a lease within 90 days after the approved plan of termination is recorded waives his or her right to retain possession of the unit. The unit owner must also sign the lease within 15 days after being presented with the lease or he or she also waives his or her right to retain possession of the unit, unless otherwise provided in the plan of termination.

Relocation Payments for Homestead Property

Section 718.117(3)(d)2., F.S., provides that any former unit owner whose unit was granted homestead exemption as of the date of the recording of the plan of termination must be paid a relocation payment equal to 1 percent of the termination proceeds allocated to the owner's former unit. The relocation payment must be paid by the single entity or related entities owning at least 80 percent of the voting interests. The relocation payment is in addition to any termination proceeds and must be paid within 10 days after the unit owner vacates the unit.

It is not clear whether this provision applies if the unit owners retains possession after termination as provided in s. 718.117(3)(b)1., F.S., in which case the relocation payments would be due within 10 days after the end of the unit owners post-termination lease.

Compensation

Section 718.117(3)(d)3., F.S., requires that all unit owners other than the bulk owner must be compensated with at least 100 percent of the fair market value of their units.

The allocation of the proceeds of the sale of condominium property to dissenting or objecting owners must be at 110 percent of the original purchase price, or at 110 percent of fair market value, whichever is greater. The fair market value must be determined by an independent appraiser. The independent appraiser must be selected by the termination trustee as of a date that is no earlier than 90 days before the date that the plan of termination is recorded.

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relative of a general partner in, a general partner of, or a person in control of the debtor; 3. Another partnership in which the debtor is a general partner; 4. A general partner in a partnership described [above]. A person in control of the debtor. (d) An affiliate, or an insider of an affiliate as if the affiliate were the debtor. (e) A managing agent of the debtor."

The bill defines the term "fair market value" to mean the price of a unit that a seller is willing to accept and a buyer is willing to pay on the open market in an arms-length transaction based on similar units sold in other condominiums, including units sold in bulk purchases but excluding units sold at wholesale or distressed prices.

Section 718.117(3)(d)4., F.S., provides that a plan of termination is not effective unless the outstanding first mortgages of all unit owners other than the bulk owner are satisfied in full before, or simultaneously with, the termination.

Mandated Disclosures in the Plan of Termination

The bill creates s. 718.117(3)(d)5., F.S., to require, before the plan of termination is presented to the unit owners, a written and sworn statement that includes the following disclosures:

- The identity of the person or entity that owns 50 percent or more of the units and if an artificial entity owns such units, the name of the natural person who manages or controls the entity;
- The identity of the person or entity that owns or controls, directly or indirectly, 20 percent or more of the bulk owners and if an artificial entity constitutes a bulk owner, the name of the natural person who manages or controls the entity;
- The units acquired by any bulk owner, the date of their acquisition, and the total amount of compensation paid to each prior unit owner by the bulk owner, regardless of whether attributed to the purchase price of the unit; and
- The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner whose identity must be disclosed.

Exemption

Section 718.117(4), F.S., is amended to provide that an amendment to a declaration to conform the declaration to s. 718.117, F.S., is not an amendment subject to the notice and vote requirements in s. 718.110(4), F.S., and may be approved by the lesser of 80 percent of the voting interests or the percentage of the voting interests required to amend the declaration.

Plan of Termination

The bill amends s. 718.117(9), F.S., which provides the process for a unit owner to reject or object to a plan of termination.

If the vote on the plan of termination is at a meeting of the unit owners, a vote to reject the plan must be made in person or by proxy, or by delivering a written rejection to the association before or at the meeting.

If the plan of termination is approved by written consent or joinder without a meeting of the unit owners, an objection to the plan must be made by written objection within 20 days after the date the association notifies the non-consenting owners that the plan of termination was approved by written action in lieu of a unit owner meeting.

The bill amends s. 718.117(11), F.S., to provide that, unless the plan of termination expressly authorizes a unit owner or other person to retain the exclusive right to possess the unit or to use the common elements of the condominium after termination, all such rights in the unit or common elements automatically terminate on the effective date of termination. All leases, occupancy agreements, subleases, licenses, or other agreements for the use or occupancy of any unit or common elements of the condominium automatically terminate on the effective date of termination unless the plan expressly provides otherwise. The plan must specify the terms and conditions of occupancy if the plan expressly authorizes a unit owner or other person to retain exclusive right of possession after termination.

The bill deletes the provision that, in a partial termination, title to the surviving units and common elements that remain part of the condominium property and vested in the ownership shown in the public records and do not vest in the termination trustee.

The bill creates s. 718.117(11)(c), F.S., to permit a plan of termination to be withdrawn or amended by the same percentage required for approval.

The bill creates s. 718.117(11)(d), F.S., to permit a termination trustee to correct a scrivener's error in the plan of termination, and to require that the amended plan be executed in the same manner as a deed.

Allocation of Proceeds of Sale

The bill amends s. 718.117(12)(a), F.S., to provide that the plan of termination may require separate valuations for the common elements. It deletes the requirement that the declaration expressly provide for the allocation of the proceeds of sale of condominium property and apportion the proceeds between the aggregate value of all units and the value of the common elements, based on their respective fair market values immediately before the termination by an independent appraiser. The bill provides that if the common elements are not separated, it is presumed that the common elements have no independent value and are included in the valuation of the unit.

The bill amends s. 718.117(12)(d), F.S., to require the lienholder of a unit to provide the termination trustee, within 30 days of the trustee's written request, with a statement confirming the outstanding obligations of the unit owner secured by the lien.

The bill amends s. 718.117(12)(e), F.S., to permit the termination trustee to setoff against, and reduce the share of, termination proceeds allocated to a unit by the following amounts, which may include attorney fees and costs:

- Unpaid assessments, taxes, late fees, interest, fines, charges, and other amounts owed for the unit;
- Costs of clearing title to the unit;
- Costs of removing persons from the unit;
- Costs related to breaches of the plan of termination by the owner and others related to the owner;
- Costs related to the removal of personal property; and

- Costs related to the appointment of a receiver or attorney ad litem acting for the unit owner if the unit owner cannot be located.

Right to Contest a Plan of Termination

Section 718.117(16), F.S., permit unit owners contest a plan of termination by petitioning the division for mandatory nonbinding arbitration pursuant s. 718.1255, F.S., which provides for the mediation and arbitration of disputes between the condominium association and unit owners.

The bill deletes the option for unit owners to contest the termination by initiating a summary procedure pursuant to s. 51.011, F.S.

The bill provides that a unit owner or lienor's right to contest a plan of termination is limited to contesting only the fairness and reasonableness of the apportionment of the proceeds from the sale, that the first mortgages of all unit owners have not or will not be fully satisfied at the time of termination, or that the required vote to approve the plan was not obtained. The contesting party bears the burden of proof.

Current law permits the court in a summary procedure to apportion the proceeds if it determines that the plan of termination is not fair and reasonable. The bill permits the arbitrator to void a plan of termination if it is determined that the plan was not properly approved. Any challenge to a plan, other than a challenge that the required vote was not obtained, does not affect title to the property or the vesting of the condominium property in the trustee. Challenges to the plan are limited to claims against the proceeds of the plan.

The bill amends s. 718.1255(1)(a), F.S., to include a plan of termination under s. 718.117, F.S., within the types of disputes that the division may arbitrate.

Effective Date

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Condominium declarations are contracts. If this bill has the effect of re-writing previously recorded declarations that have termination provisions or that implement the protections provided by s. 718.110(4), F.S., the bill may be an unconstitutional impairment of obligation of contract, under s. 10, Art. I, Fla. Const., which provides in relevant part, "No . . . law impairing the obligation of contracts shall be passed." This provision empowers the courts to strike laws that retroactively burden or alter contractual relations. Article I, s. 10 of the United States Constitution provides in relevant part that "No state shall . . . pass any . . . law impairing the obligation of contracts."

In *Pomponio v. Claridge of Pompano Condominium, Inc.*, 378 So. 2d 774, 776 (Fla. 1979), the court stated that some degree of flexibility has developed over the last century in interpreting the contract clause in order to ameliorate the harshness of the original rigid application used by the United States Supreme Court. The court set forth several factors in balancing whether the state law has in fact operated as a substantial impairment of a contractual relationship. The severity of the impairment measures the height of the hurdle the state legislation must clear. The court stated that if there is minimal alteration of contractual obligations the inquiry can end at its first stage. Severe impairment can push the inquiry to a careful examination of the nature and purpose of the state legislation. The factors to be considered are:

- Whether the law was enacted to deal with a broad, generalized economic or social problem;
- Whether the law operates in an area that was already subject to state regulation at the time the contract was entered into; and
- Whether the effect on the contractual relationships is temporary or whether it is severe, permanent, immediate, and retroactive.[25]

The court in *United States Fidelity & Guaranty Co. v. Department of Insurance*, 453 So. 2d 1355 (Fla. 1984), also adopted the method used in *Pomponio.* The court stated that the method required a balancing of a person's interest not to have his contracts impaired with the state's interest in exercising its legitimate police power.

Adopting the method of analysis used by the U.S. Supreme Court, the court outlined the main factors to be considered in applying this balancing test.

- The threshold inquiry is "whether the state law has, in fact, operated as a substantial impairment of a contractual relationship."[26] The severity of the impairment increases the level of scrutiny.
- In determining the extent of the impairment, the court considered whether the industry the complaining party entered has been regulated in the past. This is a consideration because if the party was already subject to regulation at the time the

[25] *Pomponio*, 378 So. 2d at 779.
[26] *United States Fidelity & Guaranty Co.*, 453 So. 2d at 1360 (quoting *Allied Structural Steel Co., v. Spannaus*, 438 U.S. 234, 244 (1978)).

contract was entered, then it is understood that it would be subject to further legislation upon the same topic.[27]

- If the state regulation constitutes a substantial impairment, the state needs a significant and legitimate public purpose behind the regulation.[28]
- Once the legitimate public purpose is identified, the next inquiry is whether the adjustment of the rights and responsibilities of the contracting parties are appropriate to the public purpose justifying the legislation.[29]

The bill addresses termination of a condominium and is therefore permanent and retroactive in nature because it could change a plan of termination originally entered into in the declaration. Thus, as to the threshold inquiry, at least on an as-applied-basis, the bill might operate as a substantial impairment of a contractual relationship. However, the bill does so by providing an equitable method of termination following a natural disaster or in other circumstances that fully values the interests of each unit, as well as the common elements. The bill also eliminates the ability of an owner or a small minority of owners from extracting an excessive portion of the termination proceeds at the expense of the other unit owners in the community.

Condominiums were created by statute and therefore the law operates in an area that is already subject to extensive regulation.

The legislative purpose of the statute seems to indicate that the law was enacted to deal with broad economic problems by stating that the Legislature finds that it is contrary to the public policy of the state to require the continued operation of a condominium when to do so would constitute economic waste or when the ability to do so is made impossible by law or regulation.

The last inquiry, whether the adjustment of the rights and responsibilities of the contracting parties are appropriate to the public purpose justifying the legislation, could to be true for the "economic waste or impossibility" method of approving a plan of termination. Where there are situations involving economic waste or impossibility, the adjustments of the rights of condominium owners concerning approval of termination of the condominium form of ownership may seem as reasonable and of a character appropriate to the Legislature's findings for this legislation. The other methods for approving a plan of termination may be considered unreasonable because in some circumstances they could be used for any reason to override the provisions of the declaration. Nevertheless, the adjustment of the rights and responsibilities of the contracting parties may be reasonable and appropriate because these other methods address deficiencies in the current law. As previously discussed, the current law, s. 718.117(7), F.S., places unit holders in the position of not being able to receive the market value of their investments and allowing one or more owners to withhold approval

[27] *Id.* (citing *Allied Structural Steel Co.*, 438 U.S. at 242, n 13).
[28] *Id.*
[29] *Id.*

for the sale of the property[30] (after termination of the condominium) to obtain a disproportionate share of the proceeds.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Section 718.117(3)(d)2., F.S., entitles any former unit owner whose unit was granted homestead exemption as of the date of the recording of the plan of termination to be paid a relocation payment equal to 1 percent of the termination proceeds allocated to the owner's former unit. Section 718.117(3)(d)3., F.S., requires that all unit owners who are not a bulk owner must be compensated at least 100 percent of the fair market value of their units. The allocation of the proceeds of the sale of condominium property to dissenting or objecting owners must be 110 percent of the purchase price, or 110 percent of fair market value, whichever is greater.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

On lines 345 through 348, the sentence should read:
If the arbitrator determines that the plan was not properly approved, or that the procedures to adopt the plan were not properly followed, he or she may void the plan or grant other relief he or she deems just and proper.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 718.117 and 718.11255 of the Florida Statutes.

[30] After termination of the condominium form of ownership, the current law, s. 718.117(7), F.S., provides that the property is owned by the unit owners in the same shares as each owner previously owned in the common elements, which is typically based on the square footage of the unit, not the market value. Because all of the property is owned as tenants in common after the termination of the condominium form of ownership, one or more owners could withhold approval for the sale of the property to extract a disproportionate share of the proceeds.

IX. Additional Information:

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

CS by Regulated Industries on March 24, 2015:
The committee substitute (CS):

- Revises the title of the bill from an "act relating to condominiums" to an "act relating to termination of a condominium association;"
- Amend s. 718.117(3), F.S., to provide that, if more than 10 percent of the voting interests of a condominium to reject a plan of termination, another termination may not be considered for 18 months instead of 36 months in the bill;
- Deletes the provision in s. 718.117(3)(c), F.S., that optional termination provisions do not apply to condominiums in which 75 percent or more of the units are timeshare units;
- Creates s. 718.117(3)(d), F.S., to define the term bulk owner;
- Amends s. 718.117(3)(d), F.S., to provide conditions for the termination of a condominium if at least 80 percent of the total voting interests at the time of recording the plan of termination are owned by a bulk owner. It does not limit the condition to when at least 80 percent of the voting interests are owned by bulk buyer or assignee or a related entity which would be considered an insider under and no sale of the terminated condominium property to an unrelated third party is contemplated;
- Amends s. 718.117(3)(d)3., F.S., to require that all unit owners other than the bulk owner must be compensated at least 100 percent of the fair market value of their units. It deletes the reference to third-party unit owners;
- Amends s. 718.117(3)(d)3., F.S., to require that the fair market value must be determined by an independent appraiser, selected by the termination trustee, as of a date that is no earlier than 90 days before the date that the plan of termination is recorded;
- Creates s. 718.117(3)(d)5., F.S., to require a written and sworn statement of disclosures before the plan of termination is presented to the unit owners;
- Amends s. 718.117(9), F.S., and does not amend s. 718.117(3), F.S., to provide the process for a unit owner to reject or object to a plan of terminations;
- Amends s. 718.117(11), F.S., to provide for the termination of possession rights by the former unit owner, including occupancy agreements, subleases, licenses, or other agreements, after the approval of a plan of termination, unless expressly authorized in the plan of termination. It also deletes the provision that, in a partial termination, title to the surviving units and common elements that remain part of the condominium property and vested in the ownership shown in the public records and do not vest in the termination trustees;
- Creates s. 718.117(11)(c), F.S., to permit a plan of termination to be withdrawn or amended by the same percentage required for approval;
- Creates s. 718.117(11)(c), F.S., to permit a termination trustee to correct a scrivener's error in the plan of termination, and to require that the amended plan must be executed in the same manner as a deed;
- Amends s. 718.117(12), F.S., to provide that the plan of termination may require separate valuations for the common elements. It deletes the requirement that the

declaration must expressly provide for the allocation of the proceeds of sale of condominium property and apportion the proceeds between the aggregate value of all units and the value of the common elements, based on their respective fair market values immediately before the termination by an independent appraiser;

- Amends s. 718.117(12)(d), F.S., to require the lienholder of a unit to provide the termination trustee, within 30 days of the trustee's written request, with a statement confirming the outstanding obligations of the unit owner secured by the lien;
- Amends s. 718.117(12)(e), F.S., to permit the termination trustee to setoff against and reduce the share of, termination proceeds allocated to a unit by the amounts provided, which may include attorney fees and costs;
- Amends s. 718.117(16), F.S., to permit unit owners to contest a plan of termination by petitioning the division for mandatory nonbinding arbitration pursuant s. 718.1255, F.S. It deletes the option for unit owners to contest the termination by initiating a summary procedure pursuant to s. 51.011, F.S.; and
- Amends s. 718.1255(1)(a), F.S., to include a plan of termination under s. 718.117, F.S., within the types of disputes that the division may arbitrate.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Judiciary (Simpson) recommended the following:

Senate Amendment

Delete lines 28 - 184
and insert:
interests of the condominium if ~~no more than~~ 10 percent or more of the total voting interests of the condominium have rejected the plan of termination by negative vote or by providing written objections.

(a) The termination of the condominium form of ownership is subject to the following conditions:

1. The total voting interests of the condominium must

include all voting interests for the purpose of considering a plan of termination. A voting interest of the condominium may not be suspended for any reason when voting on termination pursuant to this subsection.

2. If 10 percent or more of the total voting interests of the condominium reject a plan of termination, a subsequent plan of termination pursuant to this subsection may not be considered for 18 months after the date of the rejection.

(b) This subsection also does not apply to any condominium created pursuant to part VI of this chapter until 5 years after the recording of the declaration of condominium for the condominium unless there are no objections to the plan of termination ~~This subsection does not apply to condominiums in which 75 percent or more of the units are timeshare units~~.

(c) For purposes of this subsection, the term "bulk owner" means the single holder of such voting interests or an owner together with a related entity or entities that would be considered insiders, as defined in s. 726.102, holding such voting interests. If the condominium association is a residential association proposed for termination pursuant to this section and, at the time of recording the plan of termination, at least 80 percent of the total voting interests are owned by a bulk owner, the plan of termination is subject to the following conditions and limitations:

1. If the former condominium units are offered for lease to the public after the termination, each unit owner in occupancy immediately before the date of recording of the plan of termination may lease his or her former unit and remain in possession of the unit for 12 months after the effective date of

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the termination on the same terms as similar unit types within the property are being offered to the public. In order to obtain a lease and exercise the right to retain exclusive possession of the unit owner's former unit, the unit owner must make a written request to the termination trustee to rent the former unit within 90 days after the date the plan of termination is recorded. Any unit owner who fails to timely make such written request and sign a lease within 15 days after being presented with a lease is deemed to have waived his or her right to retain possession of his or her former unit and is required to vacate the former unit upon the effective date of the termination, unless otherwise provided in the plan of termination.

2. Any former unit owner whose unit was granted homestead-exemption status by the applicable county property appraiser as of the date of the recording of the plan of termination shall be paid a relocation payment in an amount equal to 1 percent of the termination proceeds allocated to the owner's former unit. Any relocation payment payable under this subparagraph shall be paid by the single entity or related entities owning at least 80 percent of the total voting interests. Such relocation payment is in addition to the termination proceeds for such owner's former unit and shall be paid no later than 10 days after the former unit owner vacates his or her former unit.

3. All unit owners other than the bulk owner shall be compensated at least 100 percent of the fair market value of their respective units. The fair market value shall be determined by an independent appraiser, selected by the termination trustee, as of a date that is no earlier than 90 days before the date that the plan of termination is recorded.

For original purchasers from the developer who dissent or object to the plan of termination, the fair market value for the unit owner dissenting or objecting may not be less than the original purchase price paid for the unit. For purposes of this subparagraph, the term "fair market value" means the price of a unit that a seller is willing to accept and a buyer is willing to pay on the open market in an arms-length transaction based on similar units sold in other condominiums, including units sold in bulk purchases but excluding units sold at wholesale or distressed prices. The purchase price of units acquired in bulk following a bankruptcy or foreclosure may not be considered for purposes of determining fair market value.

4. The plan of termination must provide the manner by which each first mortgage on a unit will be satisfied so that each unit owner's obligation under a first mortgage is satisfied in full at the time the plan of termination is implemented.

5. Before presenting a plan of termination to the unit owners for consideration pursuant to this paragraph, the plan must include the following written disclosures in a sworn statement:

a. The identity of any person or entity that owns or controls 50 percent or more of the units in the condominium and, if the units are owned by an artificial entity or entities, a disclosure of the natural person or persons who, directly or indirectly, manage or control the entity or entities and the natural person or persons who, directly or indirectly, own or control 20 percent or more of the artificial entity or entities that constitute the bulk owner.

b. The units acquired by any bulk owner, the date each unit

was acquired, and the total amount of compensation paid to each prior unit owner by the bulk owner, regardless of whether attributed to the purchase price of the unit.

c. The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner subject to disclosure pursuant to this subparagraph.

(d) If the members of the board of administration are elected by the bulk owner, unit owners other than the bulk owner may elect at least one-third of the members of the board of administration before the approval of any plan of termination.

(4) EXEMPTION.—A plan of termination is not an amendment subject to s. 718.110(4). In a partial termination, a plan of termination is not an amendment subject to s. 718.110(4) if the ownership share of the common elements of a surviving unit in the condominium remains in the same proportion to the surviving units as it was before the partial termination. An amendment to a declaration to conform the declaration to this section is not an amendment subject to s. 718.110(4) and may be approved by the lesser of 80 percent of the voting interests or the percentage of the voting interests required to amend the declaration.

(9) PLAN OF TERMINATION.—The plan of termination must be a written document executed in the same manner as a deed by unit owners having the requisite percentage of voting interests to approve the plan and by the termination trustee. A copy of the proposed plan of termination shall be given to all unit owners, in the same manner as for notice of an annual meeting, at least 14 days prior to the meeting at which the plan of termination is to be voted upon or prior to or simultaneously with the distribution of the solicitation seeking execution of the plan

of termination or written consent to or joinder in the plan. A unit owner may document assent to the plan by executing the plan or by consent to or joinder in the plan in the manner of a deed. A plan of termination and the consents or joinders of unit owners and, if required, consents or joinders of mortgagees must be recorded in the public records of each county in which any portion of the condominium is located. The plan is effective only upon recordation or at a later date specified in the plan. If the plan of termination fails to receive the required approval, the plan shall not be recorded and a new attempt to terminate the condominium may not be proposed at a meeting or by solicitation for joinder and consent for 180 days after the date that such failed plan of termination was first given to all unit owners in the manner as provided in this subsection.

(a) If the plan of termination is voted on at a meeting of the unit owners called in accordance with this subsection, any unit owner desiring to reject the plan must do so by either voting to reject the plan in person or by proxy, or by delivering a written rejection to the association before or at the meeting.

(b) If the plan of termination is approved by written consent or joinder without a meeting of the unit owners, any unit owner desiring to object to the plan must deliver a written objection to the association within 20 days after the date that the association notifies the nonconsenting owners, in the manner provided in paragraph (15)(a), that the plan of termination has been approved by written action in lieu of a unit owner meeting.

(11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL TERMINATION; WITHDRAWAL; ERRORS.—

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(a) Unless the plan of termination expressly authorizes a ~~may provide that each~~ unit owner or other person to retain ~~retains~~ the exclusive right to possess that ~~of possession to the~~ portion of the real estate which formerly constituted the unit after termination or to use the common elements of the condominium after termination, all such rights in the unit and

By the Committee on Regulated Industries; and Senator Latvala

580-02817-15 20151172c1

A bill to be entitled

An act relating to termination of a condominium association; amending s. 718.117, F.S.; providing and revising procedures and requirements for termination of a condominium property; providing requirements for the rejection of a plan of termination; defining terms; providing applicability; providing and revising requirements relating to partial termination of a condominium property; authorizing a plan of termination to be withdrawn, modified, or amended under certain conditions; revising and providing requirements relating to the allocation of proceeds of the sale of condominium property; revising requirements relating to the right to contest a plan of termination; amending s. 718.1255, F.S.; revising the term "dispute"; providing an effective date.

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

Section 1. Subsections (3), (4), (9), (11), (12), and (16) of section 718.117, Florida Statutes, are amended to read:

718.117 Termination of condominium.—

(3) OPTIONAL TERMINATION.—Except as provided in subsection (2) or unless the declaration provides for a lower percentage, the condominium form of ownership may be terminated for all or a portion of the condominium property pursuant to a plan of termination approved by at least 80 percent of the total voting interests of the condominium if no more than 10 percent of the total voting interests of the condominium have rejected the plan

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of termination by negative vote or by providing written objections, subject to the following conditions:

(a) The total voting interests of the condominium must include all voting interests for the purpose of considering a plan of termination. A voting interest of the condominium may not be suspended for any reason when voting on termination pursuant to this subsection.

(b) If more than 10 percent of the total voting interests of the condominium reject a plan of termination, a subsequent plan of termination pursuant to this subsection may not be considered for 18 months after the date of the rejection.

(c) This subsection also does not apply to any condominium created pursuant to part VI of this chapter until 7 years after the recording of the declaration of condominium for the condominium ~~This subsection does not apply to condominiums in which 75 percent or more of the units are timeshare units~~.

(d) For purposes of this paragraph, the term "bulk owner" means the single holder of such voting interests or an owner together with a related entity or entities that would be considered insiders, as defined in s. 726.102, holding such voting interests. If the condominium association is a residential association proposed for termination pursuant to this section and, at the time of recording the plan of termination, at least 80 percent of the total voting interests are owned by a bulk owner, the plan of termination is subject to the following conditions and limitations:

1. If the former condominium units are offered for lease to the public after the termination, each unit owner in occupancy immediately before the date of recording of the plan of

termination may lease his or her former unit and remain in possession of the unit for 12 months after the effective date of the termination on the same terms as similar unit types within the property are being offered to the public. In order to obtain a lease and exercise the right to retain exclusive possession of the unit owner's former unit, the unit owner must make a written request to the termination trustee to rent the former unit within 90 days after the date the plan of termination is recorded. Any unit owner who fails to timely make such written request and sign a lease within 15 days after being presented with a lease is deemed to have waived his or her right to retain possession of his or her former unit and is required to vacate the former unit upon the effective date of the termination, unless otherwise provided in the plan of termination.

2. Any former unit owner whose unit was granted homestead-exemption status by the applicable county property appraiser as of the date of the recording of the plan of termination shall be paid a relocation payment in an amount equal to 1 percent of the termination proceeds allocated to the owner's former unit. Any relocation payment payable under this subparagraph shall be paid by the single entity or related entities owning at least 80 percent of the total voting interests. Such relocation payment is in addition to the termination proceeds for such owner's former unit and shall be paid no later than 10 days after the former unit owner vacates his or her former unit.

3. All unit owners other than the bulk owner shall be compensated at least 100 percent of the fair market value of their respective units. The fair market value shall be determined by an independent appraiser, selected by the

termination trustee, as of a date that is no earlier than 90 days before the date that the plan of termination is recorded. Notwithstanding subsection (12), the allocation of the proceeds of the sale of condominium property to owners of units dissenting or objecting to the plan of termination must be 110 percent of the original purchase price, or 110 percent of fair market value, whichever is greater. For purposes of this subparagraph, the term "fair market value" means the price of a unit that a seller is willing to accept and a buyer is willing to pay on the open market in an arms-length transaction based on similar units sold in other condominiums, including units sold in bulk purchases but excluding units sold at wholesale or distressed prices. The purchase price of units acquired in bulk following a bankruptcy or foreclosure may not be considered for purposes of determining fair market value.

4. A plan of termination is not effective unless the plan provides that outstanding first mortgages of all unit owners other than the bulk owner are satisfied in full before, or simultaneously with, the termination.

5. Before presenting a plan of termination to the unit owners for consideration pursuant to this paragraph, the plan must include the following written disclosures in a sworn statement:

a. The identity of any person or entity that owns or controls 50 percent or more of the units in the condominium and, if the units are owned by an artificial entity or entities, a disclosure of the natural person or persons who, directly or indirectly, manage or control the entity or entities and the natural person or persons who, directly or indirectly, own or

control 20 percent or more of the artificial entity or entities that constitute the bulk owner.

b. The units acquired by any bulk owner, the date each unit was acquired, and the total amount of compensation paid to each prior unit owner by the bulk owner, regardless of whether attributed to the purchase price of the unit.

c. The relationship of any board member to the bulk owner or any person or entity affiliated with the bulk owner subject to disclosure pursuant to this subparagraph.

(e) If the members of the board of administration are elected by the bulk owner, unit owners other than the bulk owner may elect at least one-third of the members of the board of administration before the approval of any plan of termination by the board.

(4) EXEMPTION.—A plan of termination is not an amendment subject to s. 718.110(4). In a partial termination, a plan of termination is not an amendment subject to s. 718.110(4) if the ownership share of the common elements of a surviving unit in the condominium remains in the same proportion to the surviving units as it was before the partial termination. An amendment to a declaration to conform the declaration to this section is not an amendment subject to s. 718.110(4) and may be approved by the lesser of 80 percent of the voting interests or the percentage of the voting interests required to amend the declaration.

(9) PLAN OF TERMINATION.—The plan of termination must be a written document executed in the same manner as a deed by unit owners having the requisite percentage of voting interests to approve the plan and by the termination trustee. A copy of the proposed plan of termination shall be given to all unit owners,

in the same manner as for notice of an annual meeting, at least 14 days prior to the meeting at which the plan of termination is to be voted upon or prior to or simultaneously with the distribution of the solicitation seeking execution of the plan of termination or written consent to or joinder in the plan. A unit owner may document assent to the plan by executing the plan or by consent to or joinder in the plan in the manner of a deed. A plan of termination and the consents or joinders of unit owners and, if required, consents or joinders of mortgagees must be recorded in the public records of each county in which any portion of the condominium is located. The plan is effective only upon recordation or at a later date specified in the plan. If the plan of termination fails to receive the required approval, the plan shall not be recorded and a new attempt to terminate the condominium may not be proposed at a meeting or by solicitation for joinder and consent for 180 days after the date that such failed plan of termination was first given to all unit owners in the manner as provided in this subsection.

(a) If the plan of termination is voted on at a meeting of the unit owners called in accordance with this subsection, any unit owner desiring to reject the plan must do so by either voting to reject the plan in person or by proxy, or by delivering a written rejection to the association before or at the meeting.

(b) If the plan of termination is approved by written consent or joinder without a meeting of the unit owners, any unit owner desiring to object to the plan must deliver a written objection to the association within 20 days after the date that the association notifies the nonconsenting owners, in the manner

provided in paragraph (15)(a), that the plan of termination has been approved by written action in lieu of a unit owner meeting.

(11) PLAN OF TERMINATION; OPTIONAL PROVISIONS; CONDITIONAL TERMINATION; WITHDRAWAL; ERRORS.—

(a) Unless the plan of termination expressly authorizes a ~~may provide that each~~ unit owner or other person to retain ~~retains~~ the exclusive right to possess that ~~of possession to the~~ portion of the real estate which formerly constituted the unit after termination or to use the common elements of the condominium after termination, all such rights in the unit or common elements automatically terminate on the effective date of termination. Unless the plan expressly provides otherwise, all leases, occupancy agreements, subleases, licenses, or other agreements for the use or occupancy of any unit or common elements of the condominium automatically terminate on the effective date of termination. If the plan expressly authorizes a unit owner or other person to retain exclusive right of possession for that portion of the real estate which formerly constituted the unit or to use the common elements of the condominium after termination, the plan must specify the terms and ~~if the plan specifies the~~ conditions of possession. ~~In a partial termination, the plan of termination as specified in subsection (10) must also identify the units that survive the partial termination and provide that such units remain in the condominium form of ownership pursuant to an amendment to the declaration of condominium or an amended and restated declaration.~~ In a partial termination, title to the surviving units and common elements that remain part of the condominium property specified in the plan of termination remain vested in

the ownership shown in the public records and do not vest in the termination trustee.

(b) In a conditional termination, the plan must specify the conditions for termination. A conditional plan does not vest title in the termination trustee until the plan and a certificate executed by the association with the formalities of a deed, confirming that the conditions in the conditional plan have been satisfied or waived by the requisite percentage of the voting interests, have been recorded. In a partial termination, the plan does not vest title to the surviving units or common elements that remain part of the condominium property in the termination trustee.

(c) Unless otherwise provided in the plan of termination, at any time before the sale of the condominium property, a plan may be withdrawn or modified by the affirmative vote or written agreement of at least the same percentage of voting interests in the condominium as that which was required for the initial approval of the plan.

(d) Upon the discovery of a scrivener's error in the plan of termination, the termination trustee may record an amended plan or an amendment to the plan for the purpose of correcting the error, and the amended plan or amendment to the plan must be executed by the termination trustee in the same manner as required for the execution of a deed.

(12) ALLOCATION OF PROCEEDS OF SALE OF CONDOMINIUM PROPERTY.—

(a) Unless the declaration expressly provides for the allocation of the proceeds of sale of condominium property, the plan of termination may require separate valuations for ~~must~~

~~first apportion the proceeds between the aggregate value of all units and the value of~~ the common elements. However, in the absence of such provision, it is presumed that the common elements have no independent value but rather that their value is incorporated into the valuation of the units ~~based on their respective fair market values immediately before the termination, as determined by one or more independent appraisers selected by the association or termination trustee~~. In a partial termination, the aggregate values of the units and common elements that are being terminated must be separately determined, and the plan of termination must specify the allocation of the proceeds of sale for the units and common elements being terminated.

(b) The portion of proceeds allocated to the units shall be ~~further~~ apportioned among the individual units. The apportionment is deemed fair and reasonable if it is ~~so~~ determined ~~by the unit owners, who may approve the plan of termination~~ by any of the following methods:

1. The respective values of the units based on the fair market values of the units immediately before the termination, as determined by one or more independent appraisers selected by the association or termination trustee;

2. The respective values of the units based on the most recent market value of the units before the termination, as provided in the county property appraiser's records; or

3. The respective interests of the units in the common elements specified in the declaration immediately before the termination.

(c) The methods of apportionment in paragraph (b) do not

prohibit any other method of apportioning the proceeds of sale allocated to the units or any other method of valuing the units agreed upon in the plan of termination. Any ~~The~~ portion of the proceeds separately allocated to the common elements shall be apportioned among the units based upon their respective interests in the common elements as provided in the declaration.

(d) Liens that encumber a unit shall, unless otherwise provided in the plan of termination, be transferred to the proceeds of sale of the condominium property and the proceeds of sale or other distribution of association property, common surplus, or other association assets attributable to such unit in their same priority. In a partial termination, liens that encumber a unit being terminated must be transferred to the proceeds of sale of that portion of the condominium property being terminated which are attributable to such unit. The proceeds of any sale of condominium property pursuant to a plan of termination may not be deemed to be common surplus or association property. The holder of a lien that encumbers a unit at the time of recording a plan must, within 30 days after the written request from the termination trustee, deliver a statement to the termination trustee confirming the outstanding amount of any obligations of the unit owner secured by the lien.

(e) The termination trustee may setoff against, and reduce the share of, the termination proceeds allocated to a unit by the following amounts, which may include attorney fees and costs:

1. All unpaid assessments, taxes, late fees, interest, fines, charges, and other amounts due and owing to the association associated with the unit, its owner, or the owner's

family members, guests, tenants, occupants, licensees, invitees, or other persons.

2. All costs of clearing title to the owner's unit, including, but not limited to, locating lienors, obtaining statements from such lienors confirming the outstanding amount of any obligations of the unit owner, and paying all mortgages and other liens, judgments, and encumbrances and filing suit to quiet title or remove title defects.

3. All costs of removing the owner or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons from the unit in the event such persons fail to vacate a unit as required by the plan.

4. All costs arising from, or related to, any breach of the plan by the owner or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons.

5. All costs arising out of, or related to, the removal and storage of all personal property remaining in a unit, other than personal property owned by the association, so that the unit may be delivered vacant and clear of the owner or the owner's family members, guests, tenants, occupants, licensees, invitees, or other persons as required by the plan.

6. All costs arising out of, or related to, the appointment and activities of a receiver or attorney ad litem acting for the owner in the event that the owner is unable to be located.

(16) RIGHT TO CONTEST.—A unit owner or lienor may contest a plan of termination by initiating a petition for mandatory nonbinding arbitration ~~summary procedure~~ pursuant to s. 718.1255 ~~s. 51.011~~ within 90 days after the date the plan is recorded. A unit owner or lienor may only contest the fairness and

reasonableness of the apportionment of the proceeds from the sale among the unit owners, that the first mortgages of all unit owners other than the bulk owner have not or will not be fully satisfied at the time of termination as required by subsection (3), or that the required vote to approve the plan was not obtained. A unit owner or lienor who does not contest the plan within the 90-day period is barred from asserting or prosecuting a claim against the association, the termination trustee, any unit owner, or any successor in interest to the condominium property. In an action contesting a plan of termination, the person contesting the plan has the burden of pleading and proving that the apportionment of the proceeds from the sale among the unit owners was not fair and reasonable or that the required vote was not obtained. The apportionment of sale proceeds is presumed fair and reasonable if it was determined pursuant to the methods prescribed in subsection (12). The arbitrator ~~court~~ shall determine the rights and interests of the parties in the apportionment of the sale proceeds ~~and order the plan of termination to be implemented if it is fair and reasonable~~. If the arbitrator ~~court~~ determines that the apportionment of sale proceeds ~~plan of termination~~ is not fair and reasonable, the arbitrator ~~court~~ may void the plan or may modify the plan to apportion the proceeds in a fair and reasonable manner pursuant to this section based upon the proceedings and order the modified plan of termination to be implemented. If the arbitrator determines that the plan was not properly approved, or that the procedures to adopt the plan were not properly followed, it may void the plan or grant other relief it deems just and proper. The arbitrator shall

automatically void the plan upon a finding that any of the disclosures required in subparagraph (3)(d)4. are omitted, misleading, incomplete, or inaccurate. Any challenge to a plan, other than a challenge that the required vote was not obtained, does not affect title to the condominium property or the vesting of the condominium property in the trustee, but shall only be a claim against the proceeds of the plan. In any such action, the prevailing party shall recover reasonable attorney ~~attorney's~~ fees and costs.

Section 2. Subsection (1) of section 718.1255, Florida Statutes, is amended to read:

718.1255 Alternative dispute resolution; voluntary mediation; mandatory nonbinding arbitration; legislative findings.—

(1) DEFINITIONS.—As used in this section, the term "dispute" means any disagreement between two or more parties that involves:

(a) The authority of the board of directors, under this chapter or association document to:

1. Require any owner to take any action, or not to take any action, involving that owner's unit or the appurtenances thereto.

2. Alter or add to a common area or element.

(b) The failure of a governing body, when required by this chapter or an association document, to:

1. Properly conduct elections.

2. Give adequate notice of meetings or other actions.

3. Properly conduct meetings.

4. Allow inspection of books and records.

(c) A plan of termination pursuant to s. 718.117.

"Dispute" does not include any disagreement that primarily involves: title to any unit or common element; the interpretation or enforcement of any warranty; the levy of a fee or assessment, or the collection of an assessment levied against a party; the eviction or other removal of a tenant from a unit; alleged breaches of fiduciary duty by one or more directors; or claims for damages to a unit based upon the alleged failure of the association to maintain the common elements or condominium property.

Section 3. This act shall take effect July 1, 2015.

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Transportation, Tourism, and Economic Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

SENATOR JACK LATVALA
20th District

March 24, 2015

The Honorable Miguel Diaz de la Portilla, Chair
Senate Committee on Judiciary
515 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chairman Diaz de la Portilla:

I respectfully request consideration of Senate Bill 1172/Condominiums by the Senate Committee on Judiciary at your earliest convenience. The bill was referred favorably by the Regulated Industries Committee on March 24.

This bill will curtail the disagreeable practices of bulk buyers of condominiums as they attempt to convert them to apartments and will provide condo owners with equitable relief.

If you have any questions regarding this legislation, please contact me. Thank you in advance for your consideration.

Sincerely,

Jack

Jack Latvala
State Senator
District 20

This is a very important bill for me. Thanks!

Cc: Tom Cibula, Staff Director; Shirley Proctor, Administrative Assistant

REPLY TO:
☐ 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
☐ 408 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5020

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Transportation, Tourism, and Economic Development, *Chair*
Appropriations
Commerce and Tourism
Governmental Oversight and Accountability
Regulated Industries
Rules

SENATOR JACK LATVALA
20th District

April 6, 2015

The Honorable Miguel Diaz del la Portilla, Chair
Senate Judiciary Committee
515 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Diaz de la Portilla:

My bill on Condominium Conversions, Senate Bill 1172, is scheduled to be heard in the Judiciary Committee on Tuesday, April 7 at 4 p.m. at the same time as my bill SB288/Utilities Regulation is scheduled in the Communications, Energy, and Public Utilities Committee. I respectfully request that the House sponsor of the Condominium Conversion bill, Representative Chris Sprowls, be permitted to present the bill before the Judiciary Committee.

Thank you for your consideration.

Sincerely,

Jack Latvala
Senator, District 20

Cc: Tom Cibula, Staff Director; Shirley Proctor, Administrative Assistant

REPLY TO:
☐ 26133 U.S. Highway 19 North, Suite 201, Clearwater, Florida 33763 (727) 793-2797 FAX: (727) 793-2799
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Senate's Website: *www.flsenate.gov*

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee Judiciary

BILL:	SB 7070
INTRODUCER:	Appropriations Committee
SUBJECT:	Mental Health and Substance Abuse
DATE:	April 6, 2015
REVISED:	

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
Brown/Crosier	Kynoch		**AP Submitted as Committee Bill**
Brown	Cibula	JU	**Pre-meeting**

I. Summary:

SB 7070 integrates the Marchman Act, which provides substance abuse intervention, clinical treatment, and recovery support services, into the Florida Mental Health Act, more commonly known as the Baker Act.

Marchman Act and Baker Act

Significant differences between current law and provisions in the bill are as follows:

Current law authorizes persons who are substance-abuse impaired to be held in protective custody for a 72-hour period. The bill extends the 72-hour period an additional 48 hours if a doctor determines that the individual would benefit from detoxification services.

Current law prohibits mentally ill individuals from being detained in a jail setting. The bill authorizes both mentally ill and substance-abuse impaired individuals to be temporarily detained in a jail or other detention facility while awaiting transport to an appropriate facility.

Current law requires individuals to receive an individualized treatment plan within 5 days after admission to a facility. This bill reduces this timeframe to 24 hours.

Current law authorizes minors seeking voluntary admission to a facility to consent to substance abuse treatment themselves, while treatment for mental illness requires the consent of a guardian. The bill requires a guardian and a minor to jointly provide consent, unless the minor is to be admitted to a substance abuse facility. At a treatment facility the minor may consent to treatment for substance abuse impairment upon documentation by a physician that the minor has a substance abuse impairment and that the physician established the ability of the minor to give consent.

The bill also addresses issues that are not addressed in current law. Specifically, the bill requires facilities to report the following to the DCF as soon as is reasonably possible:

- The death of an individual at the facility or that occurs within 72 hours after release;
- An injury sustained, or allegedly sustained by an individual at the facility if it requires medical treatment;
- The unauthorized departure or absence of an individual from a facility under an involuntary placement;
- A natural disaster or crisis situation that jeopardizes individual safety; or
- An allegation of sexual battery on an individual.

Additionally, the role of health care surrogates and proxies is recognized, and the bill provides them with the same ability to advocate as that granted to other representatives of an individual. The bill prohibits certain persons from serving as a representative or a guardian advocate of the individual, including if the person is a professional involved in assessment or treatment of the individual, or is the subject of an injunction in which the individual is the petitioner. Rights of representatives to advocate on behalf of an individual are specified.

Advance Directives

This bill establishes the "Mental Health and Substance Abuse Directives" Act, also known as the Jennifer Act. The purpose of the Jennifer Act is to enable persons at risk of need for future services based on mental illness or substance abuse impairment governed under ch. 394, F.S., to establish directives for care and treatment in advance of becoming incapacitated. The bill grants immunity to providers and facilities who act in good faith in providing treatment in accordance with an advance directive.

Forensic Hospital Diversion Pilot Program

This bill creates the Forensic Hospital Diversion Pilot Program, which replicates the model of the Miami-Dade Forensic Alternative Center into 3 additional counties. In addition to Miami-Dade, the DCF will implement the program in Alachua, Escambia, and Hillsborough Counties. The purpose of the program is to divert incarcerated defendants found mentally incompetent to proceed or not guilty by reason of insanity into a therapeutic setting which offers beds and community outpatient treatment.

II. Present Situation:

Baker Act

In 1971, the Legislature adopted the Florida Mental Health Act, known as the Baker Act.[1] The Act authorized treatment programs for mental, emotional, and behavioral disorders. The Baker Act required programs to include comprehensive health, social, educational, and rehabilitative services to persons requiring intensive short-term and continued treatment to facilitate recovery. Additionally, the Baker Act provides protections and rights to individuals examined or treated for mental illness. Legal procedures are addressed for mental health examination and treatment,

[1] Chapter 71-131, Laws of Fla.; The Baker Act is contained in ch. 394, F.S.

including voluntary admission, involuntary admission, involuntary inpatient treatment, and involuntary outpatient treatment.

Mental illness creates enormous social and economic costs.[2] Unemployment rates for persons having mental disorders are high relative to the overall population.[3] Rates of unemployment for people having a severe mental illness range between 60 percent and 100 percent.[4] Mental illness increases a person's risk of homelessness in America threefold.[5] Approximately 33 percent of the nation's homeless live with a serious mental disorder, such as schizophrenia, for which they are untreated.[6] Often the combination of homelessness and mental illness leads to incarceration, which further decreases a person's chance of receiving proper treatment and leads to future recidivism.[7]

Marchman Act

In 1993, the Legislature adopted the Hal S. Marchman Alcohol and Other Drug Services Act. The Marchman Act provides a comprehensive continuum of accessible and quality substance abuse prevention, intervention, clinical treatment, and recovery support services. Services must be provided in the least restrictive environment to promote long-term recovery. The Marchman Act includes various protections and rights of patients served.

Comparison of the Marchman Act to the Baker Act

While the Baker Act is used to initiate approximately 136,000 involuntary examinations annually, the Marchman Act is used to initiate only an estimated 9,000 involuntary admissions per year.[8] This disparity is likely attributable to two factors:

- The Marchman Act is much more complex and difficult to apply. This leads law enforcement, mental health professionals, and the courts to prefer the Baker Act, even when substance abuse impairment may be the chief presenting problem; and
- The Marchman Act allows facilities to turn clients away for a lack of capacity or lack of payor source, whereas Baker Act receiving facilities must accept any individual brought for involuntary examination.[9]

Individual Bill of Rights

Both the Marchman Act and the Baker Act provide an individual bill of rights.[10] Rights in common include the right to dignity, right to quality of treatment, right to not be refused

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[2] MentalMenace.com, *Mental Illness: The Invisible Menace; Economic Impact,* http://www.mentalmenace.com/economicimpact.php (last visited April 5, 2015).
[3] MentalMenace.com, *Mental Illness: The Invisible Menace: More impacts and facts,* http://www.mentalmenace.com/impactsfacts.php (last visited April 5, 2015).
[4] *Id.*
[5] Family Guidance Center for Behavioral Health Care, *How does Mental Illness Impact Rates of Homelessness?,* (February 4, 2014) http://www.familyguidance.org/how-does-mental-illness-impact-rates-of-homelessness/ .
[6] *Id.*
[7] *Id.*
[8] Proposal to Streamline Baker Act and Marchman Act: Overview, pg. 1 (on file with the Senate Judiciary Committee).
[9] *Id.*.
[10] Section 397.501, F.S., provides "Rights of Individuals" for individuals served through the Marchman Act; s. 394.459, F.S., provides "Rights of Individuals" for individuals served through the Baker Act.

treatment at a state-funded facility due to an inability to pay, right to communicate with others, right to care and custody of personal effects, and the right to petition the court on a writ of habeus corpus. The individual bill of rights also imposes liability for damages on persons who violate individual rights.[11] The Marchman Act bill of rights includes the right to confidentiality of clinical records. The individual is the only person who may consent to disclosure.[12] The Baker Act addresses confidentiality in a separate section of law and permits limited disclosure by the individual, a guardian, or a guardian advocate.[13] The Marchman Act ensures the right to habeus corpus, which means that a petition for release may be filed with the court by an individual involuntarily retained or his or her parent or representative.[14] In addition to the petitioners authorized in the Marchman Act, the Baker Act permits the DCF to file a writ for habeus corpus on behalf of the individual.[15]

Transportation to a Facility

The Marchman Act authorizes an applicant seeking to have a person admitted to a facility, the person's spouse or guardian, a law enforcement officer, or a health officer to transport the individual for an emergency assessment and stabilization.[16]

The Baker Act requires each county to designate a single law enforcement agency to transfer the person in need of services. If the person is in custody based on noncriminal or minor criminal behavior, the law enforcement officer will transport the person to the nearest receiving facility. If, however, the person is arrested for a felony the person must first be processed in the same manner as any other criminal suspect. The law enforcement officer must then transport the person to the nearest facility, unless the facility is unable to provide adequate security.[17]

The Marchman Act allows law enforcement officers, however, to temporarily detain substance-impaired persons in a jail setting. An adult not charged with a crime may be detained for his or her own protection in a municipal or county jail or other appropriate detention facility. Detention in jail is not considered to be an arrest, is temporary, and requires the detention facility to provide if necessary transfer of the detainee to an appropriate licensed service provider with an available bed.[18] However, the Baker Act prohibits the detention in jail of a mentally ill person if he or she has not been charged with a crime.[19]

Voluntary Admission to a Facility

The Marchman Act authorizes persons who wish to enter treatment for substance abuse to apply to a service provider for voluntary admission. A minor is authorized to consent to treatment for

[11] Sections 397.501(10)(a) and 394.459(10), F.S.
[12] Section 397.501(7), F.S.
[13] Section 394.4615(1) and (2), F.S.
[14] Section 397.501(9), F.S.
[15] Section 394.459(8)(a), F.S.
[16] Section 397.6795, F.S.
[17] Section 394.462(1)(f) and (g), F.S.
[18] Section 397.6772(1), F.S.
[19] Section 394.459(1), F.S.

substance abuse.[20] Under the Baker Act, a guardian of a minor must give consent for mental health treatment under a voluntary admission.[21]

When a person is voluntarily admitted to a facility, the emergency contact for the person must be recorded in the individual record.[22] When a person is involuntarily admitted, contact information for the individual's guardian, guardian advocate, or representative, and the individual's attorney must be entered into the individual record.[23] The Marchman Act does not address emergency contacts.

The Baker Act requires an individualized treatment plan to be provided to the individual within 5 days after admission to a facility.[24] The Marchman Act does not address individualized treatment plans.

Involuntary Admission to a Facility

The Marchman Act provides that a person meets the criteria for involuntary admission if good faith reason exists that the person is substance abuse impaired and because of the impairment:

- Has lost the power of self-control with respect to substance abuse; and either
- Has inflicted, threatened to or attempted to inflict self-harm; or
- Is in need of services and due to the impairment, judgment is so impaired that the person is incapable of appreciating the need for services.[25]

A person who meets the criteria for involuntary admission under the Marchman Act may be taken into protective custody by a law enforcement officer.[26] The person may consent to have the law enforcement officer transport the person to his or her home, a hospital, or a licensed detoxification or addictions receiving facility.[27] If the person does not consent, the law enforcement officer may transport the person without using unreasonable force.[28]

A critical 72-hour period applies under both the Marchman and the Baker Act. Under the Marchman Act, a person may only be held in protective custody for a 72-hour period, unless a petition for involuntary assessment or treatment has been timely filed with the court within that timeframe to extend protective custody.[29] The Baker Act provides that a person cannot be held in a receiving facility for involuntary examination for more than 72 hours.[30] Within that 72-hour examination period, or, if the 72 hours ends of a weekend or holiday, no later than the next working day, one of the following must happen:

[20] Section 397.601(1) and (4)(a), F.S.
[21] Section 394.4625(1)(a), F.S.
[22] Section 394.4597(1), F.S.
[23] Section 394.4597(2), F.S.
[24] Section 394.459(2)(e), F.S.
[25] Section 397.675, F.S.
[26] Section 397.677, F.S.
[27] Section 397.6771, F.S.
[28] Section 397.6772(1), F.S.
[29] Section 397.6773(1) and (2), F.S.
[30] Section 394.463(2)(f), F.S.

- The patient must be released, unless he or she is charged with a crime, in which case law enforcement will resume custody;
- The patient must be released into voluntary outpatient treatment;
- The patient must be asked to give consent to be placed as a voluntary patient if placement is recommended; or
- A petition for involuntary placement must be filed in circuit court for outpatient or inpatient treatment.[31]

Under the Marchman Act, if the court grants the petition for involuntary admission, the person may be admitted for a period of 5 days to a facility for involuntary assessment and stabilization.[32] If the facility needs more time, the facility may request a 7-day extension from the court.[33] Based on the involuntary assessment, the facility may retain the person pending a court decision on a petition for involuntary treatment.[34]

Under the Baker Act, the court must hold a hearing on involuntary inpatient or outpatient placement within 5 working days after a petition for involuntary placement is filed.[35] The petitioner must show, by clear and convincing evidence all available less restrictive treatment alternatives are inappropriate and that the individual:

- Is mentally ill and because of the illness has refused voluntary placement for treatment or is unable to determine the need for placement; and
- Is manifestly incapable of surviving alone or with the help of willing and responsible family and friends, and without treatment is likely suffer neglect to such an extent that it poses a real and present threat of substantial harm to his or her well-being or substantial likelihood exists that in the near future he or she will inflict serious bodily harm on himself or herself or another person.[36]

Mental Illness and Substance Abuse

According to the National Alliance on Mental Illness (NAMI), about 50 percent of persons with severe mental health disorders are affected by substance abuse.[37] NAMI also estimates that 29 percent of people diagnosed as mentally ill abuse alcohol or other drugs.[38] When mental health disorders are left untreated, substance abuse likely increases. When substance abuse increases, mental health symptoms often escalate as well or new symptoms are triggered. This could also be due to discontinuation of taking prescribed medications or the contraindications for substance abuse and mental health medications. When taken with other medications, mental health medications can become less effective.[39]

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[31] Section 394.463(2)(i)4., F.S.
[32] Section 397.6811, F.S.
[33] Section 397.6821, F.S.
[34] Section 397.6822, F.S.
[35] Sections 394.4655(6) and 394.467(6), F.S.
[36] Section 394.467(1), F.S.
[37] Donna M. White, OPCI, CACP, *Living with Co-Occurring Mental & Substance Abuse Disorders, available at* http://psychcentral.com/blog/archives/2013/10/02/living-with-co-occuring-mental-substance
[38] *Id.*
[39] *Id.*

Advance Directive for Mental Health or Substance Abuse Treatment

Florida law currently allows an individual to create an advance directive which designates a surrogate to make health care decisions for the individual and provides a process for the execution of the directive.[40] Current law also allows an individual to designate a separate surrogate to consent to mental health treatment for the individual if the individual is determined by a court to be incompetent to consent to treatment.[41] A mental health or substance abuse treatment advance directive is much like a living will for health care.[42] Acute episodes of mental illness temporarily destroy the capacity required to give informed consent and often prevent people from realizing they are sick, causing them to refuse intervention.[43] Even in the midst of acute episodes, many people do not meet commitment criteria because they are not likely to injure themselves or others and are still able to care for their basic needs.[44] If left untreated, acute episodes may spiral out of control before the person meets commitment criteria.[45]

Miami-Dade Forensic Alternative Center

The Miami-Dade Forensic Alternative Center (MDFAC) opened in 2009 as a community-based, forensic commitment program. The MDFAC serves adults:

- Aged 18 years old and older;
- Who have been found by a court to be incompetent to proceed at trial due to serious mental illness or not guilty by reason of insanity for a second or third degree felony; and
- Who do not have a significant history of violence.[46]

The MDFAC provides competency restoration and a continuum of care during commitment and after reentry into the community.[47]

Since the 2011-2012 Fiscal Year, all but two of the persons served in the program were adjudicated incompetent to proceed at trial. The Center currently operates a 16-bed facility at a daily cost of $284.81 per bed.[48]

III. Effect of Proposed Changes:

Marchman Act and Baker Act

This bill adds concepts from the Marchman Act which relate to the commitment of a person having a substance abuse impairment into the Baker Act. As a conforming change, the bill

[40] Section 765.202, F.S.
[41] Section 765.202(5), F.S.
[42] Washington State Hospital Association, *Mental Health Advance Directives* (on file with the Senate Judiciary Committee).
[43] Judy A. Clausen, *Making the Case for a Model Mental Health Advance Directive Statute,* 14 YALE J. HEALTH POL'Y, L. & ETHICS 1, (Winter 2014).
[44] *Id* at 17.
[45] *Id*.
[46] Department of Children and Families (DCF), *2015 Agency Legislative Bill Analysis* (March 4 2015) (on file with the Senate Judiciary Committee).
[47] Budget Subcommittee on Health and Human Services Appropriations, The Florida Senate, *Interim Report 2012-108, The Forensic Mental Health System* (September 2011).
[48] DCF, *supra* note 46, at 2.

repeals all provisions in current law which provide for the voluntary and involuntary civil commitment of a person for substance abuse impairment under the Marchman Act.

Chapter 394, F.S., will now govern the commitment, treatment, and care of persons with mental illness and substance abuse impairment, as the conditions are presented separately or co-occurring.

Service Providers (Sections 2 and 15)

The bill recognizes that treatment may be provided not just by a state or local provider but also by a facility, mental health professional, or other health care provider affiliated with the United States Department of Veterans Affairs or the United States Department of Defense. The V.A. may:

- Initiate and conduct involuntary examinations for treatment;
- Provide voluntary treatment;
- Petition for involuntary inpatient placement; and
- Provide involuntary inpatient placement.

Advanced registered nurse practitioners are included in the list of service providers eligible to serve individuals under ch. 394, F.S.

Individual Bill of Rights (Section 5)

The bill modifies the individual bill of rights.

Right to Dignity

Current law prohibits mentally ill persons taken into custody under the Baker Act from being detained in jail. This bill allows persons detained for either or both substance abuse and mental health treatment to be detained temporarily in a municipal or county jail. If a person is detained for purposes of protective custody and transfer, the detention facility must:

- Notify the nearest appropriate facility within 8 hours;
- Notify the nearest relative of a minor or of an adult, unless the adult requests otherwise; and
- Arrange for transport to the hospital or other receiving facility.

Right to Treatment

This bill clarifies that individuals must be provided the least restrictive appropriate available treatment.

In addition to a physical examination, individuals must be given a mental health evaluation by a psychiatrist, psychologist, or psychiatric nurse, within 24 hours after arrival if the person has not been released or discharged.

Right to Express and Informed Consent

The bill reduces from 5 days after admission to a facility to 24 hours, the time in which an individual treatment plan must be provided in writing to the individual. Service providers are

required to provide information and assist competent and willing individuals complete an advance directive.

The bill also expands the list of people who may be notified of an individual's admission to a facility to include a health care surrogate or proxy. Facilities providing services will be required to review any incidents resulting an injury or alleged injury, allegations of sexual battery, and death, or unauthorized departure of an individual being held for involuntary examination or involuntary placement. Advance directives already in place must be honored, or the service provider must request a transfer of the individual to another facility.

Quality of Treatment

As soon as is reasonably possible, facilities must report to the DCF and the entity that manages the facility:

- The death of an individual which occurs while the person is at the facility or which occurs within 72 hours after release;
- An injury sustained, or allegedly sustained by an individual at the facility if it requires medical treatment, whether the injury is caused by an accident, self-inflicted, assault, abuse, neglect, or a suicide attempt;
- The unauthorized departure or absence of an individual from a facility in which he or she has been held involuntarily;
- A natural disaster or crisis situation that jeopardizes individual safety; or
- An allegation of sexual battery on an individual.

Communication, Abuse Reporting, and Visits

This bill adds to the list of persons authorized immediate access to the individual, unless access would be detrimental, a health care surrogate or proxy.

If access is restricted, the facility must document the reasons in the individual's record. Facility rules on communication must be the least restrictive possible.

Care and Custody of Personal Effects

Copies of an inventory of clothing and personal effects and the actual clothing and personal effects if appropriate, must be provided to the representative of the individual, including a health care surrogate or proxy.

Advance Directives

This bill includes advance directives in the individual bill of rights. A mental health or substance abuse treatment advance directive is a written document in which the principal provides instructions or preferences or appoints a surrogate to make decisions on behalf of the principal regarding mental health or substance abuse treatment, or both. The bill requires service providers to provide information on advance directives to individuals and to help competent and willing individuals complete an advance directive. Service providers must honor the advance directive.

Representatives and Notification in Case of Emergency (Section 6)

Individuals voluntarily admitted to a facility must be asked to identify a person to be notified in case of emergency. If an individual is involuntarily admitted, a health care surrogate or proxy's contact information is required, if appropriate.

The bill prohibits from serving as a representative or guardian advocate:

- A professional providing clinical services to the individual;
- The licensed professional who initiated the involuntary examination of the individual, if initiated by professional certificate;
- An employee, administrator, or board member of the facility providing examination or treatment;
- A person providing any substantial professional services to the individual;
- A creditor of the individual; and
- A person subject to a repeat violence, sexual violence, dating violence, or domestic violence injunction in which the individual is the petitioner.

The bill specifies rights of representatives, including the right to receive certain notices, have immediate access to the individual, and petition on behalf of the individual for a writ of habeus corpus or change of venue.

Clinical Records (Section 9)

The bill maintains the confidentiality of clinical records and adds a health care surrogate or proxy to the list of representatives who have access to the records and who may waive consent to confidentiality. The bill adds as another basis for release of records that a petition for involuntary placement is filed and the state attorney needs access to the records, solely to evaluate the allegations in the petition or to prosecute the petition, not for a criminal investigation or prosecution.

Transportation to a Facility (Section 10)

This bill requires the nearest receiving facility to accept a person who has engaged in either noncriminal behavior of a felony other than a forcible felony.

If the person has been arrested for a forcible felony, the law enforcement officer must first process the person the same as any other person arrested. The nearest receiving facility may not accept the person if the facility does not have adequate security.

A person who meets the criteria for voluntary admission may request transport to a mental health receiving facility, addictions receiving facility, or a detoxification facility.

Voluntary and Involuntary Admissions, Examinations, and Placement (Sections 6, 11, 12, 13, 14 and 16)

Admission and Transfer

To receive treatment, an adult must provide and be competent to provide express and informed consent.

Current law authorizes minors who seek voluntary admission for treatment under the Marchman Act to consent to treatment. Under the Baker Act, a guardian of a minor must provide consent for voluntary admission.

A minor may only be admitted for treatment if the minor's guardian gives express and informed consent along with the minor. A minor may, however, be admitted to an addictions receiving facility or detoxification facility by giving consent without consent of a guardian, if a physician documents in the record that the minor has a substance abuse impairment and that the minor is capable of giving consent. The bill establishes criteria for a clinician to establish consent of a minor. If a minor's consent is not verified, a petition for involuntary inpatient placement must be filed within the court within 1 court working day after arrival or the minor must be released to his or her guardian.

The bill also allows an individual on involuntary status in a facility who has been assessed and certified competent to provide express and informed consent to be transferred to voluntary status immediately. If the individual is on voluntary status and meets the criteria for involuntary placement, he or she must be transferred to a designated receiving facility.

A request for discharge by an individual on voluntary status must be conveyed to a physician, psychologist, or psychiatrist within 12 hours. If the individual meets the criteria for involuntary placement and is transferred to a receiving facility, the facility must file a petition with the court for involuntary placement within 2 court working days. Otherwise, the individual must be discharged.

Involuntary Examination

The bill directs the court to include specific facts in an ex parte order that support its findings that the required criteria for involuntary examination has been met and to designate the most appropriate type of facility for treatment. Any behavior that provides the basis for the order must have occurred within the preceding 7 calendar days. Additionally, specified medical personnel may execute a certificate that finds an individual meets the criteria for involuntary examination, and the certificate must specify the most appropriate facility.

Current law allows a person to be held for involuntary examination for 72 hours. The bill extends the 72-hour period an additional 48 hours if a physician determines, under specific criteria, that the individual has ongoing symptoms of substance intoxication or substance withdrawal and would likely experience significant clinical benefit from detoxification services. One of the following actions must happen within the time period specified:

- The individual will be approved for release by an appropriate professional;
- The individual will be asked to consent to voluntary admission; or
- The receiving facility for involuntary inpatient or outpatient treatment will file a petition in circuit court.

Within 12 hours after a physician documents that an individual's emergency medical condition has stabilized or does not exist, the individual:

- Must be examined by a medical professional, and if found not to meet criteria for involuntary examination, must be released directly from the hospital providing the emergency medical services; or
- Must be transferred to a receiving facility if appropriate medical and mental health treatment is available, with 2-hours' notice provided to the receiving facility.

Crisis Stabilization Units

This bill lifts the cap in current law on the number of beds authorized in a crisis stabilization unit. A crisis stabilization unit provides emergency response regardless of ability to pay to persons are involuntarily placed or who voluntarily seek help in stabilizing themselves. Current law limits the number of beds per facility to 30 beds.

Involuntary Outpatient Placement

An individual in an involuntary outpatient placement proceeding has the right to counsel, appointed by the court within 1 court working day after the petition is filed. The attorney must advocate the individual's expressed desires or must advocate for liberty and if outpatient treatment is ordered, the least restrictive treatment possible. At a hearing on involuntary outpatient placement, the state attorney has access to the individual's clinical records and witnesses in order to determine the sufficiency of the allegations contained in the petition. The court must notify the individual or his or her representative of the right to an independent expert examination.

Involuntary Inpatient Placement

An individual may be retained or involuntarily placed in a mental health receiving facility, an addictions receiving facility, or a detoxification facility, upon recommendation of two psychiatrists or a psychiatrist and a psychologist. If a petition seeks placement for substance abuse impairment only and an addictions receiving facility or a detoxification facility conducts the examination, recommendation may be made by a physician and a substance abuse professional.

The individual has the same right to counsel and level of advocacy as that which apply to individuals facing a petition for involuntary outpatient placement. The court must hold a hearing after a petition is filed within 5 court working days. The individual may waive his or her presence if the court establishes that waiver if knowing, intelligent, and voluntary. The bill clarifies that the state attorney in the case represents the state and not the facility that initiated the petition. The bill grants the state attorney access to the individual's clinical record.

Also, when the petition is for inpatient placement for substance abuse impairment and the individual is examined by an addictions receiving facility or a detoxification facility, a physician may provide the first opinion and a substance abuse qualified professional the second opinion needed to support the petition.

When a hearing is held on a petition to continue involuntary inpatient placement, the Division of Administrative Hearings must inform the individual of the right to an independent examination, provided by the court if the individual is an unable to pay.

Jennifer Act (Sections 20 through 27)

Part IV of ch. 765, F.S. is redesignated from "Absence of Advance Directive" to "Mental Health and Substance Abuse Directives," also known as the Jennifer Act.

A mental health or substance abuse treatment advance directive is a written document in which the principal provides instructions or preferences or appoints a surrogate to make decisions on behalf of the principal regarding mental health or substance abuse treatment, or both.

The Act emphasizes the need to allow individuals with capacity to control decisions relating to his or her own treatment. The Act recognizes that substance abuse and mental illness cause individuals to fluctuate between capacity and incapacity. An individual in a crisis situation may be unable to provide informed consent in the midst of the crisis to prevent the need for involuntary treatment.

An adult who qualifies for advance directives is an individual who has reached majority or an emancipated minor.

A principal is a competent adult who executes a mental health or substance abuse treatment advance directive and on whose behalf treatment decisions are made.

A directive executed under the terms of the Act is presumed valid. However, an inability to honor one or more of the provisions of the advance directive does not invalidate the remaining provisions. The directive may address an individual's:

- Preferences and instructions for mental health or substance abuse treatment;
- Refusal to consent to specific types of mental health or substance abuse treatment;
- Consent to admission to and retention in a facility for mental health or substance abuse treatment for up to 14 days, provided that consent is conveyed through an affirmative statement contained in the directive clearly stating whether the consent is revocable by the individual during a mental health or substance abuse crisis;
- Descriptions of situations which may cause the individual to experience a mental health or substance abuse crisis;
- Suggested alternative responses that may supplement or be in lieu of direct mental health or substance abuse treatment, such as treatment approaches from other providers;
- Appointment of a surrogate to make mental health or substance abuse treatment decisions on the individual's behalf; and
- Nomination of a guardian, limited guardian, or guardian advocate.

The directive may be independent of or combined with a nomination of a guardian or other durable power of attorney.

The bill addresses the execution, effective date, and expiration of a mental health or substance abuse advance directive.

Advance directives must:

- Be in writing;

- Clearly indicate that the individual intends to create a directive;
- Clearly indicate whether the individual intends for the surrogate to have the authority to consent to the individual's voluntary admission to inpatient mental health or substance abuse treatment and whether consent is revocable;
- Be dated and signed by the individual or, if unable to sign, dated and signed at his or her direction;
- Be witnessed by two adults who declare they were present when the individual dated and signed the directive and that the individual did not appear incapacitated or acting under fraud, undue influence, or duress. The surrogate named in the directive cannot witness execution of the directive and at least 1 witness must not be the spouse or blood relative of the individual executing the directive.

The directive is valid upon execution, but all or part may take effect at a later date as designated in the directive. A directive may be revoked in whole or in part or expire under its own terms. But, an individual may revoke an advance directive only if, at the time of execution he or she elected to be able to revoke when incapacitated. A directive that would have otherwise expired but is effective because the individual is incapacitated remains effective until the individual is no longer incapacitated.

An advance directive executed properly in another state is considered valid in this state.

The bill imposes several restrictions on directives. A directive may not create an entitlement to mental health, substance abuse, or medical treatment or supersede a determination of medical necessity. A directive does not obligate a health care provider, professional person, or facility to incur costs associated with requested treatment or to be responsible for the non-treatment or personal care of the individual outside a facility's scope of services. Directives may not replace or supersede wills, testamentary documents, or the provision of intestate succession.

An individual's family, the health care facility, attending physician, or other interested person may seek expedited judicial intervention on a surrogate's decision if a surrogate has acted improperly or abused his or her powers or the individual has sufficient capacity to make his or her own health care decisions.

This bill provides immunity from civil and criminal liability to surrogates, health care facilities, and providers who execute mental health care or substance abuse treatment decisions pursuant to the Jennifer Act, on advance directives. Health care facilities and providers who comply with the Act are also deemed not to have engaged in unprofessional conduct. Immunity from liability applies unless a proponent can show by a preponderance of the evidence that the person or entity did not act in good faith.

Forensic Hospital Diversion Pilot Program (Section 28)

This bill creates the Forensic Hospital Diversion Pilot Program (Program). The purpose of the program is to divert incarcerated defendants who are found mentally incompetent to proceed at trial from state forensic mental health treatment facilities to locked residential treatment facilities, and eventually community outpatient treatment. Goals of treatment are restoration of competency and community reintegration.

Under the bill, the Department of Children and Families (DCF) is required to implement the Program in Alachua, Escambia, Hillsborough, and Miami-Dade counties, in conjunction with the court circuits in those counties. The model for the Program is the Miami-Dade Forensic Alternative Center, which is currently in operation.

In establishing the individual programs, the DCF must consider local needs and available local resources. The bill allows the DCF and the affected judicial circuits to implement these provisions within available resources. Additionally, the Legislature may provide a specific appropriation to support the Program.

Participation in the Program is limited to persons who:

- Are 18 years of age and older;
- Are charged with a second or third degree felony;
- Do not have a significant history of violent criminal offenses;
- Have been adjudicated either incompetent to proceed to trial or not guilty by reason of insanity;
- Meet safety and treatment criteria established by the DCF for placement in the community; and
- Would otherwise be admitted to a state mental health treatment facility.

The bill encourages the Florida Supreme Court, in conjunction with the Task Force on Substance Abuse and Mental Health Issues in the Courts, to develop educational training for judges in the pilot program counties on the community forensic system.

The DCF is authorized to adopt rules to facilitate to facilitate the provisions of the bill relating to the Program. The bill requires the Office of Program Policy Analysis and Government Accountability (OPPAGA) to submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2016. The report must examine the efficiency and cost-effectiveness of the program, including its effect on public safety.

The bill takes effect July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to require counties or municipalities to spend funds or limit their authority to raise revenue or receive state-shared revenues as specified in Article VII, s. 10 of the Florida Constitution.

Although the Forensic Hospital Diversion Pilot Program envisions the availability of local resources as a type of support for the program, the bill does not require local funding.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Fourth Amendment and Due Process

The bill authorizes law enforcement officers to detain in a jail setting a mentally ill person. Detention in jail is approved as a form of protective custody, not because the individual has committed a crime. The bill qualifies that the jail detention is not considered an arrest and that no record of an individual's detention or entry of a crime in the record is permitted.

The Fourth Amendment of the federal constitution prohibits unreasonable search and seizure. Section 12, Article I, of the state constitution embodies the Fourth Amendment and guarantees to all Floridians:

> The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures … .

Although the term "arrest" does not appear in either constitution, the courts consider an arrest as a seizure of a person for purposes of constitutional analysis.[49]

In *Terry v. Ohio*, the U.S. Supreme Court articulated that "whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person."[50] The Court recognized that a law enforcement officer can effect two types of detentions. The first, a temporary detention that has come to be known as a "Terry Stop and Frisk" requires a law enforcement officer to have an articulable suspicion of criminal activity. Still, the detention must be temporary and brief.[51]

Although a law enforcement officer may purport a stop to be a temporary detention, the U.S. Supreme Court has indicated that at some point a stop becomes a de facto arrest.[52] In determining whether a stop evolves into a de facto arrest, the Court will consider not just the amount of time the person is detained, but the purpose of the detention as legitimate.[53] In this case, the Court approved a 20-minute detention of a suspect during which time the

[49] Jonathan M. Purver, *Lack of Probable Cause for Warrantless Arrest*, 44 AM. JUR. PROOF OF FACTS 2d 229 (2015).
[50] *Terry v. Ohio*, 392 So. 2d 1, 16 (1968).
[51] *Id*. at 9 -10.
[52] *United States v. Sharpe*, 470 U.S. 675, 685-686 (1985).
[53] *Id*. at 685-687.

police acted diligently to conclude their investigation of criminal activity, as constituting a temporary detention.[54]

The second type of detention, a warrantless arrest, requires a law enforcement officer to have probable cause that the person has committed a crime. In the absence of probable cause, the U.S. Supreme Court found unconstitutional the actions by a law enforcement officer of transporting a person under the threat of arrest to a police station for the purpose of fingerprinting him.[55]

This bill expressly defines the taking of a mentally ill person into police custody and detaining the person in a jail setting as protective custody, and not as an arrest. Additionally, although the bill requires the officer in charge to notify the nearest appropriate facility within the first 8 hours that the person is detained, the bill does not impose a time limit on the detention. Based on case law, these provisions appear constitutionally suspect. In no circumstance would a court consider the holding of a person in jail for potentially an undefined period of time a temporary detention. Still, even a Terry stop requires some indicia of criminal activity.

Holding mentally ill persons in jail who have not committed a crime leaves them without the whole host of due process protections afforded to persons charged with a crime. These protections include the requirement for law enforcement to issue Miranda warnings, and the rights to arraignment, speedy trial, and appointed counsel during the time that the person remains confined in the jail setting.

Public Providers and Sovereign Immunity

Sovereign immunity originally referred to the English common law concept that the government may not be sued because "the King can do no wrong." Sovereign immunity bars lawsuits against the state or its political subdivisions for the torts of officers, employees, or agents unless the public entity expressly waives immunity.

Article X, s. 13, of the Florida Constitution recognizes sovereign immunity and authorizes the Legislature to provide a waiver of immunity. Section 768.28(1), F.S., provides a broad waiver of sovereign immunity. But by law, liability to pay a claim or judgment is limited to $200,000 per plaintiff or $300,000 per incident.[56]

This bill appears to provide absolute immunity to surrogates, health care facilities, and providers who execute in good faith mental health care or substance abuse treatment decisions pursuant to the law on advance directives. Accordingly, this bill creates an exception to the broad waiver of sovereign immunity under s. 768.28, F.S.

[54] *Id*. at 688.
[55] *Hayes v. Florida*, 470 U.S. 811, 812, 817-818 (1985).
[56] Section 768.28(5), F.S.

Private Providers and Access to Courts

The grant of immunity does not specify application to public providers or both public and private providers.

The Florida Supreme Court in *Kluger v. White* reviewed the constitutionality of a statute which abolished the traditional right of action for property vehicle damage in tort from the law unless a narrow exception applied.[57] In striking down the statute, the court held:

> where a right of action to the courts for redress for a particular injury has been provided by statutory law predating the adoption of the Declaration of Rights of the Constitution of the State of Florida, or where such right has become a part of the common law of the State…the Legislature is without power to abolish such a right without providing a reasonable alternative to protect the rights of the people…unless the Legislature can show an overpowering public necessity…and no alternative of meeting such public necessity can be shown.[58]

If this bill abolishes a cause of action that existed before the Declaration of Rights was adopted in 1968 by extending immunity to a private provider or facility, this bill may create an access to courts issue.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Marchman and Baker Act

SB 7070 has an indeterminate fiscal impact on the Department of Children and Families (DCF). The bill could result in more persons having access to substance abuse treatment by including provisions of the Marchman Act in emergency behavioral health care that providers must deliver under the Baker Act. However, some unknown number of persons with substance abuse disorders may already be receiving emergency behavioral health care under the Baker Act. Some costs of those who receive treatment for substance abuse under the bill may already be reflected in the current expenditures for behavioral health care, but the extent is indeterminate.

[57] *Kluger v. White*, 281 So. 2d 1, 2 (Fla. 1973).
[58] *Id*. at 4.

The bill expands the use of involuntary outpatient care. The state could experience cost savings for behavioral health care if services are diverted from inpatient settings to outpatient settings under the bill.

The Office of the State Courts Administrator (OSCA) indicates that the fiscal impact of the bill is indeterminate due to the unavailability of data needed to quantifiably establish the bill's impact on court and judicial workload. Merging the provisions of the Marchman and Baker Acts addressing voluntary and involuntary intervention may increase judicial workload. More ex-parte orders, appointments for guardian advocates, involuntary placement hearings, and writ of habeus corpus filings may increase workload. The bill authorizes an individual or his or her representative to request an independent expert examination for involuntary outpatient placement, which may also increase expert witness fees for the judicial branch. The addition of the advance directive language may result in fewer filings of guardianship petitions, which may reduce state courts revenues. However, an increase in revenues could result from an increase in the number of petitions for the determination of incompetency.[59]

Forensic Hospital Diversion Pilot Program

This bill replicates the Miami-Dade Forensic Alternative Center Program as a pilot program in 3 other counties.

The program's current contract with the DCF is $1.596 million. Funding this model for the four programs will require $6.38 million. The DCF anticipates that the redirection of $6.38 million from the department's budget for this program could impact or decrease the provision of services to other clients of the department.[60]

Cost savings may be realized, however, based on the success of the program. The program is able to keep individuals whose competency has been restored in the program rather than in jail while awaiting trial. Doing so may shorten the process, as defendants are less likely to decompensate, or lose competency again from the stress and the less-than-optimal treatment provided in a jail setting. Commitment bed and court cost savings are expected through this bill. Competency is restored more quickly through the program, which requires 103 days on average, than at state facilities, which requires 146 days on average.

In the 2011-12 Fiscal Year, the average cost for a secure forensic bed was $333 per day. A bed at the program cost much less, at $229 a day in 2011-12.[61] However, the current cost per bed per day at the program is $285 a day.[62]

[59] Office of the State Courts Administrator, *2015 Judicial Impact Statement* (April 5, 2015).
[60] Email correspondence from John Bryant, Assistant Secretary for Substance Abuse and Mental Health, DCF (April 2, 2015) (on file with the Senate Judiciary Committee).
[61] Budget Subcommittee on Health and Human Services Appropriations, *supra* note 47.
[62] Department of Children and Families (DCF), *2015 Agency Legislative Bill Analysis on SB 1452* (March 4 2015) (on file with the Senate Judiciary Committee).

The bill authorizes, rather than requires the pilot projects to be implemented based on available resources including local resources and resources the bill authorizes the DCF to reallocate from specified forensic programs. The extent to which local resources are available in the designated pilot areas and the amount of funding the DCF can reallocate is unknown.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Section 14 of the bill provides, in instances of involuntary inpatient placement for an individual with mental illness or substance abuse impairment, that the Division of Administrative Hearings (DOAH) must inform the individual or his or her guardian, guardian advocate, health care surrogate or proxy, or representative, of the right to an independent expert examination, and, if the individual cannot afford the examination, the court must provide one. Which court is being referenced is unclear, as the case is being handled by the DOAH.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 39.407, 394.453, 394.455, 394.457, 394.4573, 394.459, 394.4597, 394.4598, 394.4599, 394.4612, 394.4615, 394.462, 394.4625, 394.463, 394.4655, 394.467, 394.4672, 394.875, 394.495, 394.496, 394.499, 394.67, 394.674, 394.9085, 395.0197, 395.1051, 397.311, 397.431, 397.702, 397.94, 402.3057, 409.1757, 409.972, 456.0575, 744.704, 765.101, 765.104, and 790.065.

This bill creates the following sections of the Florida Statutes: 765.4015, 765.402, 765.403, 765.405, 765.406, 765.407, 765.410, 765.411, and 916.185.

This bill transfers and renumbers the following sections of the Florida Statutes: 765.401 and 765.404.

This bill repeals the following sections of the Florida Statutes: 397.601, 397.675, 397.6751, 397.6752, 397.6758, 397.6759, 397.677, 397.6771, 397.6772, 397.6773, 397.6774, 397.6775, 397.679, 397.6791, 397.6793, 397.6795, 397.6797, 397.6798, 397.6799, 397.681, 397.6811, 397.6814, 397.6815, 397.6818, 397.6819, 397.6821, 397.6822, 397.693, 397.695, 397.6951, 397.6955, 397.6957, 397.697, 397.6971, 397.6975, and 397.6977.

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.

112268

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Bean) recommended the following:

Senate Amendment

Delete lines 754 - 769

and insert:

to give such examinations~~,~~ and a mental health or substance abuse evaluation, as appropriate, by a psychiatrist, psychologist, psychiatric nurse, or qualified substance abuse professional, within 24 hours after arrival at such facility if the individual has not been released or discharged pursuant to s. 394.463(2)(h) or s. 394.469. The physical examination and mental health evaluation must be documented in the clinical

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record. The physical and mental health examinations shall include efforts to identify indicators of substance abuse impairment, substance abuse intoxication, and substance abuse withdrawal.

(d) Shall ~~Every patient in a facility shall~~ be afforded the opportunity to participate in activities designed to enhance self-image and the beneficial effects of other treatments, as determined by the facility.

(e) Shall, not more than 5 days after admission to a facility, ~~each patient shall~~ have and receive an individualized treatment plan in

724834

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment

Delete lines 826 - 1007

and insert:

(a) Each individual ~~patient shall receive services, including, for a patient placed~~ under s. 394.4655 shall receive~~, those~~ services that are ~~included in the court order which are suited to his or her needs, and which shall be~~ administered skillfully, safely, and humanely with full respect for the individual's ~~patient's~~ dignity and personal integrity. Each individual ~~patient~~ shall receive such medical, vocational,

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social, educational, substance abuse, and rehabilitative services as his or her condition requires in order to live successfully in the community. In order to achieve this goal, the department shall ~~is directed to~~ coordinate its mental health and substance abuse programs with all other programs of the department and other state agencies.

(b) Facilities shall develop and maintain, in a form that is accessible to and readily understandable by individuals held for examination or admitted for mental health or substance abuse treatment ~~patients~~ and consistent with rules adopted by the department~~, the following~~:

1. Criteria, procedures, and required staff training for the ~~any~~ use of close or elevated levels of supervision, ~~of~~ restraint, seclusion, or isolation, ~~or of~~ emergency treatment orders, and ~~for the use of~~ bodily control and physical management techniques.

2. Procedures for documenting, monitoring, and requiring clinical review of all uses of the procedures described in subparagraph 1. and for documenting and requiring review of any incidents resulting in injury to individuals receiving services ~~patients~~.

3. A system for investigating, tracking, managing, and responding to complaints by individuals ~~persons~~ receiving services or persons ~~individuals~~ acting on their behalf.

(c) Facilities shall have written procedures for reporting events that place individuals receiving services at risk of harm. Such events must be reported to the managing entity in the facility's region and the department as soon as reasonably possible after discovery and include, but are not limited to:

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1. The death, regardless of cause or manner, of an individual examined or treated at a facility that occurs while the individual is at the facility or that occurs within 72 hours after release, if the death is known to the facility administrator.

2. An injury sustained, or allegedly sustained, at a facility, by an individual examined or treated at the facility and caused by an accident, self-inflicted injury, assault, act of abuse, neglect, or suicide attempt, if the injury requires medical treatment by a licensed health care practitioner in an acute care medical facility.

3. The unauthorized departure or absence of an individual from a facility in which he or she has been held for involuntary examination or involuntary placement.

4. A disaster or crisis situation such as a tornado, hurricane, kidnapping, riot, or hostage situation that jeopardizes the health, safety, or welfare of individuals examined or treated in a facility.

5. An allegation of sexual battery upon an individual examined or treated in a facility.

(d) ~~(c)~~ A facility may not use seclusion or restraint for punishment, to compensate for inadequate staffing, or for the convenience of staff. Facilities shall ensure that all staff are made aware of these restrictions ~~on the use of seclusion and restraint~~ and ~~shall make and~~ maintain records that ~~which~~ demonstrate that this information has been conveyed to each ~~individual~~ staff member ~~members~~.

(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

(a) Each individual ~~person receiving services~~ in a facility

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providing mental health services under this part has the right to communicate freely and privately with persons outside the facility unless it is determined that such communication is likely to be harmful to the individual ~~person~~ or others. Each facility shall make available ~~as soon as reasonably possible to persons receiving services~~ a telephone that allows for free local calls and access to a long-distance service to the individual as soon as reasonably possible. A facility is not required to pay the costs of the individual's ~~a patient's~~ long-distance calls. The telephone must ~~shall~~ be readily accessible ~~to the patient~~ and ~~shall be~~ placed so that the individual ~~patient~~ may use it to communicate privately and confidentially. The facility may establish reasonable rules for the use of the ~~this~~ telephone which~~, provided that the rules~~ do not interfere with an individual's ~~a patient's~~ access to a telephone to report abuse pursuant to paragraph (e).

(b) Each individual ~~patient~~ admitted to a facility under ~~the provisions of~~ this part shall be allowed to receive, send, and mail sealed, unopened correspondence; and the individual's ~~no patient's~~ incoming or outgoing correspondence may not ~~shall~~ be opened, delayed, held, or censored by the facility unless there is reason to believe that it contains items or substances that ~~which~~ may be harmful to the individual ~~patient~~ or others, in which case the administrator may direct reasonable examination of such mail and may regulate the disposition of such items or substances.

(c) Each facility shall allow ~~must permit~~ immediate access to an individual ~~any patient~~, subject to the ~~patient's~~ right to deny or withdraw consent at any time~~,~~ by the individual, or by

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the individual's ~~patient's~~ family members, guardian, guardian advocate, health care surrogate or proxy, representative, ~~Florida statewide or local advocacy council,~~ or attorneys ~~attorney~~, unless such access would be detrimental to the individual ~~patient~~. If the ~~a patient's~~ right to communicate or to receive visitors is restricted by the facility, written notice of such restriction and the reasons for the restriction shall be served on the individual and ~~patient,~~ the individual's ~~patient's~~ attorney, ~~and the patient's~~ guardian, guardian advocate, health care surrogate or proxy, or representative; and such restriction, and the reasons for the restriction, must ~~shall~~ be recorded in on the ~~patient's~~ clinical record ~~with the reasons therefor~~. The restriction must ~~of a patient's right to communicate or to receive visitors shall~~ be reviewed at least every 7 days. The right to communicate or receive visitors may ~~shall~~ not be restricted as a means of punishment. This ~~Nothing in this~~ paragraph may not ~~shall~~ be construed to limit the provisions of paragraph (d).

(d) Each facility shall establish reasonable rules, which must be the least restrictive possible, governing visitors, visiting hours, and the use of telephones by individuals ~~patients in the least restrictive possible manner~~. An individual has ~~Patients shall have~~ the right to contact and to receive communication from his or her attorney ~~their attorneys~~ at any reasonable time.

(e) Each individual ~~patient~~ receiving mental health or substance abuse treatment ~~in any facility~~ shall have ready access to a telephone in order to report ~~an~~ alleged abuse. The facility staff shall orally and in writing inform each

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individual ~~patient~~ of the procedure for reporting abuse and shall make every reasonable effort to present the information in a language the individual ~~patient~~ understands. A written copy of that procedure, including the telephone number of the central abuse hotline and reporting forms, must ~~shall~~ be posted in plain view.

(f) The department shall adopt rules providing a procedure for reporting abuse. ~~Facility staff shall be required,~~ As a condition of employment, facility staff shall ~~to~~ become familiar with the requirements and procedures for ~~the~~ reporting ~~of~~ abuse.

(6) CARE AND CUSTODY OF PERSONAL EFFECTS ~~OF PATIENTS~~.—A facility shall respect the rights of an individual ~~A patient's right~~ to the possession of his or her clothing and personal effects ~~shall be respected~~. The facility may take temporary custody of such effects if ~~when~~ required for medical and safety reasons. The ~~A patient's~~ clothing and personal effects shall be inventoried upon their removal into temporary custody. Copies of this inventory shall be given to the individual ~~patient~~ and to his or her ~~the patient's~~ guardian, guardian advocate, health care surrogate or proxy, or representative and shall be recorded in the ~~patient's~~ clinical record. This inventory may be amended upon the request of the individual ~~patient~~ or his or her ~~the patient's~~ guardian, guardian advocate, health care surrogate or proxy, or representative. The inventory and any amendments ~~to it~~ must be witnessed by two members of the facility staff and by the individual ~~patient~~, if he or she is able. All of the ~~a patient's~~ clothing and personal effects held by the facility shall be returned to the individual ~~patient~~ immediately upon his or her ~~the~~ discharge or transfer ~~of the patient~~ from the

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facility, unless such return would be detrimental to the individual ~~patient~~. If personal effects are not returned ~~to the patient~~, the reason must be documented in the clinical record along with the disposition of the clothing and personal effects, which may be given instead to the individual's patient's guardian, guardian advocate, health care surrogate or proxy, or representative. As soon as practicable after an emergency transfer ~~of a patient~~, the individual's ~~patient's~~ clothing and personal effects shall be transferred to the individual's ~~patient's~~ new location, together with a copy of the inventory and any amendments, unless an alternate plan is approved by the individual ~~patient~~, if he or she is able, and by his or her ~~the patient's~~ guardian, guardian advocate, health care surrogate or proxy, or representative.

(7) VOTING IN PUBLIC ELECTIONS.—A patient who is eligible to vote according to the laws of the state has the right to vote in the primary and general elections. The department shall establish rules to enable patients to obtain voter registration forms, applications for absentee ballots, and absentee ballots.

(8) HABEAS CORPUS.—

(a) At any time, and without notice, an individual ~~a person~~ held or admitted for mental health or substance abuse examination or placement in a receiving or treatment facility,

699908

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment

Delete line 1275

and insert:

placement ~~patient~~.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment (with title amendment)

Between lines 1335 and 1336
insert:

Section 8. Subsection (2) and paragraph (a) of subsection (4) of section 381.0056, Florida Statutes, are amended to read:

381.0056 School health services program.—

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

(a) "Emergency health needs" means onsite evaluation, management, and aid for illness or injury pending the student's return to the classroom or release to a parent, guardian,

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designated friend, law enforcement officer, or designated health care provider.

(b) "Entity" or "health care entity" means a unit of local government or a political subdivision of the state; a hospital licensed under chapter 395; a health maintenance organization certified under chapter 641; a health insurer authorized under the Florida Insurance Code; a community health center; a migrant health center; a federally qualified health center; an organization that meets the requirements for nonprofit status under s. 501(c)(3) of the Internal Revenue Code; a private industry or business; or a philanthropic foundation that agrees to participate in a public-private partnership with a county health department, local school district, or school in the delivery of school health services, and agrees to the terms and conditions for the delivery of such services as required by this section and as documented in the local school health services plan.

(c) "Invasive screening" means any screening procedure in which the skin or any body orifice is penetrated.

(d) "Physical examination" means a thorough evaluation of the health status of an individual.

(e) "School health services plan" means the document that describes the services to be provided, the responsibility for provision of the services, the anticipated expenditures to provide the services, and evidence of cooperative planning by local school districts and county health departments.

(f) "Screening" means presumptive identification of unknown or unrecognized diseases or defects by the application of tests that can be given with ease and rapidity to apparently healthy

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persons.

(4)(a) Each county health department shall develop, jointly with the district school board and the local school health advisory committee, a school health services plan.~~; and~~ The plan must include, at a minimum, provisions for all of the following:

1. Health appraisal;

2. Records review;

3. Nurse assessment;

4. Nutrition assessment;

5. A preventive dental program;

6. Vision screening;

7. Hearing screening;

8. Scoliosis screening;

9. Growth and development screening;

10. Health counseling;

11. Referral and followup of suspected or confirmed health problems by the local county health department;

12. Meeting emergency health needs in each school;

13. County health department personnel to assist school personnel in health education curriculum development;

14. Referral of students to appropriate health treatment, in cooperation with the private health community whenever possible;

15. Consultation with a student's parent or guardian regarding the need for health attention by the family physician, dentist, or other specialist when definitive diagnosis or treatment is indicated;

16. Maintenance of records on incidents of health problems, corrective measures taken, and such other information as may be

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needed to plan and evaluate health programs; except, however, that provisions in the plan for maintenance of health records of individual students must be in accordance with s. 1002.22;

17. Health information which will be provided by the school health nurses, when necessary, regarding the placement of students in exceptional student programs and the reevaluation at periodic intervals of students placed in such programs; and

18. Notification to the local nonpublic schools of the school health services program and the opportunity for representatives of the local nonpublic schools to participate in the development of the cooperative health services plan.

19. Immediate notification to a student's parent, guardian, or caregiver if the student is removed from school, school transportation, or a school-sponsored activity and taken to a receiving facility for an involuntary examination pursuant to s. 394.463, including any requirements established under ss. 1002.20(3) and 1002.33(9), as applicable.

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

And the title is amended as follows:

Delete line 44

and insert:

advocates; amending s. 381.0056, F.S.; revising the definition of the term "emergency health needs"; requiring school health services plans to include notification requirements when a student is removed from school, school transportation, or a school-sponsored activity for involuntary examination; amending s. 394.4599, F.S.; adding health

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1356 - 1404

and insert:

~~registered or certified~~ mail with the date, time, and method of notice delivery documented in ~~receipts attached to~~ the ~~patient's~~ clinical record. Hand delivery by a facility employee may be used as an alternative, with the date and time of delivery documented in the clinical record. If notice is given by a state attorney or an attorney for the department, a certificate of service is ~~shall be~~ sufficient to document service.

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(b) A receiving facility shall give prompt notice of the whereabouts of an individual ~~a patient~~ who is being involuntarily held for examination to the individual's guardian, guardian advocate, health care surrogate or proxy, attorney or representative, by telephone or in person within 24 hours after the individual's ~~patient's~~ arrival at the facility~~, unless the patient requests that no notification be made~~. Contact attempts shall be documented in the individual's ~~patient's~~ clinical record and shall begin as soon as reasonably possible after the individual's ~~patient's~~ arrival. ~~Notice that a patient is being admitted as an involuntary patient shall be given to the Florida local advocacy council no later than the next working day after the patient is admitted.~~

(c)1. A receiving facility shall give notice of the whereabouts of a minor who is being involuntarily held for examination pursuant to s. 394.463 to the minor's parent, guardian, caregiver, or guardian advocate, in person or by telephone or other form of electronic communication, immediately after the minor's arrival at the facility. The facility may delay notification for no more than 24 hours after the minor's arrival if the facility has submitted a report to the central abuse hotline, pursuant to s. 39.201, based upon knowledge or suspicion of abuse, abandonment, or neglect and if the facility deems a delay in notification to be in the minor's best interest.

2. The receiving facility shall attempt to notify the minor's parent, guardian, caregiver, or guardian advocate until the receiving facility receives confirmation from the parent, guardian, caregiver, or guardian advocate, verbally, by

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telephone or other form of electronic communication, or by recorded message, that notification has been received. Attempts to notify the parent, guardian, caregiver, or guardian advocate must be repeated at least once every hour during the first 12 hours after the minor's arrival and once every 24 hours thereafter and must continue until such confirmation is received, unless the minor is released at the end of the 72-hour examination period, or until a petition for involuntary placement is filed with the court pursuant to s. 394.463(2)(i). The receiving facility may seek assistance from a law enforcement agency to notify the minor's parent, guardian, caregiver, or guardian advocate if the facility has not received within the first 24 hours after the minor's arrival a confirmation by the parent, guardian, caregiver, or guardian advocate that notification has been received. The receiving facility must document notification attempts in the minor's clinical record.

(d) ~~(c)~~ The written notice of the filing of the petition for involuntary placement of an individual being held must contain the following:

1. Notice that the petition has been filed with the circuit court in the county in which the individual ~~patient~~ is hospitalized and the address of such court.

2. Notice that the office of the public defender has been appointed to represent the individual ~~patient~~ in the proceeding, if the individual ~~patient~~ is not otherwise represented by counsel.

3. The date, time, and place of the hearing and the name of each examining expert and every other person expected to testify

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in support of continued detention.

4. Notice that the individual ~~patient~~, the individual's ~~patient's~~ guardian, guardian advocate, health care surrogate or proxy, or representative, or the administrator may apply for a change of venue for the convenience of the parties or witnesses or because of the condition of the individual ~~patient~~.

5. Notice that the individual ~~patient~~ is entitled to an independent expert examination and, if the individual ~~patient~~ cannot afford such an examination, that the court will provide for one.

(e) ~~(d)~~ A treatment facility shall provide notice of an individual's ~~a patient's~~ involuntary admission on the next regular working day after the individual's ~~patient's~~ arrival at the facility.

(f) ~~(e)~~ When an individual ~~a patient~~ is to be transferred from one facility to another, notice shall be given by the facility where the individual ~~patient~~ is located before ~~prior to~~ the transfer.

Section 9. For the purpose of incorporating the amendment made by this act to section 394.4599, Florida Statutes, in references thereto, paragraph (a) of subsection (2) and paragraph (d) of subsection (7) of section 394.4655, Florida Statutes, are reenacted to read:

394.4655 Involuntary outpatient placement.—

(2) INVOLUNTARY OUTPATIENT PLACEMENT.—

(a)1. A patient who is being recommended for involuntary outpatient placement by the administrator of the receiving facility where the patient has been examined may be retained by the facility after adherence to the notice procedures provided

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in s. 394.4599. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary outpatient placement are met. However, in a county having a population of fewer than 50,000, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental and nervous disorders or by a psychiatric nurse. Any second opinion authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation must be entered on an involuntary outpatient placement certificate that authorizes the receiving facility to retain the patient pending completion of a hearing. The certificate shall be made a part of the patient's clinical record.

2. If the patient has been stabilized and no longer meets the criteria for involuntary examination pursuant to s. 394.463(1), the patient must be released from the receiving facility while awaiting the hearing for involuntary outpatient placement. Before filing a petition for involuntary outpatient treatment, the administrator of a receiving facility or a designated department representative must identify the service provider that will have primary responsibility for service provision under an order for involuntary outpatient placement, unless the person is otherwise participating in outpatient psychiatric treatment and is not in need of public financing for

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that treatment, in which case the individual, if eligible, may be ordered to involuntary treatment pursuant to the existing psychiatric treatment relationship.

3. The service provider shall prepare a written proposed treatment plan in consultation with the patient or the patient's guardian advocate, if appointed, for the court's consideration for inclusion in the involuntary outpatient placement order. The service provider shall also provide a copy of the proposed treatment plan to the patient and the administrator of the receiving facility. The treatment plan must specify the nature and extent of the patient's mental illness, address the reduction of symptoms that necessitate involuntary outpatient placement, and include measurable goals and objectives for the services and treatment that are provided to treat the person's mental illness and assist the person in living and functioning in the community or to prevent a relapse or deterioration. Service providers may select and supervise other individuals to implement specific aspects of the treatment plan. The services in the treatment plan must be deemed clinically appropriate by a physician, clinical psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker who consults with, or is employed or contracted by, the service provider. The service provider must certify to the court in the proposed treatment plan whether sufficient services for improvement and stabilization are currently available and whether the service provider agrees to provide those services. If the service provider certifies that the services in the proposed treatment plan are not available, the petitioner may not file the petition.

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(7) PROCEDURE FOR CONTINUED INVOLUNTARY OUTPATIENT PLACEMENT.—

(d) Notice of the hearing shall be provided as set forth in s. 394.4599. The patient and the patient's attorney may agree to a period of continued outpatient placement without a court hearing.

Section 10. For the purpose of incorporating the amendment made by this act to section 394.4599, Florida Statutes, in references thereto, subsection (2) and paragraph (b) of subsection (7) of section 394.467, Florida Statutes, are reenacted to read:

394.467 Involuntary inpatient placement.—

(2) ADMISSION TO A TREATMENT FACILITY.—A patient may be retained by a receiving facility or involuntarily placed in a treatment facility upon the recommendation of the administrator of the receiving facility where the patient has been examined and after adherence to the notice and hearing procedures provided in s. 394.4599. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a clinical psychologist or another psychiatrist, both of whom have personally examined the patient within the preceding 72 hours, that the criteria for involuntary inpatient placement are met. However, in a county that has a population of fewer than 50,000, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental and nervous disorders or by a psychiatric nurse. Any second opinion authorized in this subsection may be conducted

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through a face-to-face examination, in person or by electronic means. Such recommendation shall be entered on an involuntary inpatient placement certificate that authorizes the receiving facility to retain the patient pending transfer to a treatment facility or completion of a hearing.

(7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT PLACEMENT.—

(b) If the patient continues to meet the criteria for involuntary inpatient placement, the administrator shall, prior to the expiration of the period during which the treatment facility is authorized to retain the patient, file a petition requesting authorization for continued involuntary inpatient placement. The request shall be accompanied by a statement from the patient's physician or clinical psychologist justifying the request, a brief description of the patient's treatment during the time he or she was involuntarily placed, and an individualized plan of continued treatment. Notice of the hearing shall be provided as set forth in s. 394.4599. If at the hearing the administrative law judge finds that attendance at the hearing is not consistent with the best interests of the patient, the administrative law judge may waive the presence of the patient from all or any portion of the hearing, unless the patient, through counsel, objects to the waiver of presence. The testimony in the hearing must be under oath, and the proceedings must be recorded.

Section 11. For the purpose of incorporating the amendment made by this act to section 394.4599, Florida Statutes, in a reference thereto, subsection (1) of section 394.4685, Florida Statutes, is reenacted to read:

394.4685 Transfer of patients among facilities.—

(1) TRANSFER BETWEEN PUBLIC FACILITIES.—

(a) A patient who has been admitted to a public receiving facility, or the family member, guardian, or guardian advocate of such patient, may request the transfer of the patient to another public receiving facility. A patient who has been admitted to a public treatment facility, or the family member, guardian, or guardian advocate of such patient, may request the transfer of the patient to another public treatment facility. Depending on the medical treatment or mental health treatment needs of the patient and the availability of appropriate facility resources, the patient may be transferred at the discretion of the department. If the department approves the transfer of an involuntary patient, notice according to the provisions of s. 394.4599 shall be given prior to the transfer by the transferring facility. The department shall respond to the request for transfer within 2 working days after receipt of the request by the facility administrator.

(b) When required by the medical treatment or mental health treatment needs of the patient or the efficient utilization of a public receiving or public treatment facility, a patient may be transferred from one receiving facility to another, or one treatment facility to another, at the department’s discretion, or, with the express and informed consent of the patient or the patient’s guardian or guardian advocate, to a facility in another state. Notice according to the provisions of s. 394.4599 shall be given prior to the transfer by the transferring facility. If prior notice is not possible, notice of the transfer shall be provided as soon as practicable after the

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transfer.

Section 12. For the purpose of incorporating the amendment made by this act to section 394.4599, Florida Statutes, in a reference thereto, subsection (2) of section 394.469, Florida Statutes, is reenacted to read:

394.469 Discharge of involuntary patients.—

(2) NOTICE.—Notice of discharge or transfer of a patient shall be given as provided in s. 394.4599.

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

And the title is amended as follows:

Delete line 47

and insert:

admitted to a facility; requiring a receiving facility to give notice immediately of the whereabouts of a minor who is being held involuntarily to the minor's parent, guardian, caregiver, or guardian advocate; providing circumstances when notification may be delayed; requiring the receiving facility to make continuous attempts to notify; authorizing the receiving facility to seek assistant from law enforcement under certain circumstances; requiring the receiving facility to document notification attempts in the minor's clinical record; reenacting ss. 394.4655(2)(a) and (7)(d), 394.467(2) and (7)(b), 394.4685(1), and 394.469(2), F.S., to incorporate the amendment made to s. 394.4599, F.S., in references thereto; amending s. 394.4615, F.S.;

675926

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Bean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 1439 - 1461

and insert:

(c) A petition for involuntary inpatient placement is filed and the records are needed by the state attorney to evaluate the allegations set forth in the petition or to prosecute the petition. However, the state attorney may not use clinical records obtained under this part for the purpose of criminal investigation or prosecution, or for any other purpose not authorized by this part.

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(d) ~~(c)~~ The court orders such release. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the individual ~~person~~ to whom such information pertains.

(e) ~~(d)~~ The individual ~~patient~~ is committed to, or is to be returned to, the Department of Corrections ~~from the Department of Children and Families,~~ and the Department of Corrections requests such records. These records shall be furnished without charge to the Department of Corrections.

(3) Information from the clinical record may be released in the following circumstances:

(a) When a patient has declared an intention to harm other persons. When such declaration has been made, the administrator may authorize the release of sufficient information to provide adequate warning to law enforcement agencies and to the person threatened with harm by the

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

And the title is amended as follows:

Between lines 49 and 50

insert:

providing for the release of information from the clinical record to law enforcement agencies under certain circumstances;

817182

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Bean) recommended the following:

Senate Amendment

Delete lines 1934 - 1963

and insert:

mental health or substance abuse treatment if it is determined that such treatment is necessary for the safety of the individual ~~patient~~ or others. ~~The patient may not be released by the receiving facility or its contractor without the documented approval of a psychiatrist, a clinical psychologist, or, if the receiving facility is a hospital, the release may also be approved by an attending emergency department physician with~~

817182

~~experience in the diagnosis and treatment of mental and nervous disorders and after completion of an involuntary examination pursuant to this subsection. However, a patient may not be held in a receiving facility for involuntary examination longer than 72 hours.~~

(g) An individual may not be held for involuntary examination for more than 72 hours from the time of the individual's arrival at the facility, except that this period may be extended by 48 hours if a physician documents in the clinical record that the individual has ongoing symptoms of substance intoxication or substance withdrawal and the individual would likely experience significant clinical benefit from detoxification services. This determination must be made based on a face-to-face examination conducted by the physician no less than 48 hours and not more than 72 hours after the individual's arrival at the facility. Based on the individual's needs, one of the following actions must be taken within the involuntary examination period:

1. The individual shall be released after consultation with the admitting professional and the approval of a psychiatrist, psychiatric nurse, psychologist, or substance abuse professional. However, if the examination is conducted in a hospital, an emergency department physician may approve the release. If the examination is conducted in an addictions receiving facility or detoxification facility, a physician or substance abuse professional may approve release. The

503436

LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Judiciary (Bean) recommended the following:

Senate Amendment (with title amendment)

Between lines 3191 and 3192
insert:

Section 29. Paragraph (l) is added to subsection (3) of section 1002.20, Florida Statutes, to read:

1002.20 K-12 student and parent rights.—Parents of public school students must receive accurate and timely information regarding their child's academic progress and must be informed of ways they can help their child to succeed in school. K-12 students and their parents are afforded numerous statutory

503436

rights including, but not limited to, the following:

(3) HEALTH ISSUES.—

(l) Notification of involuntary examinations.—The public school principal or the principal's designee shall immediately notify the parent of a student who is removed from school, school transportation, or a school-sponsored activity and taken to a receiving facility for an involuntary examination pursuant to s. 394.463. The principal or the principal's designee may delay notification for no more than 24 hours after the student is removed from school if the principal or designee deems the delay to be in the student's best interest and if a report has been submitted to the central abuse hotline, pursuant to s. 39.201, based upon knowledge or suspicion of abuse, abandonment, or neglect. Each district school board shall develop a policy and procedures for notification under this paragraph.

Section 30. Paragraph (q) is added to subsection (9) of section 1002.33, Florida Statutes, to read:

1002.33 Charter schools.—

(9) CHARTER SCHOOL REQUIREMENTS.—

(q) The charter school principal or the principal's designee shall immediately notify the parent of a student who is removed from school, school transportation, or a school-sponsored activity and taken to a receiving facility for an involuntary examination pursuant to s. 394.463. The principal or the principal's designee may delay notification for no more than 24 hours after the student is removed from school if the principal or designee deems the delay to be in the student's best interest and if a report has been submitted to the central abuse hotline, pursuant to s. 39.201, based upon knowledge or

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suspicion of abuse, abandonment, or neglect. Each charter school governing board shall develop a policy and procedures for notification under this paragraph.

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

And the title is amended as follows:

Delete line 161

and insert:

the Legislature; amending ss. 1002.20 and 1002.33, F.S.; requiring public school and charter school principals or their designees to provide notice of the whereabouts of a student removed from school, school transportation, or a school-sponsored activity for involuntary examination; providing conditions for delay in notification; requiring district school boards and charter school governing boards to develop notification policies and procedures; amending ss. 39.407, 394.4612,

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LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Bean) recommended the following:

Senate Amendment (with title amendment)

Between lines 3191 and 3192
insert:

Section 29. Section 944.805, Florida Statutes, is created to read:

944.805 Nonviolent offender reentry program.—

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

(a) "Department" means the Department of Corrections.

(b) "Nonviolent offender" means an offender whose primary offense is a felony of the third degree, who is not the subject

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of a domestic violence injunction currently in force, and who has never been convicted of:

1. A forcible felony as defined in s. 776.08, Florida Statutes;

2. An offense specified in s. 775.082(9)(a)1.r., Florida Statutes, regardless of prior incarceration or release;

3. An offense described in chapter 847, Florida Statutes;

4. An offense under chapter 827, Florida Statutes;

5. Any offense specified in s. 784.07, s. 784.074, s. 784.075, s. 784.076, s. 784.08, s. 784.083, or s. 784.085, Florida Statutes;

6. Any offense involving the possession or use of a firearm;

7. A capital felony or a felony of the first or second degree;

8. Any offense that requires a person to register as a sexual offender pursuant to s. 943.0435, Florida Statutes.

(2)(a) The department shall develop and administer a reentry program for nonviolent offenders. The reentry program must include prison-based substance abuse treatment, general education development and adult basic education courses, vocational training, training in decisionmaking and personal development, and other rehabilitation programs.

(b) The reentry program is intended to divert nonviolent offenders from long periods of incarceration when a reduced period of incarceration supplemented by participation in intensive substance abuse treatment and rehabilitative programming could produce the same deterrent effect, protect the public, rehabilitate the offender, and reduce recidivism.

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(c) The nonviolent offender must serve at least 6 months in the reentry program. The offender may not count any portion of his or her sentence served before placement in the reentry program as progress toward program completion.

(d) A reentry program may be operated in a secure area in or adjacent to a correctional institution.

(3) The department shall screen offenders committed to the department for eligibility to participate in the reentry program using the criteria in this section. To be eligible, an offender must be a nonviolent offender, must have served at least one-half of his or her original sentence, and must have been identified as needing substance abuse treatment.

(4) In addition, the department must consider the following factors when selecting participants for the reentry program:

(a) The offender’s history of disciplinary reports.

(b) The offender’s criminal history.

(c) The severity of the offender’s addiction.

(d) The offender’s history of criminal behavior related to substance abuse.

(e) Whether the offender has participated or requested to participate in any general educational development certificate program or other educational, technical, work, vocational, or self-rehabilitation program.

(f) The results of any risk assessment of the offender.

(g) The outcome of all past participation of the offender in substance abuse treatment programs.

(h) The possible rehabilitative benefits that substance abuse treatment, educational programming, vocational training, and other rehabilitative programming might have on the offender.

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(i) The likelihood that the offender's participation in the program will produce the same deterrent effect, protect the public, save taxpayer dollars, and prevent or delay recidivism to an equal or greater extent than completion of the sentence previously imposed.

(5)(a) If an offender volunteers to participate in the reentry program, meets the eligibility criteria, and is selected by the department based on the considerations in subsection (4) and if space is available in the reentry program, the department may request the sentencing court to approve the offender's participation in the reentry program. The request must be made in writing, must include a brief summation of the department's evaluation under subsection (4), and must identify the documents or other information upon which the evaluation is based. The request and all accompanying documents may be delivered to the sentencing court electronically.

(b)1. The department shall notify the state attorney that the offender is being considered for placement in the reentry program. The notice must include a copy of all documents provided with the request to the court. The notice and all accompanying documents may be delivered to the state attorney electronically and may take the form of a copy of an electronic delivery made to the sentencing court.

2. The notice must also state that the state attorney may notify the sentencing court in writing of any objection he or she may have to placement of the nonviolent offender in the reentry program. Such notification must be made within 15 days after receipt of the notice by the state attorney from the department. Regardless of whether an objection is raised, the

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state attorney may provide the sentencing court with any information supplemental or contrary to the information provided by the department which may assist the court in its determination.

(c) In determining whether to approve a nonviolent offender for participation in the reentry program, the sentencing court may consider any facts that the court considers relevant, including, but not limited to, the criteria listed in subsection (4); the original sentencing report and any evidence admitted in a previous sentencing proceeding; the offender's record of arrests without conviction for crimes; any other evidence of allegations of unlawful conduct or the use of violence by the offender; the offender's family ties, length of residence in the community, employment history, and mental condition; the likelihood that participation in the program will produce the same deterrent effect, rehabilitate the offender, and prevent or delay recidivism to an equal or greater extent than completion of the sentence previously imposed; and the likelihood that the offender will engage again in criminal conduct.

(d) The sentencing court shall notify the department in writing of the court's decision to approve or disapprove the requested placement of the nonviolent offender no later than 30 days after the court receives the department's request to place the offender in the reentry program. If the court approves the placement, the notification must list the factors upon which the court relied in making its determination.

(6) After the nonviolent offender is admitted to the reentry program, he or she shall undergo a complete substance abuse assessment to determine his or her substance abuse

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treatment needs. The offender shall also receive an educational assessment, which must be accomplished using the Test of Adult Basic Education or any other testing instrument approved by the Department of Education. Each offender who has not obtained a high school diploma shall be enrolled in an adult education program designed to aid the offender in improving his or her academic skills and earning a high school diploma. Additional assessments of the offender's vocational skills and future career education shall be provided to the offender as needed. A periodic reevaluation shall be made to assess the progress of each offender.

(7)(a) If a nonviolent offender in the reentry program becomes unmanageable, the department may revoke the offender's gain-time and place the offender in disciplinary confinement in accordance with department rule. Except as provided in paragraph (b), the offender shall be readmitted to the reentry program after completing the ordered discipline. Any period during which the offender cannot participate in the reentry program must be excluded from the specified time requirements in the reentry program.

(b) The department may terminate an offender from the reentry program if:

1. The offender commits or threatens to commit a violent act;

2. The department determines that the offender cannot participate in the reentry program because of the offender's medical condition;

3. The offender's sentence is modified or expires;

4. The department reassigns the offender's classification

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status; or

5. The department determines that removing the offender from the reentry program is in the best interest of the offender or the security of the reentry program facility.

(8)(a) The department shall submit a report to the sentencing court at least 30 days before the nonviolent offender is scheduled to complete the reentry program. The report must describe the offender's performance in the reentry program and certify whether the performance is satisfactory. The court may schedule a hearing to consider any modification to the imposed sentence. Notwithstanding the eligibility criteria contained in s. 948.20, if the offender's performance is satisfactory to the department and the court, the court shall issue an order modifying the sentence imposed and placing the offender on drug offender probation, as described in s. 948.20(2), subject to the department's certification of the offender's successful completion of the remainder of the reentry program. The term of drug offender probation must not be less than the remaining time the offender would have served in prison had he or she not participated in the program. A condition of drug offender probation may include electronic monitoring or placement in a community residential or nonresidential licensed substance abuse treatment facility under the jurisdiction of the department or the Department of Children and Families or any public or private entity providing such services. The order must include findings that the offender's performance is satisfactory, that the requirements for resentencing under this section are satisfied, and that public safety will not be compromised. If the nonviolent offender violates the conditions of drug offender

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probation, the court may revoke probation and impose any sentence that it might have originally imposed. An offender may not be released from the custody of the department under this section except pursuant to a judicial order modifying his or her sentence.

(b) If an offender released pursuant to paragraph (a) intends to reside in a county that has established a postadjudicatory drug court program as described in s. 397.334, the sentencing court may require the offender to successfully complete the postadjudicatory drug court program as a condition of drug offender probation. The original sentencing court shall relinquish jurisdiction of the offender's case to the postadjudicatory drug court program until the offender is no longer active in the program, the case is returned to the sentencing court due to the offender's termination from the program for failure to comply with the terms of the program, or the offender's sentence is completed. An offender who is transferred to a postadjudicatory drug court program shall comply with all conditions and orders of the program.

(9) The department shall implement the reentry program to the fullest extent feasible within available resources.

(10) The department may enter into performance-based contracts with qualified individuals, agencies, or corporations for the provision of any or all of the services for the reentry program. However, an offender may not be released from the custody of the department under this section except pursuant to a judicial order modifying a sentence.

(11) A nonviolent offender in the reentry program is subject to rules of conduct established by the department and

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may have sanctions imposed, including loss of privileges, restrictions, disciplinary confinement, alteration of release plans, or other program modifications in keeping with the nature and gravity of the program violation. Administrative or protective confinement, as necessary, may be imposed.

(12) This section does not create or confer any right to any offender to placement in the reentry program or any right to placement or early release under supervision of any type. An inmate does not have a cause of action under this section against the department, a court, or the state attorney related to the reentry program.

(13) The department may establish a system of incentives within the reentry program which the department may use to promote participation in rehabilitative programs and the orderly operation of institutions and facilities.

(14) The department shall develop a system for tracking recidivism, including, but not limited to, rearrests and recommitment of nonviolent offenders who successfully complete the reentry program, and shall report the recidivism rate in the annual report required under this section.

(15) The department shall submit an annual report to the Governor, the President of the Senate, and the Speaker of the House of Representatives detailing the extent of implementation of the reentry program and the number of participants who are selected by the department, the number of participants who are approved by the court, and the number of participants who successfully complete the program. The report must include a reasonable estimate or description of the additional public costs incurred and any public funds saved with respect to each

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participant, a brief description of each sentence modification, and a brief description of the subsequent criminal history, if any, of each participant following any modification of sentence under this section. The report must also include future goals and any recommendations that the department has for future legislative action.

(16) The department shall adopt rules as necessary to administer the reentry program.

(17) Nothing in this section is severable from the remaining provisions of this section. If any subsection of this section is determined by any state or federal court to be not fully enforceable, this section shall stand repealed in its entirety.

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

And the title is amended as follows:

Delete line 161

and insert:

the Legislature; creating s. 944.805, F.S.; defining the terms "department" and "nonviolent offender"; requiring the Department of Corrections to develop and administer a reentry program for nonviolent offenders which is intended to divert nonviolent offenders from long periods of incarceration; requiring that the program include intensive substance abuse treatment and rehabilitative programming; providing for the minimum length of service in the program; providing that any portion of a sentence before placement in the program does not count as progress toward program

completion; identifying permissible locations for the operation of a reentry program; specifying eligibility criteria for a nonviolent offender's participation in the reentry program; requiring the department to screen and select eligible offenders for the program based on specified considerations; requiring the department to notify the nonviolent offender's sentencing court to obtain approval before the nonviolent offender is placed in the reentry program; requiring the department to notify the state attorney; authorizing the state attorney to file objections to placing the offender in the reentry program within a specified period; authorizing the sentencing court to consider certain factors when deciding whether to approve an offender for placement in a reentry program; requiring the sentencing court to notify the department of the court's decision to approve or disapprove the requested placement within a specified period; requiring the nonviolent offender to undergo an educational assessment and a complete substance abuse assessment if admitted into the reentry program; requiring the offender to be enrolled in an adult education program in specified circumstances; requiring that assessments of vocational skills and future career education be provided to the offender; requiring that certain reevaluation be made periodically; providing that the nonviolent offender is subject to the disciplinary rules of the department; specifying the reasons for which the

offender may be terminated from the reentry program; requiring that the department submit a report to the sentencing court at least 30 days before the nonviolent offender is scheduled to complete the reentry program; specifying the issues to be addressed in the report; authorizing a court to schedule a hearing to consider any modification to an imposed sentence; requiring the sentencing court to issue an order modifying the sentence imposed and placing the nonviolent offender on drug offender probation if the nonviolent offender's performance is satisfactory; authorizing the court to revoke probation and impose the original sentence in specified circumstances; authorizing the court to require the offender to complete a postadjudicatory drug court program in specified circumstances; directing the department to implement the reentry program using available resources; authorizing the department to enter into contracts with qualified individuals, agencies, or corporations for services for the reentry program; requiring offenders to abide by department conduct rules; authorizing the department to impose administrative or protective confinement as necessary; providing that the section does not create a right to placement in the reentry program or any right to placement or early release under supervision of any type; providing that the section does not create a cause of action related to the program; authorizing the department to establish a system of incentives

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within the reentry program which the department may use to promote participation in rehabilitative programs and the orderly operation of institutions and facilities; requiring the department to develop a system for tracking recidivism, including, but not limited to, rearrests and recommitment of nonviolent offenders who successfully complete the reentry program, and to report on recidivism in an annual report; requiring the department to submit an annual report to the Governor and Legislature detailing the extent of implementation of the reentry program, specifying requirements for the report; requiring the department to adopt rules; providing that specified provisions are not severable; amending ss. 39.407, 394.4612,

LEGISLATIVE ACTION

Senate . House

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The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 3146 - 3148

and insert:

Diversion Pilot Program in Alachua, Broward, Escambia, Hillsborough, and Miami-Dade Counties, in conjunction with the Eighth Judicial Circuit, the Seventeenth Judicial Circuit, the First Judicial Circuit, the Thirteenth Judicial

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

And the title is amended as follows:

Delete line 154

and insert:

Diversion Pilot Program in five specified judicial

By the Committee on Appropriations

576-02889-15 20157070__

A bill to be entitled

An act relating to mental health and substance abuse; amending s. 394.453, F.S.; adding substance abuse impairment to a list of disorders for which the Legislature intends to develop treatment programs; providing that dignity and human rights are guaranteed to all individuals who are admitted to substance abuse facilities; amending s. 394.455, F.S.; defining and redefining terms; amending s. 394.457, F.S.; adding substance abuse services as a program focus for which the Department of Children and Families is responsible; removing the department's responsibility for personnel standards; amending s. 394.4573, F.S.; redefining terms; adding substance abuse care as an element of the continuity of care management system that the department must establish; removing duties and measures of performance of the department regarding a continuity of care management system; amending s. 394.459, F.S.; extending a right to dignity to all individuals held for examination or admitted for mental health or substance abuse treatment; providing procedural requirements that must be followed to detain without consent an individual who has a mental illness or substance abuse impairment but who has not been charged with a criminal offense; providing that individuals held for examination or admitted for treatment at a facility have a right to certain evaluation and treatment procedures; removing provisions regarding express and informed consent for

576-02889-15 20157070__

medical procedures requiring the use of a general anesthetic or electroconvulsive treatment; requiring facilities to have written procedures for reporting events that place individuals receiving services at risk of harm; requiring service providers to provide information concerning advance directives to individuals receiving services; amending s. 394.4597, F.S.; specifying certain persons who are prohibited from being selected as an individual's representative; providing certain rights for an individual's representative; amending s. 394.4598, F.S.; specifying certain persons who are prohibited from being appointed as an individual's guardian advocate; providing guidelines for decisions of guardian advocates; amending s. 394.4599, F.S.; adding health care surrogate or proxy to those individuals who have responsibilities to act on behalf of an individual admitted to a facility; amending s. 394.4615, F.S.; adding a condition under which the clinical record of an individual must be released to the state attorney; amending s. 394.462, F.S.; providing that a person in custody for a felony other than a forcible felony shall be transported to the nearest receiving facility for examination; providing that a law enforcement officer may transport an individual meeting the criteria for voluntary admission to a mental health receiving facility, addictions receiving facility, or detoxification facility at the individual's request; amending s. 394.4625, F.S.; providing criteria for the

examination and treatment of an individual admitted to a facility on voluntary status; providing criteria for the release or discharge of an individual on voluntary status; providing that an individual on voluntary status who is released or discharged and is currently charged with a crime shall be returned to the custody of a law enforcement officer; providing procedures for transferring an individual to voluntary status and transferring an individual to involuntary status; amending s. 394.463, F.S.; providing for the involuntary examination of a person for a substance abuse impairment; providing for the transportation of an individual for an involuntary examination; providing that a certificate for an involuntary examination must contain certain information; providing criteria and procedures for the release of an individual held for involuntary examination from receiving or treatment facilities; amending s. 394.4655, F.S.; adding substance abuse impairment as a condition to which criteria for involuntary outpatient placement apply; providing guidelines for an attorney representing an individual subject to proceedings for involuntary outpatient placement; providing guidelines for the state attorney in prosecuting a petition for involuntary placement; requiring the court to consider certain information when determining whether to appoint a guardian advocate for the individual; requiring the court to inform the individual and his or her representatives of the individual's right to an

independent expert examination with regard to proceedings for involuntary outpatient placement; amending s. 394.467, F.S.; adding substance abuse impairment as a condition to which criteria for involuntary inpatient placement apply; adding addictions receiving facilities and detoxification facilities as identified receiving facilities; providing for first and second medical opinions in proceedings for placement for treatment of substance abuse impairment; providing guidelines for attorney representation of an individual subject to proceedings for involuntary inpatient placement; providing guidelines for the state attorney in prosecuting a petition for involuntary placement; setting standards for the court to accept a waiver of the individual's rights; requiring the court to consider certain testimony regarding the individual's prior history in proceedings; requiring the Division of Administrative Hearings to inform the individual and his or her representatives of the right to an independent expert examination; amending s. 394.4672, F.S.; providing authority of facilities of the United States Department of Veterans Affairs to conduct certain examinations and provide certain treatments; amending s. 394.875, F.S.; removing a limitation on the amount of beds in crisis stabilization units; transferring and renumbering s. 765.401, F.S.; transferring and renumbering s. 765.404, F.S.; providing a directive to the Division of Law Revision and Information; creating

s. 765.4015, F.S.; providing a short title; creating s. 765.402, F.S.; providing legislative findings; creating s. 765.403, F.S.; defining terms; creating s. 765.405, F.S.; authorizing an adult with capacity to execute a mental health or substance abuse treatment advance directive; providing a presumption of validity if certain requirements are met; specifying provisions that an advance directive may include; creating s. 765.406, F.S.; providing for execution of the mental health or substance abuse treatment advance directive; establishing requirements for a valid mental health or substance abuse treatment advance directive; providing that a mental health or substance abuse treatment advance directive is valid upon execution even if a part of the advance directive takes effect at a later date; allowing a mental health or substance abuse treatment advance directive to be revoked, in whole or in part, or to expire under its own terms; specifying that a mental health or substance abuse treatment advance directive does not or may not serve specified purposes; creating s. 765.407, F.S.; providing circumstances under which a mental health or substance abuse treatment advance directive may be revoked; providing circumstances under which a principal may waive specific directive provisions without revoking the advance directive; creating s. 765.410, F.S.; prohibiting criminal prosecution of a health care facility, provider, or surrogate who acts pursuant to a mental health or substance abuse treatment decision;

creating s. 765.411, F.S.; providing for recognition of a mental health and substance abuse treatment advance directive executed in another state if it complies with the laws of this state; creating s. 916.185, F.S.; providing legislative findings and intent; defining terms; creating the Forensic Hospital Diversion Pilot Program; requiring the Department of Children and Families to implement a Forensic Hospital Diversion Pilot Program in four specified judicial circuits; providing eligibility criteria for participation in the pilot program; providing legislative intent concerning the training of judges; authorizing the department to adopt rules; directing the Office of Program Policy Analysis and Government Accountability to submit a report to the Governor and the Legislature; amending ss. 39.407, 394.4612, 394.495, 394.496, 394.499, 394.67, 394.674, 394.9085, 395.0197, 395.1051, 397.311, 397.431, 397.702, 397.94, 402.3057, 409.1757, 409.972, 456.0575, 744.704, 765.101, 765.104 and 790.065, F.S.; conforming cross-references; repealing ss. 397.601, 397.675, 397.6751, 397.6752, 397.6758, 397.6759, 397.677, 397.6771, 397.6772, 397.6773, 397.6774, 397.6775, 397.679, 397.6791, 397.6793, 397.6795, 397.6797, 397.6798, 397.6799, 397.681, 397.6811, 397.6814, 397.6815, 397.6818, 397,6819, 397. 6821, 397.6822, 397.693, 397.695, 397.6951, 397.6955, 397.6957, 397.697, 397.6971, 397.6975, and 397.6977, F.S.; providing an effective date.

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

Section 1. Section 394.453, Florida Statutes, is amended to read:

394.453 Legislative intent.—It is the intent of the Legislature to authorize and direct the Department of Children and Families to evaluate, research, plan, and recommend to the Governor and the Legislature programs designed to reduce the occurrence, severity, duration, and disabling aspects of mental, emotional, and behavioral disorders, and substance abuse impairment. It is the intent of the Legislature that treatment programs for such disorders shall include, but not be limited to, comprehensive health, social, educational, and rehabilitative services for individuals ~~to persons~~ requiring intensive short-term and continued treatment in order to encourage them to assume responsibility for their treatment and recovery. It is intended that such individuals ~~persons~~ be provided with emergency service and temporary detention for evaluation if ~~when~~ required; that they be admitted to treatment facilities if ~~on a voluntary basis when~~ extended or continuing care is needed and unavailable in the community; that involuntary placement be provided only if ~~when~~ expert evaluation determines that it is necessary; that any involuntary treatment or examination be accomplished in a setting that ~~which~~ is clinically appropriate and most likely to facilitate the individual's ~~person's~~ return to the community as soon as possible; and that ~~individual~~ dignity and human rights be guaranteed to all individuals ~~persons~~ who are admitted to mental

health and substance abuse treatment facilities or who are being held under s. 394.463. It is the further intent of the Legislature that the least restrictive means of intervention be employed based on the individual's ~~individual~~ needs ~~of each person,~~ within the scope of available services. It is the policy of this state that the use of restraint and seclusion ~~on clients~~ is justified only as an emergency safety measure to be used in response to imminent danger to the individual ~~client~~ or others. It is, therefore, the intent of the Legislature to achieve an ongoing reduction in the use of restraint and seclusion in programs and facilities serving individuals ~~persons~~ with mental illness or who have a substance abuse impairment.

Section 2. Section 394.455, Florida Statutes, is reordered and amended to read:

394.455 Definitions.—As used in this part, unless the context clearly requires otherwise, the term:

(1) "Addictions receiving facility" means a secure, acute care facility that, at a minimum, provides detoxification and stabilization services; is operated 24 hours per day, 7 days per week; and is designated by the department to serve individuals found to be substance abuse impaired as defined in subsection (44) who qualify for services under this section.

(2) ~~(1)~~ "Administrator" means the chief administrative officer of a receiving or treatment facility or his or her designee.

(3) "Adult" means an individual who is 18 years of age or older, or who has had the disability of nonage removed pursuant to s. 743.01 or s. 743.015.

(4) "Advanced registered nurse practitioner" means any

person licensed in this state to practice professional nursing who is certified in advanced or specialized nursing practice under s. 464.012.

(36)~~(2)~~ "~~Clinical~~ Psychologist" means a psychologist as defined in s. 490.003(7) ~~with 3 years of postdoctoral experience in the practice of clinical psychology, inclusive of the experience required for licensure~~, or a psychologist employed by a facility operated by the United States Department of Veterans Affairs that qualifies as a receiving or treatment facility under this part.

(5)~~(3)~~ "Clinical record" means all parts of the record required to be maintained and includes all medical records, progress notes, charts, and admission and discharge data, and all other information recorded by ~~a~~ facility staff which pertains to an individual's ~~the patient's~~ hospitalization or treatment.

(6)~~(4)~~ "Clinical social worker" means a person licensed as a clinical social worker under s. 491.005 or s. 491.006 or a person employed as a clinical social worker by a facility operated by the United States Department of Veterans Affairs or the United States Department of Defense under chapter 491.

(7)~~(5)~~ "Community facility" means a ~~any~~ community service provider contracting with the department to furnish substance abuse or mental health services under part IV of this chapter.

(8)~~(6)~~ "Community mental health center or clinic" means a publicly funded, not-for-profit center that ~~which~~ contracts with the department for the provision of inpatient, outpatient, day treatment, or emergency services.

(9)~~(7)~~ "Court," unless otherwise specified, means the

circuit court.

(10)~~(8)~~ "Department" means the Department of Children and Families.

(11) "Detoxification facility" means a facility licensed to provide detoxification services under chapter 397.

(12) "Electronic means" means a form of telecommunication that requires all parties to maintain visual as well as audio communication.

(13)~~(9)~~ "Express and informed consent" means consent voluntarily given in writing, by a competent individual ~~person~~, after sufficient explanation and disclosure of the subject matter involved to enable the individual ~~person~~ to make a knowing and willful decision without any element of force, fraud, deceit, duress, or other form of constraint or coercion.

(14)~~(10)~~ "Facility" means any hospital, community facility, public or private facility, or receiving or treatment facility providing for the evaluation, diagnosis, care, treatment, training, or hospitalization of individuals ~~persons~~ who appear to have ~~a mental illness~~ or who have been diagnosed as having a mental illness or substance abuse impairment. The term ~~"Facility"~~ does not include a ~~any~~ program or entity licensed under ~~pursuant to~~ chapter 400 or chapter 429.

(15) "Governmental facility" means a facility owned, operated, or administered by the Department of Corrections or the United States Department of Veterans Affairs.

(16)~~(11)~~ "Guardian" means the natural guardian of a minor, or a person appointed by a court to act on behalf of a ward's person if the ward is a minor or has been adjudicated incapacitated.

(17) ~~(12)~~ "Guardian advocate" means a person appointed by a court to make decisions regarding mental health or substance abuse treatment on behalf of an individual ~~a patient~~ who has been found incompetent to consent to treatment pursuant to this part. ~~The guardian advocate may be granted specific additional powers by written order of the court, as provided in this part.~~

(18) ~~(13)~~ "Hospital" means a hospital ~~facility as defined in s. 395.002 and~~ licensed under chapter 395 and part II of chapter 408.

(19) ~~(14)~~ "Incapacitated" means that an individual ~~a person~~ has been adjudicated incapacitated pursuant to part V of chapter 744 and a guardian of the person has been appointed.

(20) ~~(15)~~ "Incompetent to consent to treatment" means that an individual's ~~a person's~~ judgment is so affected by ~~his or her~~ mental illness, substance abuse impairment, or any medical or organic cause, that he or she ~~the person~~ lacks the capacity to make a well-reasoned, willful, and knowing decision concerning his or her medical, ~~or~~ mental health, or substance abuse treatment.

(21) "Involuntary examination" means an examination performed under s. 394.463 to determine whether an individual qualifies for involuntary outpatient placement under s. 394.4655 or involuntary inpatient placement under s. 394.467.

(22) "Involuntary placement" means involuntary outpatient placement pursuant to s. 394.4655 or involuntary inpatient placement in a receiving or treatment facility pursuant to s. 394.467.

(23) ~~(16)~~ "Law enforcement officer" means a law enforcement officer as defined in s. 943.10.

(24) "Marriage and family therapist" means a person licensed to practice marriage and family therapy under s. 491.005 or s. 491.006 or a person employed as a marriage and family therapist by a facility operated by the United States Department of Veterans Affairs or the United States Department of Defense.

(25) "Mental health counselor" means a person licensed to practice mental health counseling under s. 491.005 or s. 491.006 or a person employed as a mental health counselor by a facility operated by the United States Department of Veterans Affairs or the United States Department of Defense.

(26) ~~(17)~~ "Mental health overlay program" means a mobile service that ~~which~~ provides an independent examination for voluntary admission ~~admissions~~ and a range of supplemental onsite services to an individual who has ~~persons with~~ a mental illness in a residential setting such as a nursing home, assisted living facility, adult family-care home, or nonresidential setting such as an adult day care center. Independent examinations provided ~~pursuant to this part~~ through a mental health overlay program must ~~only~~ be provided only under contract with the department ~~for this service~~ or must be attached to a public receiving facility that is also a community mental health center.

(28) ~~(18)~~ "Mental illness" means an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with the individual's ~~person's~~ ability to meet the ordinary demands of living. For the purposes of this part, the term does not include a developmental

disability as defined in chapter 393, intoxication, brain injury, dementia, or conditions manifested only by antisocial behavior or substance abuse impairment.

(29) "Minor" means an individual who is 17 years of age or younger and who has not had the disabilities of nonage removed pursuant to s. 743.01 or s. 743.015.

(30) ~~(19)~~ "Mobile crisis response service" means a nonresidential crisis service ~~attached to a public receiving facility and~~ available 24 hours a day, 7 days a week, ~~through~~ which provides immediate intensive assessments and interventions, including screening for admission into a mental health receiving facility, addictions receiving facility, or a detoxification facility, ~~take place~~ for the purpose of identifying appropriate treatment services.

~~(20) "Patient" means any person who is held or accepted for mental health treatment.~~

(31) ~~(21)~~ "Physician" means a medical practitioner licensed under chapter 458 or chapter 459 ~~who has experience in the diagnosis and treatment of mental and nervous disorders~~ or a physician employed by a facility operated by the United States Department of Veterans Affairs or the United States Department of Defense ~~which qualifies as a receiving or treatment facility under this part~~.

(32) "Physician assistant" means a person licensed under chapter 458 or chapter 459 who has experience in the diagnosis and treatment of mental disorders or a person employed as a physician assistant by a facility operated by the United States Department of Veterans Affairs or the United States Department of Defense.

(33) ~~(22)~~ "Private facility" means any hospital or facility operated by a for-profit or not-for-profit corporation or association that provides mental health or substance abuse services and is not a public facility.

(34) ~~(23)~~ "Psychiatric nurse" means a registered nurse licensed under part I of chapter 464 who has a master's degree or a doctorate in psychiatric nursing and 2 years of post-master's clinical experience under the supervision of a physician or a person employed as a psychiatric nurse by a facility operated by the United States Department of Veterans Affairs or the United States Department of Defense.

(35) ~~(24)~~ "Psychiatrist" means a medical practitioner licensed under chapter 458 or chapter 459 ~~who has primarily diagnosed and treated mental and nervous disorders~~ for at least ~~a period of not less than~~ 3 years, inclusive of psychiatric residency, or a person employed as a psychiatrist by a facility operated by the United States Department of Veterans Affairs or the United States Department of Defense.

(37) ~~(25)~~ "Public facility" means any facility that has contracted with the department to provide mental health or substance abuse services to all individuals ~~persons~~, regardless of ~~their~~ ability to pay, and is receiving state funds for such purpose.

(27) ~~(26)~~ "Mental health receiving facility" means any public or private facility designated by the department to receive and hold individuals on involuntary status ~~involuntary patients under emergency conditions or~~ for psychiatric evaluation and to provide ~~short term~~ treatment. The term does not include a county jail.

(38)~~(27)~~ "Representative" means a person selected pursuant to s. 394.4597(2) ~~to receive notice of proceedings during the time a patient is held in or admitted to a receiving or treatment facility~~.

(39)~~(28)(a)~~ "Restraint" means a physical device, method, or drug used to control behavior.

(a) A physical restraint is any manual method or physical or mechanical device, material, or equipment attached or adjacent to an ~~the~~ individual's body so that he or she cannot easily remove the restraint and which restricts freedom of movement or normal access to one's body.

(b) A drug used as a restraint is a medication used to control an individual's ~~the person's~~ behavior or to restrict his or her freedom of movement and is not part of the standard treatment regimen for an individual having ~~of a person with~~ a diagnosed mental illness ~~who is a client of the department~~. Physically holding an individual ~~a person~~ during a procedure to forcibly administer psychotropic medication is a physical restraint.

(c) Restraint does not include physical devices, such as orthopedically prescribed appliances, surgical dressings and bandages, supportive body bands, or other physical holding ~~when~~ necessary for routine physical examinations and tests; ~~or~~ for purposes of orthopedic, surgical, or other similar medical treatment; ~~when used~~ to provide support for the achievement of functional body position or proper balance; or ~~when used~~ to protect an individual ~~a person~~ from falling out of bed.

(40) "School psychologist" has the same meaning as in s. 490.003.

(41)~~(29)~~ "Seclusion" means the physical segregation ~~of a person in any fashion~~ or involuntary isolation of an individual ~~a person~~ in a room or area from which the individual ~~person~~ is prevented from leaving. The prevention may be by physical barrier or by a staff member who is acting in a manner, or who is physically situated, so as to prevent the individual ~~person~~ from leaving the room or area. For purposes of this chapter, the term does not mean isolation due to an individual's ~~a person's~~ medical condition or symptoms.

(42)~~(30)~~ "Secretary" means the Secretary of Children and Families.

(43) "Service provider" means a mental health receiving facility, any facility licensed under chapter 397, a treatment facility, an entity under contract with the department to provide mental health or substance abuse services, a community mental health center or clinic, a psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician, a psychiatrist, an advanced registered nurse practitioner, or a psychiatric nurse.

(44) "Substance abuse impairment" means a condition involving the use of alcoholic beverages or any psychoactive or mood-altering substance in such a manner as to induce mental, emotional, or physical problems and cause socially dysfunctional behavior.

(45) "Substance abuse qualified professional" has the same meaning as in s. 397.311(26).

(46)~~(31)~~ "Transfer evaluation" means the process, as approved by the ~~appropriate district office of the~~ department, in which an individual ~~whereby a person who is being considered~~

~~for placement in a state treatment facility~~ is ~~first~~ evaluated for appropriateness of admission to a treatment ~~the~~ facility. The transfer evaluation shall be conducted by the department, by a ~~community-based~~ public receiving facility, or by another service provider as authorized by the department or by a community mental health center or clinic ~~if the public receiving facility is not a community mental health center or clinic~~.

(47)~~(32)~~ "Treatment facility" means a ~~any~~ state-owned, state-operated, or state-supported hospital, center, or clinic designated by the department for extended treatment and hospitalization of individuals who have a mental illness, beyond that provided ~~for~~ by a receiving facility or a~~, of persons who have a mental illness, including facilities of the United States Government, and any~~ private facility designated by the department when rendering such services ~~to a person~~ pursuant to ~~the provisions of~~ this part. Patients treated in facilities of the United States Government shall be solely those whose care is the responsibility of the United States Department of Veterans Affairs.

~~(33) "Service provider" means any public or private receiving facility, an entity under contract with the Department of Children and Families to provide mental health services, a clinical psychologist, a clinical social worker, a marriage and family therapist, a mental health counselor, a physician, a psychiatric nurse as defined in subsection (23), or a community mental health center or clinic as defined in this part.~~

~~(34) "Involuntary examination" means an examination performed under s. 394.463 to determine if an individual qualifies for involuntary inpatient treatment under s.~~

~~394.467(1) or involuntary outpatient treatment under s. 394.4655(1).~~

~~(35) "Involuntary placement" means either involuntary outpatient treatment pursuant to s. 394.4655 or involuntary inpatient treatment pursuant to s. 394.467.~~

~~(36) "Marriage and family therapist" means a person licensed as a marriage and family therapist under chapter 491.~~

~~(37) "Mental health counselor" means a person licensed as a mental health counselor under chapter 491.~~

~~(38) "Electronic means" means a form of telecommunication that requires all parties to maintain visual as well as audio communication.~~

Section 3. Section 394.457, Florida Statutes, is amended to read:

394.457 Operation and administration.—

(1) ADMINISTRATION.—The Department of Children and Families is designated the "Mental Health Authority" of Florida. The department and the Agency for Health Care Administration shall exercise executive and administrative supervision over all ~~mental health~~ facilities, programs, and services.

(2) RESPONSIBILITIES OF THE DEPARTMENT.—The department is responsible for:

(a) The planning, evaluation, and implementation of a complete and comprehensive statewide program of mental health and substance abuse, including community services, receiving and treatment facilities, child services, research, and training as authorized and approved by the Legislature, based on the annual program budget of the department. The department is also responsible for the coordination of efforts with other

departments and divisions of the state government, county and municipal governments, and private agencies concerned with and providing mental health and substance abuse services. It is responsible for establishing standards, providing technical assistance, and supervising ~~exercising supervision of~~ mental health and substance abuse programs of, and the treatment of individuals ~~patients~~ at, community facilities, other facilities serving individuals ~~for persons~~ who have a mental illness or substance abuse impairment, and any agency or facility providing services under ~~to patients pursuant to~~ this part.

(b) The publication and distribution of an information handbook to facilitate understanding of this part, the policies and procedures involved in the implementation of this part, and the responsibilities of the various providers of services under this part. It shall stimulate research by public and private agencies, institutions of higher learning, and hospitals in the interest of the elimination and amelioration of mental illness.

(3) POWER TO CONTRACT.—The department may contract to provide, and be provided with, services and facilities in order to carry out its responsibilities under this part with the following agencies: public and private hospitals; receiving and treatment facilities; clinics; laboratories; departments, divisions, and other units of state government; the state colleges and universities; the community colleges; private colleges and universities; counties, municipalities, and any other governmental unit, including facilities of the United States Government; and any other public or private entity which provides or needs facilities or services. Baker Act funds for community inpatient, crisis stabilization, short-term

residential treatment, and screening services must be allocated to each county pursuant to the department's funding allocation methodology. Notwithstanding s. 287.057(3)(e), contracts for community-based Baker Act services for inpatient, crisis stabilization, short-term residential treatment, and screening provided under this part, other than those with other units of government, to be provided for the department must be awarded using competitive sealed bids if the county commission of the county receiving the services makes a request to the department's district office by January 15 of the contracting year. The district may not enter into a competitively bid contract under this provision if such action will result in increases of state or local expenditures for Baker Act services within the district. Contracts for these Baker Act services using competitive sealed bids are effective for 3 years. The department shall adopt rules establishing minimum standards for such contracted services and facilities and shall make periodic audits and inspections to assure that the contracted services are provided and meet the standards of the department.

(4) APPLICATION FOR AND ACCEPTANCE OF GIFTS AND GRANTS.—The department may apply for and accept any funds, grants, gifts, or services made available to it by any agency or department of the Federal Government or any other public or private agency or person ~~individual~~ in aid of mental health and substance abuse programs. All such moneys must ~~shall~~ be deposited in the State Treasury and ~~shall be~~ disbursed as provided by law.

(5) RULES.—The department shall adopt rules:

(a) Establishing ~~The department shall adopt rules establishing~~ forms and procedures relating to the rights and

privileges of individuals being examined or treated at ~~patients seeking mental health treatment from~~ facilities under this part.

(b) ~~The department shall adopt rules~~ Necessary for the implementation and administration of ~~the provisions of~~ this part.~~, and~~ A program subject to ~~the provisions of~~ this part may ~~shall~~ not ~~be permitted to~~ operate unless rules designed to ensure the protection of the health, safety, and welfare of the individuals examined and ~~patients~~ treated under ~~through~~ such program have been adopted. Such rules ~~adopted under this subsection~~ must include provisions governing the use of restraint and seclusion which are consistent with recognized best practices and professional judgment; prohibit inherently dangerous restraint or seclusion procedures; establish limitations on the use and duration of restraint and seclusion; establish measures to ensure the safety of program participants and staff during an incident of restraint or seclusion; establish procedures for staff to follow before, during, and after incidents of restraint or seclusion; establish professional qualifications ~~of~~ and training for staff who may order or be engaged in the use of restraint or seclusion; and establish mandatory reporting, data collection, and data dissemination procedures and requirements. Such rules ~~adopted under this subsection~~ must require that each instance of the use of restraint or seclusion be documented in the clinical record of the individual who has been restrained or secluded ~~patient~~.

(c) Establishing ~~The department shall adopt rules establishing~~ minimum standards for services provided by a mental health overlay program or a mobile crisis response service.

~~(6) PERSONNEL.—~~

~~(a) The department shall, by rule, establish minimum standards of education and experience for professional and technical personnel employed in mental health programs, including members of a mobile crisis response service.~~

~~(b) The department shall design and distribute appropriate materials for the orientation and training of persons actively engaged in implementing the provisions of this part relating to the involuntary examination and placement of persons who are believed to have a mental illness.~~

(6)~~(7)~~ PAYMENT FOR CARE OF PATIENTS.—Fees and fee collections for patients in state-owned, state-operated, or state-supported treatment facilities shall be according to s. 402.33.

Section 4. Section 394.4573, Florida Statutes, is amended to read:

394.4573 Continuity of care management system; measures of performance; reports.—

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

(a) "Case management" means those activities aimed at assessing ~~client~~ needs, planning services, linking the service system ~~to a client~~, coordinating the various system components, monitoring service delivery, and evaluating the effect of service delivery.

(b) "Case manager" means a person ~~an individual~~ who works with clients~~,~~ and their families and significant others~~,~~ to provide case management.

(c) "Client manager" means an employee of the department who is assigned to specific provider agencies and geographic areas to ensure that the full range of needed services is

available to clients.

~~(d) "Continuity of care management system" means a system that assures, within available resources, that clients have access to the full array of services within the mental health services delivery system.~~

(2) The department shall ensure the establishment of ~~is directed to implement~~ a continuity of care management system for the provision of mental health and substance abuse care in keeping with s. 394.9082.~~, through the provision of client and case management, including clients referred from state treatment facilities to community mental health facilities. Such system shall include a network of client managers and case managers throughout the state designed to:~~

~~(a) Reduce the possibility of a client's admission or readmission to a state treatment facility.~~

~~(b) Provide for the creation or designation of an agency in each county to provide single intake services for each person seeking mental health services. Such agency shall provide information and referral services necessary to ensure that clients receive the most appropriate and least restrictive form of care, based on the individual needs of the person seeking treatment. Such agency shall have a single telephone number, operating 24 hours per day, 7 days per week, where practicable, at a central location, where each client will have a central record.~~

~~(c) Advocate on behalf of the client to ensure that all appropriate services are afforded to the client in a timely and dignified manner.~~

~~(d) Require that any public receiving facility initiating a~~

~~patient transfer to a licensed hospital for acute care mental health services not accessible through the public receiving facility shall notify the hospital of such transfer and send all records relating to the emergency psychiatric or medical condition.~~

~~(3) The department is directed to develop and include in contracts with service providers measures of performance with regard to goals and objectives as specified in the state plan. Such measures shall use, to the extent practical, existing data collection methods and reports and shall not require, as a result of this subsection, additional reports on the part of service providers. The department shall plan monitoring visits of community mental health facilities with other state, federal, and local governmental and private agencies charged with monitoring such facilities.~~

Section 5. Subsections (1) through (6) and (8) of section 394.459, Florida Statutes, are amended, present subsection (12) of that section is redesignated as subsection (13), and a new subsection (12) is added to that section, to read:

394.459 Rights of individuals receiving treatment and services ~~patients~~.—

(1) RIGHT TO ~~INDIVIDUAL~~ DIGNITY.—It is the policy of this state that the ~~individual~~ dignity of all individuals held for examination or admitted for mental health or substance abuse treatment ~~the patient shall~~ be respected at all times and upon all occasions, including ~~any occasion~~ when the individual ~~patient~~ is taken into custody, held, or transported. Procedures, facilities, vehicles, and restraining devices used ~~utilized~~ for criminals or those accused of a crime may ~~shall~~ not be used in

connection with individuals ~~persons~~ who have a mental illness or substance abuse impairment, except for the protection of that individual ~~the patient~~ or others. An individual ~~Persons~~ who has ~~have~~ a mental illness or substance abuse impairment but who has ~~are~~ not been charged with a criminal offense may be detained without his or her consent, subject to the limitations specified in paragraph (b). If it has been determined that a hospital, an addictions receiving facility, or a licensed detoxification facility is the most appropriate placement for the individual, the detaining officer shall: ~~shall not be detained or incarcerated in the jails of this state.~~

(a) Without using unreasonable force, take the individual, if necessary, against his or her will, to a hospital or a licensed detoxification or addictions receiving facility.

(b) In the case of an adult, detain the individual for his or her own protection in a municipal or county jail or other appropriate detention facility. Such detention may not be considered an arrest for any purpose, and an entry or other record may not be made to indicate that the individual has been detained or charged with any crime. The officer in charge of the detention facility must notify the nearest appropriate facility within the first 8 hours after detention that the individual has been detained. It is the duty of the detention facility to arrange, as necessary, for transportation of the individual to the appropriate facility.

The detaining officer shall notify the nearest relative of a minor who has been taken into protective custody and shall notify the nearest relative of an adult who is in such custody,

unless the adult requests that notification not be given. An individual ~~A person~~ who is receiving treatment for mental illness or substance abuse may ~~shall~~ not be deprived of his or her ~~any~~ constitutional rights. However, if such individual ~~a person~~ is adjudicated incapacitated, his or her rights may be limited to the same extent that the rights of any incapacitated person are limited by law.

(2) RIGHT TO TREATMENT.—An individual held for examination or admitted for mental illness or substance abuse treatment:

(a) May ~~A person shall~~ not be denied treatment for mental illness or substance abuse impairment, and services may ~~shall~~ not be delayed at a mental health receiving facility, addictions receiving facility, detoxification facility, or treatment facility because of inability to pay. However, every reasonable effort to collect appropriate reimbursement for the cost of providing mental health or substance abuse services from individuals ~~to persons~~ able to pay for services, including insurance or ~~third-party~~ payments by third-party payers, shall be made by facilities providing services under ~~pursuant to~~ this part.

(b) Shall be provided ~~It is further the policy of the state that~~ the least restrictive appropriate available treatment, which must be ~~utilized~~ based on the individual's ~~individual~~ needs and best interests ~~of the patient~~ and consistent with the optimum improvement of the individual's ~~patient's~~ condition.

(c) Shall ~~Each person who remains at a receiving or treatment facility for more than 12 hours shall~~ be given a physical examination by a health practitioner authorized by law to give such examinations, and a mental health evaluation by a

psychiatrist, psychologist, or psychiatric nurse, within 24 hours after arrival at such facility if the individual has not been released or discharged pursuant to s. 394.463(2)(h) or s. 394.469. The physical examination and mental health evaluation must be documented in the clinical record. The physical and mental health examinations shall include efforts to identify indicators of substance abuse impairment, substance abuse intoxication, and substance abuse withdrawal.

(d) Shall ~~Every patient in a facility shall~~ be afforded the opportunity to participate in activities designed to enhance self-image and the beneficial effects of other treatments, as determined by the facility.

(e) Shall, within 24 hours of admission to a facility, ~~Not more than 5 days after admission to a facility, each patient shall~~ have and receive an individualized treatment plan in writing, which the individual ~~patient~~ has had an opportunity to assist in preparing and to review before ~~prior to its~~ implementation. The plan must ~~shall~~ include a space for the individual's ~~patient's~~ comments and signature.

(3) RIGHT TO EXPRESS AND INFORMED ~~PATIENT~~ CONSENT.—

(a) ~~(a)~~1. Each individual ~~patient~~ entering treatment shall be asked to give express and informed consent for admission or treatment.

1. If the individual ~~patient~~ has been adjudicated incapacitated or found to be incompetent to consent to treatment, express and informed consent must ~~to treatment shall~~ be sought from his or her ~~instead from the patient's~~ guardian, ~~or~~ guardian advocate, or health care surrogate or proxy. If the individual ~~patient~~ is a minor, express and informed consent for

admission or treatment must be obtained ~~shall also be requested from the patient's guardian. Express and informed consent for admission or treatment of a patient under 18 years of age shall be required~~ from the minor's ~~patient's~~ guardian, unless the minor is seeking outpatient crisis intervention services under s. 394.4784. ~~Express and informed consent for admission or treatment given by a patient who is under 18 years of age shall not be a condition of admission when the patient's guardian gives express and informed consent for the patient's admission pursuant to s. 394.463 or s. 394.467.~~

2. Before giving express and informed consent, the following information shall be provided and explained in plain language to the individual and ~~patient, or~~ to his or her ~~the patient's~~ guardian if the individual ~~patient~~ is an adult ~~18 years of age or older~~ and has been adjudicated incapacitated, ~~or~~ to his or her ~~the patient's~~ guardian advocate if the individual ~~patient~~ has been found to be incompetent to consent to treatment, to the health care surrogate or proxy, or to both the individual ~~patient~~ and the guardian if the individual ~~patient~~ is a minor: the reason for admission or treatment; the proposed treatment and ~~,~~ the purpose of such ~~the~~ treatment ~~to be provided~~; the common risks, benefits, and side effects of the proposed treatment ~~thereof~~; the specific dosage range of ~~for the~~ medication, if ~~when~~ applicable; alternative treatment modalities; the approximate length of care; the potential effects of stopping treatment; how treatment will be monitored; and that any consent given for treatment may be revoked orally or in writing before or during the treatment period by the individual receiving the treatment ~~patient~~ or by a person who is

legally authorized to make health care decisions on the individual's behalf ~~of the patient~~.

~~(b) In the case of medical procedures requiring the use of a general anesthetic or electroconvulsive treatment, and prior to performing the procedure, express and informed consent shall be obtained from the patient if the patient is legally competent, from the guardian of a minor patient, from the guardian of a patient who has been adjudicated incapacitated, or from the guardian advocate of the patient if the guardian advocate has been given express court authority to consent to medical procedures or electroconvulsive treatment as provided under s. 394.4598.~~

(4) QUALITY OF TREATMENT.—

(a) Each individual held for examination, admitted for mental health or substance abuse treatment, or receiving involuntary outpatient treatment ~~patient shall receive services, including, for a patient placed~~ under s. 394.4655 shall receive~~, those~~ services that are ~~included in the court order which are suited to his or her needs, and which shall be~~ administered skillfully, safely, and humanely with full respect for the individual's ~~patient's~~ dignity and personal integrity. Each individual ~~patient~~ shall receive such medical, vocational, social, educational, substance abuse, and rehabilitative services as his or her condition requires in order to live successfully in the community. In order to achieve this goal, the department shall ~~is directed to~~ coordinate its mental health and substance abuse programs with all other programs of the department and other state agencies.

(b) Facilities shall develop and maintain, in a form that

is accessible to and readily understandable by individuals held for examination or admitted for mental health or substance abuse treatment ~~patients~~ and consistent with rules adopted by the department~~, the following~~:

1. Criteria, procedures, and required staff training for the ~~any~~ use of close or elevated levels of supervision, ~~of~~ restraint, seclusion, or isolation, ~~or of~~ emergency treatment orders, and ~~for the use of~~ bodily control and physical management techniques.

2. Procedures for documenting, monitoring, and requiring clinical review of all uses of the procedures described in subparagraph 1. and for documenting and requiring review of any incidents resulting in injury to individuals receiving services ~~patients~~.

3. A system for investigating, tracking, managing, and responding to complaints by individuals ~~persons~~ receiving services or persons ~~individuals~~ acting on their behalf.

(c) Facilities shall have written procedures for reporting events that place individuals receiving services at risk of harm. Such events must be reported to the managing entity in the facility's region and the department as soon as reasonably possible after discovery and include, but are not limited to:

1. The death, regardless of cause or manner, of an individual examined or treated at a facility that occurs while the individual is at the facility or that occurs within 72 hours after release, if the death is known to the facility administrator.

2. An injury sustained, or allegedly sustained, at a facility, by an individual examined or treated at the facility

and caused by an accident, self-inflicted injury, assault, act of abuse, neglect, or suicide attempt, if the injury requires medical treatment by a licensed health care practitioner in an acute care medical facility.

3. The unauthorized departure or absence of an individual from a facility in which he or she has been held for involuntary examination or involuntary placement.

4. A disaster or crisis situation such as a tornado, hurricane, kidnapping, riot, or hostage situation that jeopardizes the health, safety, or welfare of individuals examined or treated in a facility.

5. An allegation of sexual battery upon an individual examined or treated in a facility.

(d) ~~(c)~~ A facility may not use seclusion or restraint for punishment, to compensate for inadequate staffing, or for the convenience of staff. Facilities shall ensure that all staff are made aware of these restrictions ~~on the use of seclusion and restraint~~ and ~~shall make and~~ maintain records that ~~which~~ demonstrate that this information has been conveyed to each ~~individual~~ staff member ~~members~~.

(5) COMMUNICATION, ABUSE REPORTING, AND VISITS.—

(a) Each individual held for examination or admitted for mental health or substance abuse treatment ~~person receiving services~~ in a facility providing mental health services under this part has the right to communicate freely and privately with persons outside the facility unless it is determined that such communication is likely to be harmful to the individual ~~person~~ or others. Each facility shall make available ~~as soon as reasonably possible to persons receiving services~~ a telephone

that allows for free local calls and access to a long-distance service to the individual as soon as reasonably possible. A facility is not required to pay the costs of the individual's ~~a patient's~~ long-distance calls. The telephone must ~~shall~~ be readily accessible ~~to the patient~~ and ~~shall be~~ placed so that the individual ~~patient~~ may use it to communicate privately and confidentially. The facility may establish reasonable rules for the use of the ~~this~~ telephone which~~, provided that the rules~~ do not interfere with an individual's ~~a patient's~~ access to a telephone to report abuse pursuant to paragraph (e).

(b) Each individual ~~patient~~ admitted to a facility under ~~the provisions of~~ this part shall be allowed to receive, send, and mail sealed, unopened correspondence; and the individual's ~~no patient's~~ incoming or outgoing correspondence may not ~~shall~~ be opened, delayed, held, or censored by the facility unless there is reason to believe that it contains items or substances that ~~which~~ may be harmful to the individual ~~patient~~ or others, in which case the administrator may direct reasonable examination of such mail and may regulate the disposition of such items or substances.

(c) Each facility shall allow ~~must permit~~ immediate access to an individual held for examination or admitted for mental health or substance abuse treatment ~~any patient~~, subject to the ~~patient's~~ right to deny or withdraw consent at any time~~,~~ by the individual, or by the individual's ~~patient's~~ family members, guardian, guardian advocate, health care surrogate or proxy, representative, ~~Florida statewide or local advocacy council,~~ or attorneys ~~attorney~~, unless such access would be detrimental to the individual ~~patient~~. If the ~~a patient's~~ right to communicate

or to receive visitors is restricted by the facility, written notice of such restriction and the reasons for the restriction shall be served on the individual and ~~patient,~~ the individual's ~~patient's~~ attorney, ~~and the patient's~~ guardian, guardian advocate, health care surrogate or proxy, or representative; and such restriction, and the reasons for the restriction, must ~~shall~~ be recorded in on the ~~patient's~~ clinical record ~~with the reasons therefor~~. The restriction must ~~of a patient's right to communicate or to receive visitors shall~~ be reviewed at least every 7 days. The right to communicate or receive visitors may ~~shall~~ not be restricted as a means of punishment. This ~~Nothing in this~~ paragraph may not ~~shall~~ be construed to limit the provisions of paragraph (d).

(d) Each facility shall establish reasonable rules, which must be the least restrictive possible, governing visitors, visiting hours, and the use of telephones by individuals held for examination or admitted for mental health or substance abuse treatment ~~patients in the least restrictive possible manner~~. An individual has ~~Patients shall have~~ the right to contact and to receive communication from his or her attorney ~~their attorneys~~ at any reasonable time.

(e) Each individual held for examination or admitted for ~~patient receiving~~ mental health or substance abuse treatment ~~in any facility~~ shall have ready access to a telephone in order to report ~~an~~ alleged abuse. The facility staff shall orally and in writing inform each individual ~~patient~~ of the procedure for reporting abuse and shall make every reasonable effort to present the information in a language the individual ~~patient~~ understands. A written copy of that procedure, including the

telephone number of the central abuse hotline and reporting forms, must ~~shall~~ be posted in plain view.

(f) The department shall adopt rules providing a procedure for reporting abuse. ~~Facility staff shall be required,~~ As a condition of employment, facility staff shall ~~to~~ become familiar with the requirements and procedures for ~~the~~ reporting ~~of~~ abuse.

(6) CARE AND CUSTODY OF PERSONAL EFFECTS ~~OF PATIENTS~~.—A facility shall respect the rights of an individual held for examination or admitted for mental health or substance abuse treatment ~~A patient's right~~ to ~~the~~ possession of his or her clothing and personal effects ~~shall be respected~~. The facility may take temporary custody of such effects if ~~when~~ required for medical and safety reasons. The ~~A patient's~~ clothing and personal effects shall be inventoried upon their removal into temporary custody. Copies of this inventory shall be given to the individual ~~patient~~ and to his or her ~~the patient's~~ guardian, guardian advocate, health care surrogate or proxy, or representative and shall be recorded in the ~~patient's~~ clinical record. This inventory may be amended upon the request of the individual ~~patient~~ or his or her ~~the patient's~~ guardian, guardian advocate, health care surrogate or proxy, or representative. The inventory and any amendments ~~to it~~ must be witnessed by two members of the facility staff and by the individual ~~patient~~, if he or she is able. All of the ~~a patient's~~ clothing and personal effects held by the facility shall be returned to the individual ~~patient~~ immediately upon his or her ~~the~~ discharge or transfer ~~of the patient~~ from the facility, unless such return would be detrimental to the individual ~~patient~~. If personal effects are not returned ~~to the patient~~,

the reason must be documented in the clinical record along with the disposition of the clothing and personal effects, which may be given instead to the individual's patient's guardian, guardian advocate, health care surrogate or proxy, or representative. As soon as practicable after an emergency transfer ~~of a patient~~, the individual's ~~patient's~~ clothing and personal effects shall be transferred to the individual's ~~patient's~~ new location, together with a copy of the inventory and any amendments, unless an alternate plan is approved by the individual ~~patient~~, if he or she is able, and by his or her ~~the patient's~~ guardian, guardian advocate, health care surrogate or proxy, or representative.

(7) VOTING IN PUBLIC ELECTIONS.—A patient who is eligible to vote according to the laws of the state has the right to vote in the primary and general elections. The department shall establish rules to enable patients to obtain voter registration forms, applications for absentee ballots, and absentee ballots.

(8) HABEAS CORPUS.—

(a) At any time, and without notice, an individual ~~a person~~ held or admitted for mental health or substance abuse examination or placement in a ~~receiving or treatment~~ facility, or a relative, friend, guardian, guardian advocate, health care surrogate or proxy, representative, or attorney, or the department, on behalf of such individual ~~person~~, may petition for a writ of habeas corpus to question the cause and legality of such detention and request that the court order a return to the writ in accordance with chapter 79. Each individual ~~patient~~ held in a facility shall receive a written notice of the right to petition for a writ of habeas corpus.

(b) At any time, and without notice, an individual held or admitted for mental health or substance abuse examination or placement ~~a person who is a patient~~ in a ~~receiving or treatment~~ facility, or a relative, friend, guardian, guardian advocate, health care surrogate or proxy, representative, or attorney, or the department, on behalf of such individual ~~person~~, may file a petition in the circuit court in the county where the individual ~~patient~~ is being held alleging that he or she ~~the patient~~ is being unjustly denied a right or privilege granted under this part ~~herein~~ or that a procedure authorized under this part ~~herein~~ is being abused. Upon the filing of such a petition, the court may ~~shall have the authority to~~ conduct a judicial inquiry and ~~to~~ issue an ~~any~~ order ~~needed~~ to correct an abuse of ~~the provisions of~~ this part.

(c) The administrator of any ~~receiving or treatment~~ facility receiving a petition under this subsection shall file the petition with the clerk of the court on the next court working day.

(d) A ~~No~~ fee may not ~~shall~~ be charged for ~~the~~ filing ~~of~~ a petition under this subsection.

(9) VIOLATIONS.—The department shall report to the Agency for Health Care Administration any violation of the rights or privileges of patients, or of any procedures provided under this part, by any facility or professional licensed or regulated by the agency. The agency is authorized to impose any sanction authorized for violation of this part, based solely on the investigation and findings of the department.

(10) LIABILITY FOR VIOLATIONS.—Any person who violates or abuses any rights or privileges of patients provided by this

part is liable for damages as determined by law. Any person who acts in good faith in compliance with the provisions of this part is immune from civil or criminal liability for his or her actions in connection with the admission, diagnosis, treatment, or discharge of a patient to or from a facility. However, this section does not relieve any person from liability if such person commits negligence.

(11) RIGHT TO PARTICIPATE IN TREATMENT AND DISCHARGE PLANNING.—The patient shall have the opportunity to participate in treatment and discharge planning and shall be notified in writing of his or her right, upon discharge from the facility, to seek treatment from the professional or agency of the patient's choice.

(12) ADVANCE DIRECTIVES.—All service providers under this part shall provide information concerning advance directives to individuals and assist those who are competent and willing to complete an advance directive. The directive may include instructions regarding mental health or substance abuse care. Service providers under this part shall honor the advance directive of individuals they serve, or shall request the transfer of the individual as required under s. 765.1105.

Section 6. Section 394.4597, Florida Statutes, is amended to read:

394.4597 Persons to be notified; appointment of a ~~patient's~~ representative.—

(1) VOLUNTARY ADMISSION ~~PATIENTS~~.—At the time an individual ~~a patient~~ is voluntarily admitted to a receiving or treatment facility, the individual shall be asked to identify a person to be notified in case of an emergency, and the identity and

contact information of that ~~a~~ person ~~to be notified in case of an emergency~~ shall be entered in the individual's ~~patient's clinical~~ record.

(2) INVOLUNTARY ADMISSION ~~PATIENTS~~.—

(a) At the time an individual ~~a patient~~ is admitted to a facility for involuntary examination or placement, or when a petition for involuntary placement is filed, the names, addresses, and telephone numbers of the individual's ~~patient's~~ guardian or guardian advocate, health care surrogate, or proxy, or representative if he or she ~~the patient~~ has no guardian, and the individual's ~~patient's~~ attorney shall be entered in the ~~patient's clinical~~ record.

(b) If the individual ~~patient~~ has no guardian, guardian advocate, health care surrogate, or proxy, he or she ~~the patient~~ shall be asked to designate a representative. If the individual ~~patient~~ is unable or unwilling to designate a representative, the facility shall select a representative.

(c) The individual ~~patient~~ shall be consulted with regard to the selection of a representative by the receiving or treatment facility and may ~~shall have authority to~~ request that the ~~any such~~ representative be replaced.

(d) If ~~When~~ the receiving or treatment facility selects a representative, first preference shall be given to a health care surrogate, if one has been previously selected ~~by the patient~~. If the individual ~~patient~~ has not previously selected a health care surrogate, the selection, except for good cause documented in the individual's ~~patient's~~ clinical record, shall be made from the following list in the order of listing:

1. The individual's ~~patient's~~ spouse.

2. An adult child of the individual ~~patient~~.

3. A parent of the individual ~~patient~~.

4. The adult next of kin of the individual ~~patient~~.

5. An adult friend of the individual ~~patient~~.

~~6. The appropriate Florida local advocacy council as provided in s. 402.166.~~

(e) The following persons are prohibited from selection as an individual's representative:

1. A professional providing clinical services to the individual under this part;

2. The licensed professional who initiated the involuntary examination of the individual, if the examination was initiated by professional certificate;

3. An employee, administrator, or board member of the facility providing the examination of the individual;

4. An employee, administrator, or board member of a treatment facility providing treatment of the individual;

5. A person providing any substantial professional services to the individual, including clinical and nonclinical services;

6. A creditor of the individual;

7. A person subject to an injunction for protection against domestic violence under s. 741.30, whether the order of injunction is temporary or final, and for which the individual was the petitioner; and

8. A person subject to an injunction for protection against repeat violence, sexual violence, or dating violence under s. 784.046, whether the order of injunction is temporary or final, and for which the individual was the petitioner.

~~(c) A licensed professional providing services to the~~

~~patient under this part, an employee of a facility providing direct services to the patient under this part, a department employee, a person providing other substantial services to the patient in a professional or business capacity, or a creditor of the patient shall not be appointed as the patient's representative~~.

(f) The representative selected by the individual or designated by the facility has the right to:

1. Receive notice of the individual's admission;

2. Receive notice of proceedings affecting the individual;

3. Have immediate access to the individual unless such access is documented to be detrimental to the individual;

4. Receive notice of any restriction of the individual's right to communicate or receive visitors;

5. Receive a copy of the inventory of personal effects upon the individual's admission and to request an amendment to the inventory at any time;

6. Receive disposition of the individual's clothing and personal effects if not returned to the individual, or to approve an alternate plan;

7. Petition on behalf of the individual for a writ of habeas corpus to question the cause and legality of the individual's detention or to allege that the individual is being unjustly denied a right or privilege granted under this part, or that a procedure authorized under this part is being abused;

8. Apply for a change of venue for the individual's involuntary placement hearing for the convenience of the parties or witnesses or because of the individual's condition;

9. Receive written notice of any restriction of the

individual's right to inspect his or her clinical record;

10. Receive notice of the release of the individual from a receiving facility where an involuntary examination was performed;

11. Receive a copy of any petition for the individual's involuntary placement filed with the court; and

12. Be informed by the court of the individual's right to an independent expert evaluation pursuant to involuntary placement procedures.

Section 7. Section 394.4598, Florida Statutes, is amended to read:

394.4598 Guardian advocate.—

(1) The administrator may petition the court for the appointment of a guardian advocate based upon the opinion of a psychiatrist that an individual held for examination or admitted for mental health or substance abuse treatment ~~the patient~~ is incompetent to consent to treatment. If the court finds that the individual ~~a patient~~ is incompetent to consent to treatment and has not been adjudicated incapacitated and a guardian having ~~with the~~ authority to consent to mental health or substance abuse treatment has not been appointed, it shall appoint a guardian advocate. The individual ~~patient~~ has the right to have an attorney represent him or her at the hearing. If the individual ~~person~~ is indigent, the court shall appoint the office of the public defender to represent him or her at the hearing. The individual ~~patient~~ has the right to testify, cross-examine witnesses, and present witnesses. The proceeding must ~~shall~~ be recorded ~~either~~ electronically or stenographically, and testimony shall be ~~provided~~ under oath. One of the professionals

authorized to give an opinion in support of a petition for involuntary placement, as described in s. 394.4655 or s. 394.467, shall ~~must~~ testify. The ~~A~~ guardian advocate shall ~~must~~ meet the qualifications of a guardian pursuant to ~~contained in~~ part IV of chapter 744~~, except that a professional referred to in this part, an employee of the facility providing direct services to the patient under this part, a departmental employee, a facility administrator, or member of the Florida local advocacy council shall not be appointed. A person who is appointed as a guardian advocate must agree to the appointment~~. A person may not be appointed as a guardian advocate unless he or she agrees to the appointment.

(2) The following persons are prohibited from being appointed as an individual's guardian advocate:

(a) A professional providing clinical services to the individual under this part;

(b) The licensed professional who initiated the involuntary examination of the individual, if the examination was initiated by professional certificate;

(c) An employee, administrator, or board member of the facility providing the examination of the individual;

(d) An employee, administrator, or board member of a treatment facility providing treatment of the individual;

(e) A person providing any substantial professional services to the individual, including clinical and nonclinical services;

(f) A creditor of the individual;

(g) A person subject to an injunction for protection against domestic violence under s. 741.30, whether the order of

injunction is temporary or final, and for which the individual was the petitioner; and

(h) A person subject to an injunction for protection against repeat violence, sexual violence, or dating violence under s. 784.046, whether the order of injunction is temporary or final, and for which the individual was the petitioner.

(3) ~~(2)~~ A facility requesting appointment of a guardian advocate must, prior to the appointment, provide the prospective guardian advocate with information about the duties and responsibilities of guardian advocates, including the information about the ethics of medical decisionmaking. Before asking a guardian advocate to give consent to treatment for an individual held for examination or admitted for mental health or substance abuse treatment ~~a patient~~, the facility shall provide ~~to the guardian advocate~~ sufficient information to allow ~~so that~~ the guardian advocate to ~~can~~ decide whether to give express and informed consent to the treatment, including information that the treatment is essential to the care of the individual ~~patient~~, and that the treatment does not present an unreasonable risk of serious, hazardous, or irreversible side effects. Before giving consent to treatment, the guardian advocate must meet and talk with the individual ~~patient~~ and the individual's ~~patient's~~ physician face to face ~~in person~~, if ~~at all~~ possible, and by telephone, if not. The guardian advocate shall make every effort to make decisions regarding treatment that he or she believes the individual would have made under the circumstances if the individual were capable of making such a decision. The decision of the guardian advocate may be reviewed by the court, upon petition of the individual's ~~patient's~~ attorney, the

individual's ~~patient's~~ family, or the facility administrator.

(4) ~~(3)~~ ~~Prior to~~ A guardian advocate must attend at least a 4-hour training course approved by the court before exercising his or her authority~~, the guardian advocate shall attend a training course approved by the court~~. This training course~~, of not less than 4 hours,~~ must include, at minimum, information about an ~~the~~ individual's ~~patient~~ rights, psychotropic medications, diagnosis of mental illness or substance abuse impairment, the ethics of medical decisionmaking, and the duties of guardian advocates. This training course shall take the place of the training required for guardians appointed pursuant to chapter 744.

(5) ~~(4)~~ The information to be supplied to prospective guardian advocates before ~~prior to~~ their appointment and the training course for guardian advocates must be developed and completed through a course developed by the department and approved by the chief judge of the circuit court and taught by a court-approved organization. Court-approved organizations may include, but need ~~are~~ not be limited to, community ~~or junior~~ colleges, guardianship organizations, and the local bar association or The Florida Bar. The court may~~, in its discretion,~~ waive some or all of the training requirements for guardian advocates or impose additional requirements. The court shall make its decision on a case-by-case basis and, in making its decision, shall consider the experience and education of the guardian advocate, the duties assigned to the guardian advocate, and the needs of the individual subject to involuntary examination or placement ~~patient~~.

(6) ~~(5)~~ In selecting a guardian advocate, the court shall

give preference to a health care surrogate, if one has already been designated by the individual held for examination or admitted for mental health or substance abuse treatment ~~patient~~. If the individual ~~patient~~ has not previously selected a health care surrogate, except for good cause documented in the court record, the selection shall be made from the following list in the order of listing:

(a) The individual's ~~patient's~~ spouse.

(b) An adult child of the individual ~~patient~~.

(c) A parent of the individual ~~patient~~.

(d) The adult next of kin of the individual ~~patient~~.

(e) An adult friend of the individual ~~patient~~.

(f) An adult trained and willing to serve as guardian advocate for the individual ~~patient~~.

(7) ~~(6)~~ If a guardian with the authority to consent to medical treatment has not already been appointed or if the individual held for examination or admitted for mental health or substance abuse treatment ~~patient~~ has not already designated a health care surrogate, the court may authorize the guardian advocate to consent to medical treatment, as well as mental health and substance abuse treatment. Unless otherwise limited by the court, a guardian advocate with authority to consent to medical treatment shall have the same authority to make health care decisions and be subject to the same restrictions as a proxy appointed under part IV of chapter 765. Unless the guardian advocate has sought and received express court approval in proceeding separate from the proceeding to determine the competence of the patient to consent to medical treatment, the guardian advocate may not consent to:

(a) Abortion.

(b) Sterilization.

(c) Electroconvulsive treatment.

(d) Psychosurgery.

(e) Experimental treatments that have not been approved by a federally approved institutional review board in accordance with 45 C.F.R. part 46 or 21 C.F.R. part 56.

In making a medical treatment decision under this subsection, the court shall ~~must~~ base its decision on evidence that the treatment or procedure is essential to the care of the individual ~~patient~~ and that the treatment does not present an unreasonable risk of serious, hazardous, or irreversible side effects. The court shall follow the procedures set forth in subsection (1) of this section.

(8) ~~(7)~~ The guardian advocate shall be discharged when the individual for whom he or she is appointed ~~patient~~ is discharged from an order for involuntary outpatient ~~placement~~ or involuntary inpatient placement or when the individual ~~patient~~ is transferred from involuntary to voluntary status. The court ~~or a hearing officer~~ shall consider the competence of the individual ~~patient~~ pursuant to subsection (1) and may consider an involuntarily placed individual's ~~patient's~~ competence to consent to treatment at any hearing. Upon sufficient evidence, the court may restore, or the magistrate or administrative law judge ~~hearing officer~~ may recommend that the court restore, the individual's ~~patient's~~ competence. A copy of the order restoring competence or the certificate of discharge containing the restoration of competence shall be provided to the individual

~~patient~~ and the guardian advocate.

Section 8. Section 394.4599, Florida Statutes, is amended to read:

394.4599 Notice.—

(1) VOLUNTARY ADMISSION ~~PATIENTS~~.—Notice of an individual's ~~a~~ voluntary ~~patient's~~ admission shall ~~only~~ be given only at the request of the individual ~~patient~~, except that, in an emergency, notice shall be given as determined by the facility.

(2) INVOLUNTARY ADMISSION ~~PATIENTS~~.—

(a) Whenever notice is required to be given under this part, such notice shall be given to the individual ~~patient~~ and the individual's ~~patient's~~ guardian, guardian advocate, health care surrogate or proxy, attorney, and representative.

1. When notice is required to be given to an individual ~~a patient~~, it shall be given both orally and in writing, in the language and terminology that the individual ~~patient~~ can understand, and, if needed, the facility shall provide an interpreter for the individual ~~patient~~.

2. Notice to an individual's ~~a patient's~~ guardian, guardian advocate, health care surrogate or proxy, attorney, and representative shall be given by ~~United States mail and by~~ registered ~~or certified~~ mail with the receipts attached to the ~~patient's~~ clinical record. Hand delivery by a facility employee may be used as an alternative, with delivery documented in the clinical record. If notice is given by a state attorney or an attorney for the department, a certificate of service is ~~shall be~~ sufficient to document service.

(b) A receiving facility shall give prompt notice of the whereabouts of an individual ~~a patient~~ who is being

involuntarily held for examination to the individual's guardian, guardian advocate, health care surrogate or proxy, attorney or representative, by telephone or in person within 24 hours after the individual's ~~patient's~~ arrival at the facility~~, unless the patient requests that no notification be made~~. Contact attempts shall be documented in the individual's ~~patient's~~ clinical record and shall begin as soon as reasonably possible after the individual's ~~patient's~~ arrival. ~~Notice that a patient is being admitted as an involuntary patient shall be given to the Florida local advocacy council no later than the next working day after the patient is admitted.~~

(c) The written notice of the filing of the petition for involuntary placement of an individual being held must contain the following:

1. Notice that the petition has been filed with the circuit court in the county in which the individual ~~patient~~ is hospitalized and the address of such court.

2. Notice that the office of the public defender has been appointed to represent the individual ~~patient~~ in the proceeding, if the individual ~~patient~~ is not otherwise represented by counsel.

3. The date, time, and place of the hearing and the name of each examining expert and every other person expected to testify in support of continued detention.

4. Notice that the individual ~~patient~~, the individual's ~~patient's~~ guardian, guardian advocate, health care surrogate or proxy, or representative, or the administrator may apply for a change of venue for the convenience of the parties or witnesses or because of the condition of the individual ~~patient~~.

5. Notice that the individual ~~patient~~ is entitled to an independent expert examination and, if the individual ~~patient~~ cannot afford such an examination, that the court will provide for one.

(d) A treatment facility shall provide notice of an individual's ~~a patient's~~ involuntary admission on the next regular working day after the individual's ~~patient's~~ arrival at the facility.

(e) When an individual ~~a patient~~ is to be transferred from one facility to another, notice shall be given by the facility where the individual ~~patient~~ is located before ~~prior to~~ the transfer.

Section 9. Subsections (1), (2), (3), and (10) of section 394.4615, Florida Statutes, are amended to read:

394.4615 Clinical records; confidentiality.—

(1) A clinical record shall be maintained for each individual held for examination or admitted for treatment under this part ~~patient~~. The record shall include data pertaining to admission and such other information as may be required under rules of the department. A clinical record is confidential and exempt from ~~the provisions of~~ s. 119.07(1). Unless waived by express and informed consent of the individual, ~~by the patient~~ or his or her ~~the patient's~~ guardian, ~~or~~ guardian advocate, health care surrogate or proxy, or, if the individual ~~patient~~ is deceased, by his or her guardian, guardian advocate, health care surrogate or proxy, by his or her ~~the patient's~~ personal representative or the family member who stands next in line of intestate succession, the confidential status of the clinical record shall not be lost by either authorized or unauthorized

disclosure to any person, organization, or agency.

(2) The clinical record of an individual held for examination or admitted for treatment under this part shall be released if ~~when~~:

(a) The individual ~~patient~~ or the individual's ~~patient's~~ guardian, guardian advocate, health care surrogate or proxy, or representative authorizes the release. The guardian, ~~or~~ guardian advocate, health care surrogate or proxy shall be provided access to the appropriate clinical records ~~of the patient~~. The individual patient or the patient's guardian, ~~or~~ guardian advocate, health care surrogate or proxy may authorize the release of information and clinical records to appropriate persons to ensure the continuity of the individual's ~~patient's~~ health ~~care~~ or mental health or substance abuse care.

(b) The individual ~~patient~~ is represented by counsel and the records are needed by the individual's ~~patient's~~ counsel for adequate representation.

(c) A petition for involuntary placement is filed and the records are needed by the state attorney to evaluate and confirm the allegations set forth in the petition or to prosecute the petition. However, the state attorney may not use clinical records obtained under this part for the purpose of criminal investigation or prosecution, or for any other purpose not authorized by this part.

(d) ~~(c)~~ The court orders such release. In determining whether there is good cause for disclosure, the court shall weigh the need for the information to be disclosed against the possible harm of disclosure to the individual ~~person~~ to whom such information pertains.

(e)~~(d)~~ The individual ~~patient~~ is committed to, or is to be returned to, the Department of Corrections ~~from the Department of Children and Families,~~ and the Department of Corrections requests such records. These records shall be furnished without charge to the Department of Corrections.

(3) Information from the clinical record may be released in the following circumstances:

(a) When a patient has declared an intention to harm other persons. When such declaration has been made, the administrator may authorize the release of sufficient information to provide adequate warning to the person threatened with harm by the patient.

(b) When the administrator of the facility or secretary of the department deems release to a qualified researcher as defined in administrative rule, an aftercare treatment provider, or an employee or agent of the department is necessary for treatment of the patient, maintenance of adequate records, compilation of treatment data, aftercare planning, or evaluation of programs.

For the purpose of determining whether a person meets the criteria for involuntary outpatient placement or for preparing the proposed treatment plan pursuant to s. 394.4655, the clinical record may be released to the state attorney, the public defender or the patient's private legal counsel, the court, and to the appropriate mental health professionals, including the service provider identified in s. 394.4655(7)(b) ~~s. 394.4655(6)(b)2.~~, in accordance with state and federal law.

(10) An individual held for examination or admitted for

treatment ~~Patients~~ shall have reasonable access to his or her ~~their~~ clinical records, unless such access is determined by the individual's ~~patient's~~ physician to be harmful to the individual ~~patient~~. If the individual's ~~patient's~~ right to inspect his or her clinical record is restricted by the facility, written notice of such restriction shall be given to the individual ~~patient~~ and the individual's ~~patient's~~ guardian, guardian advocate, health care surrogate or proxy, or attorney, and representative. In addition, the restriction shall be recorded in the clinical record, together with the reasons for it. The restriction of an individual's ~~a patient's~~ right to inspect his or her clinical record shall expire after 7 days but may be renewed, after review, for subsequent 7-day periods.

Section 10. Paragraphs (a) through (m) of subsection (1) of section 394.462, Florida Statutes, are amended, and paragraph (n) is added to that subsection, to read:

394.462 Transportation.—

(1) TRANSPORTATION TO A RECEIVING OR DETOXIFICATION FACILITY.—

(a) Each county shall designate a single law enforcement agency within the county, or portions thereof, to take an individual ~~a person~~ into custody upon the entry of an ex parte order or the execution of a certificate for involuntary examination by an authorized professional and to transport that individual ~~person~~ to the nearest receiving facility for examination. The designated law enforcement agency may decline to transport the individual ~~person~~ to a receiving or detoxification facility only if:

1. The county or jurisdiction designated by the county has

contracted ~~on an annual basis~~ with an emergency medical transport service or private transport company for transportation of individuals ~~persons~~ to receiving facilities ~~pursuant to this section at the sole cost of the county~~; and

2. The law enforcement agency and the emergency medical transport service or private transport company agree that the continued presence of law enforcement personnel is not necessary for the safety of the individuals being transported ~~person~~ or others.

3. The jurisdiction designated by the county may seek reimbursement for transportation expenses. The party responsible for payment for such transportation is the person receiving the transportation. The county shall seek reimbursement from the following sources in the following order:

a. From an insurance company, health care corporation, or other source, if the individual being transported ~~person receiving the transportation~~ is covered by an insurance policy or subscribes to a health care corporation or other source for payment of such expenses.

b. From the individual being transported ~~person receiving the transportation~~.

c. From a financial settlement for medical care, treatment, hospitalization, or transportation payable or accruing to the injured party.

(b) Any company that transports a patient pursuant to this subsection is considered an independent contractor and is solely liable for the safe and dignified transportation of the patient. Such company must be insured and provide no less than $100,000 in liability insurance with respect to the transportation of

patients.

(c) Any company that contracts with a governing board of a county to transport patients shall comply with the applicable rules of the department to ensure the safety and dignity of the patients.

(d) When a law enforcement officer takes custody of a person pursuant to this part, the officer may request assistance from emergency medical personnel if such assistance is needed for the safety of the officer or the person in custody.

(e) When a member of a mental health overlay program or a mobile crisis response service is a professional authorized to initiate an involuntary examination pursuant to s. 394.463 and that professional evaluates a person and determines that transportation to a receiving facility is needed, the service, at its discretion, may transport the person to the facility or may call on the law enforcement agency or other transportation arrangement best suited to the needs of the patient.

(f) When a ~~any~~ law enforcement officer has custody of a person, based on ~~either~~ noncriminal ~~or minor criminal~~ behavior, a misdemeanor, or a felony other than a forcible felony as defined in s. 776.08, who ~~that~~ meets the statutory guidelines for involuntary examination under this part, the law enforcement officer shall transport the individual ~~person~~ to the nearest receiving facility for examination.

(g) When any law enforcement officer has arrested a person for a forcible felony as defined in s. 776.08 and it appears that the person meets the criteria ~~statutory guidelines~~ for involuntary examination ~~or placement~~ under this part, such person shall first be processed in the same manner as any other

criminal suspect. The law enforcement agency shall thereafter immediately notify the nearest public receiving facility, which shall be responsible for promptly arranging for the examination and treatment of the person. A receiving facility may not ~~is not required to~~ admit a person charged with a forcible felony as defined in s. 776.08 ~~crime~~ for whom the facility determines and documents that it is unable to provide adequate security, but shall provide ~~mental health~~ examination and treatment to the person at the location where he or she is held.

(h) If the appropriate law enforcement officer believes that a person has an emergency medical condition as defined in s. 395.002, the person may be first transported to a hospital for emergency medical treatment, regardless of whether the hospital is a designated receiving facility.

(i) The costs of transportation, evaluation, hospitalization, and treatment incurred under this subsection by persons who have been arrested for violations of any state law or county or municipal ordinance may be recovered as provided in s. 901.35.

(j) The nearest receiving facility must accept persons brought by law enforcement officers for involuntary examination.

(k) Each law enforcement agency shall develop a memorandum of understanding with each receiving facility within the law enforcement agency's jurisdiction which reflects a single set of protocols for the safe and secure transportation of the person and transfer of custody of the person. These protocols must also address crisis intervention measures.

(l) When a jurisdiction has entered into a contract with an emergency medical transport service or a private transport

company for transportation of persons to receiving facilities, such service or company shall be given preference for transportation of persons from nursing homes, assisted living facilities, adult day care centers, or adult family-care homes, unless the behavior of the person being transported is such that transportation by a law enforcement officer is necessary.

(m) Nothing in this section shall be construed to limit emergency examination and treatment of incapacitated persons provided in accordance with the provisions of s. 401.445.

(n) Upon the request of an individual who appears to meet criteria for voluntary admission under s. 394.4625(1)(a), a law enforcement officer may transport him or her to a mental health receiving facility, addictions receiving facility, or detoxification facility.

Section 11. Subsections (1), (4), and (5) of section 394.4625, Florida Statutes, are amended and paragraph (c) of subsection (2) of that section is added, to read:

394.4625 Voluntary admissions.—

(1) EXAMINATION AND TREATMENT ~~AUTHORITY TO RECEIVE PATIENTS~~.—

(a) In order to be admitted to a facility on a voluntary status ~~A facility may receive~~ for observation, diagnosis, or treatment: ~~any person 18 years of age or older making application by express and informed consent for admission or any person age 17 or under for whom such application is made by his or her guardian. If found to~~

1. An individual must show evidence of mental illness or substance abuse impairment; and, ~~to be competent to provide express and informed consent, and to be suitable for treatment,~~

~~such person 18 years of age or older may be admitted to the facility. A person age 17 or under may be admitted only after a hearing to verify the voluntariness of the consent.~~

2. An individual must be suitable for treatment by the facility.

3. An adult must provide, and be competent to provide, express and informed consent.

4. A minor may only be admitted on the basis of the express and informed consent of the minor's guardian in conjunction with the consent of the minor, except that a minor may be admitted to an addictions receiving facility or detoxification facility by his or her own consent without consent of the minor's guardian, if a physician documents in the clinical record that the minor has a substance abuse impairment. If the minor is admitted by his or her own consent and without consent of the minor's guardian, the facility must request the minor's permission to notify an adult family member or friend of the minor's voluntary admission into the facility.

a. The consent of the minor is an affirmative agreement by the minor to remain at the facility for examination or treatment, and failure to object does not constitute consent.

b. The minor's consent must be verified through a clinical assessment that is documented in the clinical record and conducted within 12 hours after arrival at the facility by a licensed professional authorized to initiate an involuntary examination pursuant to s. 394.463.

c. In verifying the minor's consent, and using language that is appropriate to the minor's age, experience, maturity, and condition, the examining professional must provide the minor

with an explanation as to why the minor will be examined and treated, what the minor can expect while in the facility, and when the minor may expect to be released. The examining professional must determine and document that the minor is able to understand the information.

d. Unless the minor's consent is verified pursuant to this section, a petition for involuntary inpatient placement shall be filed with the court within 1 court working day after his or her arrival or the minor must be released to his or her guardian.

(b) A mental health overlay program or a mobile crisis response service or a licensed professional who is authorized to initiate an involuntary examination pursuant to s. 394.463 and is employed by a community mental health center or clinic must, pursuant to district procedure approved by the respective district administrator, conduct an initial assessment of the ability of the following persons to give express and informed consent to treatment before such persons may be admitted voluntarily:

1. A person 60 years of age or older for whom transfer is being sought from a nursing home, assisted living facility, adult day care center, or adult family-care home, when such person has been diagnosed as suffering from dementia.

2. A person 60 years of age or older for whom transfer is being sought from a nursing home pursuant to s. 400.0255(12).

3. A person for whom all decisions concerning medical treatment are currently being lawfully made by the health care surrogate or proxy designated under chapter 765.

(c) When an initial assessment of the ability of a person to give express and informed consent to treatment is required

under this section, and a mobile crisis response service does not respond to the request for an assessment within 2 hours after the request is made or informs the requesting facility that it will not be able to respond within 2 hours after the request is made, the requesting facility may arrange for assessment by any licensed professional authorized to initiate an involuntary examination pursuant to s. 394.463 who is not employed by or under contract with, and does not have a financial interest in, either the facility initiating the transfer or the receiving facility to which the transfer may be made.

(d) A facility may not admit as a voluntary patient a person who has been adjudicated incapacitated, unless the condition of incapacity has been judicially removed. If a facility admits as a voluntary patient a person who is later determined to have been adjudicated incapacitated, and the condition of incapacity had not been removed by the time of the admission, the facility must either discharge the patient or transfer the patient to involuntary status.

(e) The health care surrogate or proxy of an individual on ~~a~~ voluntary status ~~patient~~ may not consent to the provision of mental health treatment or substance abuse treatment for that individual ~~the patient~~. An individual on voluntary status ~~A voluntary patient~~ who is unwilling or unable to provide express and informed consent to mental health treatment must ~~either~~ be discharged or transferred to involuntary status.

(f) Within 24 hours after admission of a voluntary patient, the admitting physician shall document in the patient's clinical record that the patient is able to give express and informed

consent for admission. If the patient is not able to give express and informed consent for admission, the facility shall either discharge the patient or transfer the patient to involuntary status pursuant to subsection (5).

(2) RELEASE OR DISCHARGE ~~OF VOLUNTARY PATIENTS~~.—

(a) A facility shall discharge a voluntary patient:

1. Who has sufficiently improved so that retention in the facility is no longer desirable. A patient may also be discharged to the care of a community facility.

2. Who revokes consent to admission or requests discharge. A voluntary patient or a relative, friend, or attorney of the patient may request discharge either orally or in writing at any time following admission to the facility. The patient must be discharged within 24 hours of the request, unless the request is rescinded or the patient is transferred to involuntary status pursuant to this section. The 24-hour time period may be extended by a treatment facility when necessary for adequate discharge planning, but shall not exceed 3 days exclusive of weekends and holidays. If the patient, or another on the patient's behalf, makes an oral request for discharge to a staff member, such request shall be immediately entered in the patient's clinical record. If the request for discharge is made by a person other than the patient, the discharge may be conditioned upon the express and informed consent of the patient.

(b) A voluntary patient who has been admitted to a facility and who refuses to consent to or revokes consent to treatment shall be discharged within 24 hours after such refusal or revocation, unless transferred to involuntary status pursuant to

this section or unless the refusal or revocation is freely and voluntarily rescinded by the patient.

(c) An individual on voluntary status who is currently charged with a crime shall be returned to the custody of a law enforcement officer upon release or discharge from a facility, unless the individual has been released from law enforcement custody by posting of a bond, by a pretrial conditional release, or by other judicial release.

(4) TRANSFER TO VOLUNTARY STATUS.—An individual on involuntary status ~~patient~~ who has been assessed and certified by a physician or psychologist as competent to provide express and informed consent and who applies to be transferred to voluntary status shall be transferred to voluntary status immediately~~,~~ unless the individual ~~patient has been charged with a crime, or~~ has been involuntarily placed for treatment by a court pursuant to s. 394.467 and continues to meet the criteria for involuntary placement. When transfer to voluntary status occurs, notice shall be given as provided in s. 394.4599.

(5) TRANSFER TO INVOLUNTARY STATUS.—If an individual on ~~When a~~ voluntary status ~~patient~~, or an authorized person on the individual's ~~patient's~~ behalf, makes a request for discharge, the request for discharge, unless freely and voluntarily rescinded, must be communicated to a physician, ~~clinical~~ psychologist, or psychiatrist as quickly as possible within~~, but not later than~~ 12 hours after the request is made. If the individual ~~patient~~ meets the criteria for involuntary placement, the individual must be transferred to a designated receiving facility and the administrator of the receiving facility where the individual is held must file with the court a petition for

involuntary placement~~,~~ within 2 court working days after the request ~~for discharge~~ is made. If the petition is not filed within 2 court working days, the individual must ~~patient shall~~ be discharged. Pending the filing of the petition, the individual ~~patient~~ may be held and emergency mental health treatment rendered in the least restrictive manner, upon the written order of a physician, if it is determined that such treatment is necessary for the safety of the individual ~~patient~~ or others.

Section 12. Section 394.463, Florida Statutes, is amended to read:

394.463 Involuntary examination.—

(1) CRITERIA.—A person may be subject to an ~~taken to a receiving facility for~~ involuntary examination if there is reason to believe that he or she ~~the person~~ has a mental illness or substance abuse impairment and because of this ~~his or her~~ mental illness or substance abuse impairment:

(a)1. The person has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; or

2. The person is unable to determine for himself or herself whether examination is necessary; and

(b)1. Without care or treatment, the person is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or

2. There is a substantial likelihood that without care or treatment the person will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

(2) INVOLUNTARY EXAMINATION.—

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

1. A court may enter an ex parte order stating that an individual ~~a person~~ appears to meet the criteria for involuntary examination, giving the findings on which that conclusion is based. The ex parte order for involuntary examination must be based on sworn testimony, written or oral, which includes specific facts that support the finding that the criteria have been met. Any behavior relied on for the issuance of an ex parte order must have occurred within the preceding 7 calendar days. The order must specify whether the individual must be taken to a mental health facility, detoxification facility, or addictions receiving facility. ~~If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation,~~ A law enforcement officer, or other designated agent of the court, shall take the individual ~~person~~ into custody and deliver him or her to the nearest ~~receiving~~ facility of the type specified in the order for involuntary examination. However, if the county in which the individual is taken into custody has a transportation exception plan specifying a central receiving facility, the law enforcement officer shall transport the individual to the central receiving facility pursuant to the plan. The ~~order of the~~ court order must ~~shall~~ be made a part of the ~~patient's~~ clinical record. A ~~No~~ fee may not ~~shall~~ be charged

for the filing of an order under this subsection. Any ~~receiving~~ facility accepting the individual ~~patient~~ based on the court's ~~this~~ order must send a copy of the order to the Agency for Health Care Administration on the next working day. The order is ~~shall be~~ valid only until executed or, if not executed, for the period specified in the order itself. If no time limit is specified in the order, the order is ~~shall be~~ valid for 7 days after the date it ~~that the order~~ was signed.

2. A law enforcement officer shall take a person who appears to meet the criteria for involuntary examination into custody and deliver ~~the person or have~~ him or her ~~delivered~~ to the nearest mental health receiving facility, addictions receiving facility, or detoxification facility, whichever the officer determines is most appropriate for examination. However, if the county in which the individual taken into custody has a transportation exception plan specifying a central receiving facility, the law enforcement officer shall transport the individual to the central receiving facility pursuant to the plan. The officer shall complete ~~execute~~ a written report detailing the circumstances under which the individual ~~person~~ was taken into custody.~~, and~~ The report shall be made a part of the patient's clinical record. Any receiving facility or detoxification facility accepting the individual ~~patient~~ based on the ~~this~~ report must send a copy of the report to the Agency for Health Care Administration on the next working day.

3. A physician, physician assistant, clinical psychologist, advanced registered nurse practitioner certified pursuant to s. 464.012, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker may execute a

certificate stating that he or she has examined the individual ~~a person~~ within the preceding 48 hours and finds that the individual ~~person~~ appears to meet the criteria for involuntary examination and stating the observations upon which that conclusion is based. The certificate must specify whether the individual is to be taken to a mental health receiving facility, an addictions receiving facility, or a detoxification facility, and must include specific facts supporting the conclusion that the individual would benefit from services provided by the type of facility specified. ~~If other less restrictive means are not available, such as voluntary appearance for outpatient evaluation,~~ A law enforcement officer shall take the individual ~~person~~ named in the certificate into custody and deliver him or her to the nearest ~~receiving~~ facility of the type specified in the certificate for involuntary examination. However, if the county in which the individual is taken into custody has a transportation exception plan specifying a central receiving facility, the law enforcement officer shall transport the individual to the central receiving facility pursuant to the plan. A law enforcement officer may only take an individual into custody on the basis of a certificate within 7 calendar days after execution of the certificate. The law enforcement officer shall complete ~~execute~~ a written report detailing the circumstances under which the individual ~~person~~ was taken into custody. The report and certificate shall be made a part of the ~~patient's~~ clinical record. Any ~~receiving~~ facility accepting the individual ~~patient~~ based on the ~~this~~ certificate must send a copy of the certificate to the Agency for Health Care Administration on the next working day.

(b) An individual may ~~A person shall~~ not be removed from a ~~any~~ program or residential placement licensed under chapter 400 or chapter 429 and transported to a receiving facility for involuntary examination unless an ex parte order, a professional certificate, or a law enforcement officer's report is first prepared. If the condition of the individual ~~person~~ is such that preparation of a law enforcement officer's report is not practicable before removal, the report must ~~shall~~ be completed as soon as possible after removal, but ~~in any case~~ before the individual ~~person~~ is transported to a receiving facility. A receiving facility admitting an individual ~~a person~~ for involuntary examination who is not accompanied by the required ex parte order, professional certificate, or law enforcement officer's report must ~~shall~~ notify the Agency for Health Care Administration of such admission by certified mail by ~~no later than~~ the next working day. ~~The provisions of this paragraph do not apply when transportation is provided by the patient's family or guardian.~~

(c) A law enforcement officer acting in accordance with an ex parte order issued pursuant to this subsection may serve and execute such order on any day of the week, at any time of the day or night.

(d) A law enforcement officer acting in accordance with an ex parte order issued pursuant to this subsection may use such reasonable physical force as is necessary to gain entry to the premises, and any dwellings, buildings, or other structures located on the premises, and to take custody of the person who is the subject of the ex parte order.

(e) Petitions and ~~The Agency for Health Care Administration~~

~~shall receive and maintain the copies of ex parte orders, involuntary outpatient placement~~ orders, involuntary outpatient placement petitions and orders issued pursuant to s. 394.4655, involuntary inpatient placement petitions and orders issued pursuant to s. 394.467, professional certificates, and law enforcement officers' reports are~~. These documents shall be~~ considered part of the clinical record~~,~~ governed by ~~the provisions of~~ s. 394.4615. The agency shall prepare annual reports analyzing the data obtained from these documents, without information identifying individuals held for examination or admitted for mental health and substance abuse treatment ~~patients~~, and shall provide copies of reports to the department, the President of the Senate, the Speaker of the House of Representatives, and the minority leaders of the Senate and the House of Representatives.

(f) An individual held for examination ~~A patient~~ shall be examined by a physician, a ~~or~~ clinical psychologist, or a psychiatric nurse at a receiving facility without unnecessary delay and may, upon the order of a physician, be given emergency mental health treatment if it is determined that such treatment is necessary for the safety of the individual ~~patient~~ or others. ~~The patient may not be released by the receiving facility or its contractor without the documented approval of a psychiatrist, a clinical psychologist, or, if the receiving facility is a hospital, the release may also be approved by an attending emergency department physician with experience in the diagnosis and treatment of mental and nervous disorders and after completion of an involuntary examination pursuant to this subsection. However, a patient may not be held in a receiving~~

~~facility for involuntary examination longer than 72 hours.~~

(g) An individual may not be held for involuntary examination for more than 72 hours from the time of the individual's arrival at the facility, except that this period may be extended by 48 hours if a physician documents in the clinical record that the individual has ongoing symptoms of substance intoxication or substance withdrawal and the individual would likely experience significant clinical benefit from detoxification services. This determination must be made based on a face-to-face examination conducted by the physician no less than 48 hours and not more than 72 hours after the individual's arrival at the facility. Based on the individual's needs, one of the following actions must be taken within the involuntary examination period:

1. The individual shall be released with the approval of a psychiatrist, psychiatric nurse, or psychologist. However, if the examination is conducted in a hospital, an emergency department physician may approve the release. If the examination is conducted in an addictions receiving facility or detoxification facility, a physician may approve release. The professional approving release must have personally conducted the involuntary examination;

2. The individual shall be asked to provide express and informed consent for voluntary admission if a physician or psychologist has determined that the individual is competent to consent to treatment; or

3. A petition for involuntary placement shall be completed and filed in the circuit court by the receiving facility administrator if involuntary outpatient or inpatient placement

is deemed necessary. If the 72-hour period ends on a weekend or legal holiday, the petition must be filed by the next working day. If inpatient placement is deemed necessary, the least restrictive treatment consistent with the optimum improvement of the individual's condition must be made available.

(h) An individual released from a receiving or treatment facility on a voluntary or involuntary basis who is currently charged with a crime shall be returned to the custody of law enforcement, unless the individual has been released from law enforcement custody by posting of a bond, by a pretrial conditional release, or by other judicial release.

(i) If an individual ~~A person~~ for whom an involuntary examination has been initiated ~~who~~ is being evaluated or treated at a hospital for an emergency medical condition specified in s. 395.002 the involuntary examination period ~~must be examined by a receiving facility within 72 hours. The 72-hour period~~ begins when the individual ~~patient~~ arrives at the hospital and ceases when a ~~the attending~~ physician documents that the individual ~~patient~~ has an emergency medical condition. The 72-hour period resumes when the physician documents that the emergency medical condition has stabilized or does not exist. ~~If the patient is examined at a hospital providing emergency medical services by a professional qualified to perform an involuntary examination and is found as a result of that examination not to meet the criteria for involuntary outpatient placement pursuant to s. 394.4655(1) or involuntary inpatient placement pursuant to s. 394.467(1), the patient may be offered voluntary placement, if appropriate, or released directly from the hospital providing emergency medical services. The finding by the professional that~~

~~the patient has been examined and does not meet the criteria for involuntary inpatient placement or involuntary outpatient placement must be entered into the patient's clinical record. Nothing in this paragraph is intended to prevent~~ A hospital providing emergency medical services may transfer an individual ~~from appropriately transferring a patient~~ to another hospital before ~~prior to~~ stabilization if, provided the requirements of s. 395.1041(3)(c) are ~~have been~~ met. One of the following actions must occur within 12 hours after a physician documents that the individual's emergency medical condition has stabilized or does not exist:

~~(h) One of the following must occur within 12 hours after the patient's attending physician documents that the patient's medical condition has stabilized or that an emergency medical condition does not exist:~~

1. The individual shall be examined by a physician, psychiatric nurse or psychologist and, if found not to meet the criteria for involuntary examination pursuant to s. 394.463, shall be released directly from the hospital providing the emergency medical services. The results of the examination, including the final disposition, shall be entered into the clinical records; or

2. The individual shall be transferred to a receiving facility for examination if appropriate medical and mental health treatment is available. However, the receiving facility must be notified of the transfer within 2 hours after the individual's condition has been stabilized or after determination that an emergency medical condition does not exist. ~~The patient must be examined by a designated receiving~~

~~facility and released; or~~

~~2. The patient must be transferred to a designated receiving facility in which appropriate medical treatment is available. However, the receiving facility must be notified of the transfer within 2 hours after the patient's condition has been stabilized or after determination that an emergency medical condition does not exist.~~

~~(i) Within the 72-hour examination period or, if the 72 hours ends on a weekend or holiday, no later than the next working day thereafter, one of the following actions must be taken, based on the individual needs of the patient:~~

~~1. The patient shall be released, unless he or she is charged with a crime, in which case the patient shall be returned to the custody of a law enforcement officer;~~

~~2. The patient shall be released, subject to the provisions of subparagraph 1., for voluntary outpatient treatment;~~

~~3. The patient, unless he or she is charged with a crime, shall be asked to give express and informed consent to placement as a voluntary patient, and, if such consent is given, the patient shall be admitted as a voluntary patient; or~~

~~4. A petition for involuntary placement shall be filed in the circuit court when outpatient or inpatient treatment is deemed necessary. When inpatient treatment is deemed necessary, the least restrictive treatment consistent with the optimum improvement of the patient's condition shall be made available. When a petition is to be filed for involuntary outpatient placement, it shall be filed by one of the petitioners specified in s. 394.4655(3)(a). A petition for involuntary inpatient placement shall be filed by the facility administrator~~.

(3) NOTICE OF RELEASE.—Notice of the release shall be given to the individual's ~~patient's~~ guardian, health care surrogate or proxy, or representative, to any person who executed a certificate admitting the individual ~~patient~~ to the receiving facility, and to any court that ~~which~~ ordered the individual's examination ~~patient's evaluation~~.

Section 13. Section 394.4655, Florida Statutes, is amended to read:

394.4655 Involuntary outpatient placement.—

(1) CRITERIA FOR INVOLUNTARY OUTPATIENT PLACEMENT.—An individual ~~A person~~ may be ordered to involuntary outpatient placement upon a finding of the court ~~that~~ by clear and convincing evidence that:

(a) The individual is an adult ~~person is 18 years of age or older~~;

(b) The individual ~~person~~ has a mental illness or substance abuse impairment;

(c) The individual ~~person~~ is unlikely to survive safely in the community without supervision, based on a clinical determination;

(d) The individual ~~person~~ has a history of lack of compliance with treatment for mental illness or substance abuse impairment;

(e) The individual ~~person~~ has:

1. Within ~~At least twice within~~ the immediately preceding 36 months, been involuntarily admitted to a receiving or treatment facility ~~as defined in s. 394.455~~, or has received mental health or substance abuse services in a forensic or correctional facility. The 36-month period does not include any

period during which the individual ~~person~~ was admitted or incarcerated; or

2. Engaged in one or more acts of serious violent behavior toward self or others, or attempts at serious bodily harm to himself or herself or others, within the preceding 36 months;

(f) Due to ~~The person is, as a result of~~ his or her mental illness or substance abuse impairment, the individual is~~,~~ unlikely to voluntarily participate in the recommended treatment plan and ~~either he or she~~ has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement for treatment or ~~he or she~~ is unable to determine for himself or herself whether placement is necessary;

(g) In view of the individual's ~~person's~~ treatment history and current behavior, the individual ~~person~~ is in need of involuntary outpatient placement in order to prevent a relapse or deterioration that would be likely to result in serious bodily harm to self ~~himself or herself~~ or others, or a substantial harm to his or her well-being as set forth in s. 394.463(1);

(h) It is likely that the individual ~~person~~ will benefit from involuntary outpatient placement; and

(i) All available, less restrictive alternatives that ~~would~~ offer an opportunity for improvement of his or her condition have been judged to be inappropriate or unavailable.

(2) INVOLUNTARY OUTPATIENT PLACEMENT.—

(a)~~1.~~ An individual ~~A patient~~ who is being recommended for involuntary outpatient placement by the administrator of the receiving facility where he or she ~~the patient~~ has been examined

may be retained by the facility after adherence to the notice procedures provided in s. 394.4599.

1. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a ~~clinical~~ psychologist or another psychiatrist, both of whom have personally examined the individual ~~patient~~ within the preceding 72 hours, that the criteria for involuntary outpatient placement are met. However, in a county having a population of fewer than 50,000, if the administrator certifies that a psychiatrist or clinical psychologist is not available to provide the second opinion, the second opinion may be provided by a ~~licensed~~ physician who has postgraduate training and experience in diagnosis and treatment of mental and nervous disorders or by a psychiatric nurse. Any second opinion authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation must be entered on an involuntary outpatient placement certificate that authorizes the receiving facility to retain the individual ~~patient~~ pending completion of a hearing. The certificate shall be made a part of the patient's clinical record.

2. If the individual ~~patient~~ has been stabilized and no longer meets the criteria for involuntary examination pursuant to s. 394.463(1), he or she ~~the patient~~ must be released from the receiving facility while awaiting the hearing for involuntary outpatient placement.

3. Before filing a petition for involuntary outpatient treatment, the administrator of the ~~a~~ receiving facility or a designated department representative must identify the service provider that will have primary responsibility for service

provision under an order for involuntary outpatient placement, unless the individual ~~person~~ is otherwise participating in outpatient psychiatric treatment and is not in need of public financing for that treatment, in which case the individual, if eligible, may be ordered to involuntary treatment pursuant to the existing psychiatric treatment relationship.

4.~~3.~~ The service provider shall prepare a written proposed treatment plan in consultation with the individual being held ~~patient~~ or his or her ~~the patient's~~ guardian advocate, if appointed, for the court's consideration for inclusion in the involuntary outpatient placement order. The service provider shall ~~also~~ provide a copy of the proposed treatment plan to the individual ~~patient~~ and the administrator of the receiving facility. The treatment plan must specify the nature and extent of the individual's ~~patient's~~ mental illness or substance abuse impairment, address the reduction of symptoms that necessitate involuntary outpatient placement, and include measurable goals and objectives for the services and treatment that are provided to treat the individual's ~~person's~~ mental illness or substance abuse impairment and assist the individual ~~person~~ in living and functioning in the community or to prevent a relapse or deterioration. Service providers may select and supervise other providers ~~individuals~~ to implement specific aspects of the treatment plan. The services in the treatment plan must be deemed clinically appropriate by a physician, ~~clinical~~ psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker who consults with, or is employed or contracted by, the service provider. The service provider must certify to the court in the

proposed treatment plan whether sufficient services for improvement and stabilization are currently available and whether the service provider agrees to provide those services. If the service provider certifies that the services in the proposed treatment plan are not available, the petitioner may not file the petition.

(b) If an individual ~~a patient~~ in involuntary inpatient placement meets the criteria for involuntary outpatient placement, the administrator of the treatment facility may, before the expiration of the period during which the treatment facility is authorized to retain the individual ~~patient~~, recommend involuntary outpatient placement.

1. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a ~~clinical~~ psychologist or another psychiatrist, both of whom have personally examined the individual ~~patient~~ within the preceding 72 hours, that the criteria for involuntary outpatient placement are met. However, in a county having a population of fewer than 50,000, if the administrator certifies that a psychiatrist or ~~clinical~~ psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental and nervous disorders or by a psychiatric nurse. Any second opinion authorized in this subparagraph may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation must be entered on an involuntary outpatient placement certificate, and the certificate must be made a part of the individual's ~~patient's~~ clinical record.

2.~~(c)1.~~ The administrator of the treatment facility shall

provide a copy of the involuntary outpatient placement certificate and a copy of the state mental health discharge form to a department representative in the county where the individual ~~patient~~ will be residing. ~~For persons who are leaving a state mental health treatment facility, the petition for involuntary outpatient placement must be filed in the county where the patient will be residing.~~

3.~~2.~~ The service provider that will have primary responsibility for service provision shall be identified by the designated department representative prior to the order for involuntary outpatient placement and must, before ~~prior to~~ filing a petition for involuntary outpatient placement, certify to the court whether the services recommended in the individual's ~~patient's~~ discharge plan are available in the local community and whether the service provider agrees to provide those services. The service provider must develop with the individual ~~patient~~, or the patient's guardian advocate, if one is appointed, a treatment or service plan that addresses the needs identified in the discharge plan. The plan must be deemed to be clinically appropriate by a physician, ~~clinical~~ psychologist, psychiatric nurse, mental health counselor, marriage and family therapist, or clinical social worker, ~~as defined in this chapter,~~ who consults with, or is employed or contracted by, the service provider.

~~3. If the service provider certifies that the services in the proposed treatment or service plan are not available, the petitioner may not file the petition.~~

(3) PETITION FOR INVOLUNTARY OUTPATIENT PLACEMENT.—

(a) A petition for involuntary outpatient placement may be

filed by:

1. The administrator of a mental health receiving facility, an addictions receiving facility, or a detoxification facility; or

2. The administrator of a treatment facility.

(b) Each required criterion for involuntary outpatient placement must be alleged and substantiated in the petition for involuntary outpatient placement. A copy of the certificate recommending involuntary outpatient placement completed by a qualified professional specified in subsection (2) must be attached to the petition. A copy of the proposed treatment plan must be attached to the petition. Before the petition is filed, the service provider shall certify that the services in the proposed treatment plan are available. If the necessary services are not available in the ~~patient's~~ local community where the individual will reside ~~to respond to the person's individual needs~~, the petition may not be filed.

(c) A ~~The~~ petition for involuntary outpatient placement must be filed in the county where the individual who is the subject of the petition ~~patient~~ is located, unless the individual ~~patient~~ is being placed from a state treatment facility, in which case the petition must be filed in the county where the individual ~~patient~~ will reside. When the petition is ~~has been~~ filed, the clerk of the court shall provide copies of the petition and the proposed treatment plan to the department, the individual ~~patient~~, the individual's ~~patient's~~ guardian, guardian advocate, health care surrogate or proxy, or representative, the state attorney, and the public defender or the individual's ~~patient's~~ private counsel. A fee may not be

charged for filing a petition under this subsection.

(4) APPOINTMENT OF COUNSEL.—Within 1 court working day after ~~the~~ filing of a petition for involuntary outpatient placement, the court shall appoint the public defender to represent the individual ~~person~~ who is the subject of the petition, unless the individual ~~person~~ is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of the appointment. The public defender shall represent the individual ~~person~~ until the petition is dismissed, the court order expires, or the individual ~~patient~~ is discharged from involuntary outpatient placement. An attorney who represents the individual ~~patient~~ shall have access to the individual ~~patient~~, witnesses, and records relevant to the presentation of the individual's ~~patient's~~ case and shall represent the interests of the individual ~~patient~~, regardless of the source of payment to the attorney. An attorney representing an individual in proceedings under this part shall advocate the individual's expressed desires and must be present and actively participate in all hearings on involuntary placement. If the individual is unable or unwilling to express his or her desires to the attorney, the attorney shall proceed as though the individual expressed a desire for liberty, opposition to involuntary placement and, if placement is ordered, a preference for the least restrictive treatment possible.

(5) CONTINUANCE OF HEARING.—The patient is entitled, with the concurrence of the patient's counsel, to at least one continuance of the hearing. The continuance shall be for a period of up to 4 weeks.

(6) HEARING ON INVOLUNTARY OUTPATIENT PLACEMENT.—

(a)~~1.~~ The court shall hold the hearing on involuntary outpatient placement within 5 court working days after the filing of the petition, unless a continuance is granted. The hearing shall be held in the county where the petition is filed, ~~shall~~ be as convenient to the individual who is the subject of the petition ~~patient~~ as is consistent with orderly procedure, and ~~shall~~ be conducted in physical settings not likely to be injurious to the individual's ~~patient's~~ condition. If the court finds that the individual's ~~patient's~~ attendance at the hearing is not consistent with the best interests of the individual ~~patient~~ and if the individual's ~~patient's~~ counsel does not object, the court may waive the presence of the individual ~~patient~~ from all or any portion of the hearing. The state attorney for the circuit in which the individual ~~patient~~ is located shall represent the state, rather than the petitioner, as the real party in interest in the proceeding. The state attorney shall have access to the individual's clinical record and witnesses and shall independently evaluate and confirm the allegations set forth in the petition for involuntary placement. If the allegations are substantiated, the state attorney shall prosecute the petition. If the allegations are not substantiated, the state attorney shall withdraw the petition.

(b)~~2.~~ The court may appoint a magistrate ~~master~~ to preside at the hearing. One of the professionals who executed the involuntary outpatient placement certificate shall be a witness. The individual who is the subject of the petition ~~patient~~ and his or her ~~the patient's~~ guardian, guardian advocate, health care surrogate or proxy, or representative shall be informed by the court of the right to an independent expert examination. If

the individual ~~patient~~ cannot afford such an examination, the court shall provide ~~for~~ one. The independent expert's report is ~~shall be~~ confidential and not discoverable, unless the expert is ~~to be~~ called as a witness for the individual ~~patient~~ at the hearing. The court shall allow testimony from persons ~~individuals~~, including family members, deemed by the court to be relevant ~~under state law~~, regarding the individual's ~~person's~~ prior history and how that ~~prior~~ history relates to the individual's ~~person's~~ current condition. The testimony in the hearing must be ~~given~~ under oath, and the proceedings must be recorded. The individual ~~patient~~ may refuse to testify at the hearing.

(c) The court shall consider testimony and evidence regarding the competence of the individual being held to consent to treatment. If the court finds that the individual is incompetent to consent, it shall appoint a guardian advocate as provided in s. 394.4598.

(7) COURT ORDER.—

(a) ~~(b)1.~~ If the court concludes that the individual who is the subject of the petition ~~patient~~ meets the criteria for involuntary outpatient placement under ~~pursuant to~~ subsection (1), the court shall issue an order for involuntary outpatient placement. The court order may ~~shall~~ be for ~~a period of~~ up to 6 months. The order must specify the nature and extent of the individual's ~~patient's~~ mental illness or substance abuse impairment. The court order ~~of the court~~ and the treatment plan must ~~shall~~ be made part of the individual's ~~patient's~~ clinical record. The service provider shall discharge an individual ~~a~~ ~~patient~~ from involuntary outpatient placement when the order

expires or any time the individual ~~patient~~ no longer meets the criteria for involuntary placement. Upon discharge, the service provider shall send a certificate of discharge to the court.

(b) ~~2.~~ The court may not order the department or the service provider to provide services if the program or service is not available in the ~~patient's~~ local community of the individual being served, if there is no space available in the program or service for the individual ~~patient~~, or if funding is not available for the program or service. A copy of the order must be sent to the Agency for Health Care Administration by the service provider within 1 working day after it is received from the court. After the placement order is issued, the service provider and the individual ~~patient~~ may modify ~~provisions of~~ the treatment plan. For any material modification of the treatment plan to which the individual ~~patient~~ or the individual's ~~patient's~~ guardian advocate, if appointed, does agree, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the individual ~~patient~~ or the individual's ~~patient's~~ guardian advocate, if appointed, must be approved or disapproved by the court consistent with the requirements of subsection (2).

(c) ~~3.~~ If, in the clinical judgment of a physician, the individual being served ~~patient~~ has failed or has refused to comply with the treatment ordered by the court, and, in the clinical judgment of the physician, efforts were made to solicit compliance and the individual ~~patient~~ may meet the criteria for involuntary examination, the individual ~~a person~~ may be brought to a receiving facility pursuant to s. 394.463 for involuntary

examination. If, after examination, the individual ~~patient~~ does not meet the criteria for involuntary inpatient placement pursuant to s. 394.467, the individual ~~patient~~ must be discharged from the receiving facility. The involuntary outpatient placement order remains ~~shall remain~~ in effect unless the service provider determines that the individual ~~patient~~ no longer meets the criteria for involuntary outpatient placement or until the order expires. The service provider must determine whether modifications should be made to the existing treatment plan and must attempt to continue to engage the individual ~~patient~~ in treatment. For any material modification of the treatment plan to which the individual ~~patient~~ or the individual's ~~patient's~~ guardian advocate, if appointed, agrees ~~does agree~~, the service provider shall send notice of the modification to the court. Any material modifications of the treatment plan which are contested by the individual ~~patient~~ or the individual's ~~patient's~~ guardian advocate, if appointed, must be approved or disapproved by the court consistent with the requirements of subsection (2).

(d) ~~(c)~~ If, at any time before the conclusion of the initial hearing on involuntary outpatient placement, it appears to the court that the individual ~~person~~ does not meet the criteria for involuntary outpatient placement under this section but, ~~instead,~~ meets the criteria for involuntary inpatient placement, the court may order the individual ~~person~~ admitted for involuntary inpatient examination under s. 394.463. ~~If the person instead meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to s. 397.675, the court may order the person to be admitted for~~

~~involuntary assessment for a period of 5 days pursuant to s. 397.6811. Thereafter, all proceedings shall be governed by chapter 397.~~

~~(d) At the hearing on involuntary outpatient placement, the court shall consider testimony and evidence regarding the patient's competence to consent to treatment. If the court finds that the patient is incompetent to consent to treatment, it shall appoint a guardian advocate as provided in s. 394.4598. The guardian advocate shall be appointed or discharged in accordance with s. 394.4598.~~

(e) The administrator of the receiving facility, the detoxification facility, or the designated department representative shall provide a copy of the court order and adequate documentation of an individual's ~~a patient's~~ mental illness or substance abuse impairment to the service provider for involuntary outpatient placement. Such documentation must include any advance directives made by the individual ~~patient~~, a psychiatric evaluation of the individual ~~patient~~, and any evaluations of the individual ~~patient~~ performed by a ~~clinical~~ psychologist or a clinical social worker.

(8) ~~(7) PROCEDURE FOR~~ CONTINUED INVOLUNTARY OUTPATIENT PLACEMENT.—

(a) ~~1.~~ If the individual ~~person~~ continues to meet the criteria for involuntary outpatient placement, the service provider shall, before the expiration of the period during which the placement ~~treatment~~ is ordered ~~for the person~~, file in the circuit court a petition for continued involuntary outpatient placement.

1. ~~2.~~ The existing involuntary outpatient placement order

remains in effect until disposition of ~~on~~ the petition for continued involuntary outpatient placement.

2.~~3.~~ A certificate must ~~shall~~ be attached to the petition which includes a statement from the individual's ~~person's~~ physician or ~~clinical~~ psychologist justifying the request, a brief description of the individual's ~~patient's~~ treatment during the time he or she was involuntarily placed, and a personalized ~~an individualized~~ plan of continued treatment.

3.~~4.~~ The service provider shall develop the ~~individualized~~ plan of continued treatment in consultation with the individual ~~patient~~ or his or her ~~the patient's~~ guardian advocate, if appointed. When the petition has been filed, the clerk of the court shall provide copies of the certificate and the ~~individualized~~ plan of continued treatment to the department, the individual ~~patient~~, the individual's ~~patient's~~ guardian advocate, the state attorney, and the individual's ~~patient's~~ private counsel or the public defender.

(b) Within 1 court working day after the filing of a petition for continued involuntary outpatient placement, the court shall appoint the public defender to represent the individual ~~person~~ who is the subject of the petition, unless the individual ~~person~~ is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of such appointment. The public defender shall represent the individual ~~person~~ until the petition is dismissed, ~~or~~ the court order expires, or the individual ~~patient~~ is discharged from involuntary outpatient placement. Any attorney representing the individual ~~patient~~ shall have access to the individual ~~patient~~, witnesses, and records relevant to the presentation of the

individual's ~~patient's~~ case and shall represent the interests of the individual ~~patient~~, regardless of the source of payment to the attorney.

(c) The court shall inform the individual who is the subject of the petition and his or her guardian, guardian advocate, health care surrogate or proxy, or representative of the individual's right to an independent expert examination. If the individual cannot afford such an examination, the court shall provide one.

(d) ~~(c)~~ Hearings on petitions for continued involuntary outpatient placement are ~~shall be~~ before the circuit court. The court may appoint a magistrate ~~master~~ to preside at the hearing. The procedures for obtaining an order pursuant to this paragraph must ~~shall~~ be in accordance with subsection (6), except that the time period included in paragraph (1)(e) is not applicable in determining the appropriateness of additional periods of involuntary outpatient placement.

(e) ~~(d)~~ Notice of the hearing shall be provided in accordance with ~~as set forth in~~ s. 394.4599. The individual being served ~~patient~~ and the individual's ~~patient's~~ attorney may agree to a period of continued outpatient placement without a court hearing.

(f) ~~(e)~~ The same procedure shall be repeated before the expiration of each additional period the individual being served ~~patient~~ is placed in treatment.

(g) ~~(f)~~ If the individual in involuntary outpatient placement ~~patient~~ has previously been found incompetent to consent to treatment, the court shall consider testimony and evidence regarding the individual's ~~patient's~~ competence.

Section 394.4598 governs the discharge of the guardian advocate if the individual's ~~patient's~~ competency to consent to treatment has been restored.

Section 14. Section 394.467, Florida Statutes, is amended to read:

394.467 Involuntary inpatient placement.—

(1) CRITERIA.—An individual ~~A person~~ may be placed in involuntary inpatient placement for treatment upon a finding of the court by clear and convincing evidence that:

(a) He or she has a mental illness or substance abuse impairment ~~is mentally ill~~ and because of his or her mental illness or substance abuse impairment:

1.a. He or she has refused voluntary placement for treatment after sufficient and conscientious explanation and disclosure of the purpose of placement for treatment; or

b. He or she is unable to determine for himself or herself whether placement is necessary; and

2.a. He or she is manifestly incapable of surviving alone or with the help of willing and responsible family or friends, including available alternative services, and, without treatment, is likely to suffer from neglect or refuse to care for himself or herself, and such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; or

b. There is substantial likelihood that in the near future he or she will inflict serious bodily harm on self or others ~~himself or herself or another person~~, as evidenced by recent behavior causing, attempting, or threatening such harm; and

(b) All available less restrictive treatment alternatives

that ~~which would~~ offer an opportunity for improvement of his or her condition have been judged to be inappropriate.

(2) ADMISSION TO A TREATMENT FACILITY.—An individual ~~A patient~~ may be retained by a mental health receiving facility, an addictions receiving facility, or a detoxification facility, or involuntarily placed in a treatment facility upon the recommendation of the administrator of the receiving facility where the individual ~~patient~~ has been examined and after adherence to the notice and hearing procedures provided in s. 394.4599. The recommendation must be supported by the opinion of a psychiatrist and the second opinion of a ~~clinical~~ psychologist or another psychiatrist, both of whom have personally examined the individual ~~patient~~ within the preceding 72 hours, that the criteria for involuntary inpatient placement are met. However, in a county that has a population of fewer than 50,000, if the administrator certifies that a psychiatrist or ~~clinical~~ psychologist is not available to provide the second opinion, the second opinion may be provided by a licensed physician who has postgraduate training and experience in diagnosis and treatment of mental and nervous disorders or by a psychiatric nurse. If the petition seeks placement for treatment of substance abuse impairment only, and the individual is examined by an addictions receiving facility or detoxification facility, the first opinion may be provided by a physician and the second opinion may be provided by a substance abuse qualified professional. Any second opinion authorized in this subsection may be conducted through a face-to-face examination, in person or by electronic means. Such recommendation must ~~shall~~ be entered on an involuntary inpatient placement certificate that authorizes the receiving facility to

retain the individual being held ~~patient~~ pending transfer to a treatment facility or completion of a hearing.

(3) PETITION FOR INVOLUNTARY INPATIENT PLACEMENT.—The administrator of the mental health facility, addictions receiving facility, or detoxification facility shall file a petition for involuntary inpatient placement in the court in the county where the individual ~~patient~~ is located. Upon filing, the clerk of the court shall provide copies to the department, the individual ~~patient~~, the individual's ~~patient's~~ guardian, guardian advocate, health care surrogate or proxy, or representative, and the state attorney and public defender of the judicial circuit in which the individual ~~patient~~ is located. A ~~No~~ fee may not ~~shall~~ be charged for the filing of a petition under this subsection.

(4) APPOINTMENT OF COUNSEL.—Within 1 court working day after the filing of a petition for involuntary inpatient placement, the court shall appoint the public defender to represent the individual ~~person~~ who is the subject of the petition, unless the individual ~~person~~ is otherwise represented by counsel. The clerk of the court shall immediately notify the public defender of such appointment. Any attorney representing the individual ~~patient~~ shall have access to the individual ~~patient~~, witnesses, and records relevant to the presentation of the individual's ~~patient's~~ case and shall represent the interests of the individual ~~patient~~, regardless of the source of payment to the attorney.

(a) An attorney representing an individual in proceedings under this part shall advocate the individual's expressed desires and must be present and actively participate in all

hearings on involuntary placement. If the individual is unable or unwilling to express his or her desires to the attorney, the attorney shall proceed as though the individual expressed a desire for liberty, opposition to involuntary placement, and, if placement is ordered, a preference for the least restrictive treatment possible.

(b) The state attorney for the circuit in which the individual is located shall represent the state rather than the petitioning facility administrator as the real party in interest in the proceeding. The state attorney shall have access to the individual's clinical record and witnesses and shall independently evaluate and confirm the allegations set forth in the petition for involuntary placement. If the allegations are substantiated, the state attorney shall prosecute the petition. If the allegations are not substantiated, the state attorney shall withdraw the petition.

(5) CONTINUANCE OF HEARING.—The individual ~~patient~~ is entitled, with the concurrence of the individual's ~~patient's~~ counsel, to at least one continuance of the hearing. The continuance shall be for ~~a period of~~ up to 4 weeks.

(6) HEARING ON INVOLUNTARY INPATIENT PLACEMENT.—

(a)~~1.~~ The court shall hold the hearing on involuntary inpatient placement within 5 court working days after the petition is filed, unless a continuance is granted.

1. The hearing shall be held in the county where the individual ~~patient~~ is located and shall be as convenient to the individual ~~patient~~ as may be consistent with orderly procedure and shall be conducted in physical settings not likely to be injurious to the individual's ~~patient's~~ condition. If the

individual wishes to waive his or her ~~court finds that the patient's~~ attendance at the hearing, the court must determine that the waiver is knowingly, intelligently, and voluntarily being waived and ~~is not consistent with the best interests of the patient, and the patient's counsel does not object, the court~~ may waive the presence of the individual ~~patient~~ from all or any portion of the hearing. ~~The state attorney for the circuit in which the patient is located shall represent the state, rather than the petitioning facility administrator, as the real party in interest in the proceeding.~~

2. The court may appoint a general or special magistrate to preside at the hearing. One of the two professionals who executed the involuntary inpatient placement certificate shall be a witness. The individual ~~patient~~ and the individual's ~~patient's~~ guardian, guardian advocate, health care surrogate or proxy, or representative shall be informed by the court of the right to an independent expert examination. If the individual ~~patient~~ cannot afford such an examination, the court shall provide for one. The independent expert's report is ~~shall be~~ confidential and not discoverable, unless the expert is to be called as a witness for the individual ~~patient~~ at the hearing. The testimony in the hearing must be given under oath, and the proceedings must be recorded. The individual ~~patient~~ may refuse to testify at the hearing.

3. The court shall allow testimony from persons, including family members, deemed by the court to be relevant regarding the individual's prior history and how that prior history relates to the individual's current condition.

(b) If the court concludes that the individual ~~patient~~

meets the criteria for involuntary inpatient placement, it shall order that the individual ~~patient~~ be transferred to a treatment facility or, if the individual ~~patient~~ is at a treatment facility, that the individual ~~patient~~ be retained there or be treated at any other appropriate mental health receiving facility, addictions receiving facility, detoxification facility, or treatment facility, or that the individual ~~patient~~ receive services from such a facility ~~a receiving or treatment facility~~, on an involuntary basis, for up to 90 days ~~a period of up to 6 months~~. The order shall specify the nature and extent of the individual's ~~patient's~~ mental illness or substance abuse impairment. The facility shall discharge the individual at ~~a patient~~ any time the individual ~~patient~~ no longer meets the criteria for involuntary inpatient placement, unless the individual ~~patient~~ has transferred to voluntary status.

(c) If at any time before ~~prior to~~ the conclusion of the hearing on involuntary inpatient placement it appears to the court that the individual ~~person~~ does not meet the criteria for involuntary inpatient placement under this section, but instead meets the criteria for involuntary outpatient placement, the court may order the individual ~~person~~ evaluated for involuntary outpatient placement pursuant to s. 394.4655, and~~.~~ the petition and hearing procedures set forth in s. 394.4655 ~~shall~~ apply. ~~If the person instead meets the criteria for involuntary assessment, protective custody, or involuntary admission pursuant to s. 397.675, then the court may order the person to be admitted for involuntary assessment for a period of 5 days pursuant to s. 397.6811. Thereafter, all proceedings shall be governed by chapter 397.~~

(d) At the hearing on involuntary inpatient placement, the court shall consider testimony and evidence regarding the individual's ~~patient's~~ competence to consent to treatment. If the court finds that the individual ~~patient~~ is incompetent to consent to treatment, it shall appoint a guardian advocate as provided in s. 394.4598.

(e) The administrator of the petitioning ~~receiving~~ facility shall provide a copy of the court order and adequate documentation of the individual's ~~a patient's~~ mental illness or substance abuse impairment to the administrator of a treatment facility if the individual ~~whenever a patient~~ is ordered for involuntary inpatient placement, whether by civil or criminal court. The documentation must ~~shall~~ include any advance directives made by the individual ~~patient~~, a psychiatric evaluation of the individual ~~patient~~, and any evaluations of the individual ~~patient~~ performed by a ~~clinical~~ psychologist, a marriage and family therapist, a mental health counselor, a substance abuse qualified professional or a clinical social worker. The administrator of a treatment facility may refuse admission to an individual ~~any patient~~ directed to its facilities on an involuntary basis, whether by civil or criminal court order, who is not accompanied at the same time by adequate orders and documentation.

(7) PROCEDURE FOR CONTINUED INVOLUNTARY INPATIENT PLACEMENT.—

(a) Hearings on petitions for continued involuntary inpatient placement shall be administrative hearings and shall be conducted in accordance with ~~the provisions of~~ s. 120.57(1), except that an ~~any~~ order entered by an ~~the~~ administrative law

judge is ~~shall be~~ final and subject to judicial review in accordance with s. 120.68. Orders concerning an individual ~~patients~~ committed after successfully pleading not guilty by reason of insanity are ~~shall be~~ governed by ~~the provisions of~~ s. 916.15.

(b) If the individual ~~patient~~ continues to meet the criteria for involuntary inpatient placement, the administrator shall, before ~~prior~~ to the expiration of the period ~~during which~~ the ~~treatment~~ facility is authorized to retain the individual ~~patient~~, file a petition requesting authorization for continued involuntary inpatient placement. The request must ~~shall~~ be accompanied by a statement from the individual's ~~patient's~~ physician or ~~clinical~~ psychologist justifying the request, a brief description of the individual's ~~patient's~~ treatment during the time he or she was involuntarily placed, and a personalized ~~an individualized~~ plan of continued treatment. Notice of the hearing must ~~shall~~ be provided as set forth in s. 394.4599. If at the hearing the administrative law judge finds that attendance at the hearing is not consistent with the individual's best interests ~~of the~~ ~~patient~~, the administrative law judge may waive the presence of the individual ~~patient~~ from all or any portion of the hearing, unless the individual ~~patient~~, through counsel, objects to the waiver of presence. The testimony in the hearing must be under oath, and the proceedings must be recorded.

(c) Unless the individual ~~patient~~ is otherwise represented or is ineligible, he or she shall be represented at the hearing on the petition for continued involuntary inpatient placement by the public defender of the circuit in which the facility is

located.

(d) The Division of Administrative Hearings shall inform the individual and his or her guardian, guardian advocate, health care surrogate or proxy, or representative of the right to an independent expert examination. If the individual cannot afford such an examination, the court shall provide one.

(e) ~~(d)~~ If at a hearing it is shown that the individual ~~patient~~ continues to meet the criteria for involuntary inpatient placement, the administrative law judge shall sign the order for continued involuntary inpatient placement for a period of up to 90 days ~~not to exceed 6 months~~. The same procedure must ~~shall~~ be repeated prior to the expiration of each additional period the individual ~~patient~~ is retained.

(f) ~~(e)~~ If continued involuntary inpatient placement is necessary for an individual ~~a patient~~ admitted while serving a criminal sentence~~,~~ but whose sentence is about to expire, or for a minor ~~patient~~ involuntarily placed ~~while a minor~~ but who is about to reach the age of 18, the administrator shall petition the administrative law judge for an order authorizing continued involuntary inpatient placement.

(g) ~~(f)~~ If the individual previously ~~patient~~ has been ~~previously~~ found incompetent to consent to treatment, the administrative law judge shall consider testimony and evidence regarding the individual's ~~patient's~~ competence. If the administrative law judge finds evidence that the individual ~~patient~~ is now competent to consent to treatment, the ~~administrative law~~ judge may issue a recommended order to the court that found the individual ~~patient~~ incompetent to consent to treatment that the individual's ~~patient's~~ competence be

restored and that any guardian advocate previously appointed be discharged.

(8) RETURN TO FACILITY ~~OF PATIENTS~~.—If an individual held ~~When a patient~~ at a ~~treatment~~ facility involuntarily under this part leaves the facility without the administrator's authorization, the administrator may authorize a search for, ~~the patient~~ and the return of, the individual ~~patient~~ to the facility. The administrator may request the assistance of a law enforcement agency ~~in the search for and return of the patient~~.

Section 15. Section 394.4672, Florida Statutes, is amended to read:

394.4672 Procedure for placement of veteran with federal agency.—

(1) A facility owned, operated, or administered by the United States Department of Veterans Affairs that provides mental health services has authority as granted by the Department of Veterans' Affairs to:

(a) Initiate and conduct involuntary examinations pursuant to s. 394.463.

(b) Provide voluntary treatment pursuant to s. 394.4625.

(c) Petition for involuntary inpatient placement pursuant to s. 394.467.

(d) Provide involuntary inpatient placement pursuant to this part.

(2) ~~(1)~~ If a ~~Whenever it is determined by the~~ court determines that an individual ~~a person~~ meets the criteria for involuntary placement and he or she ~~it appears that such person~~ is eligible for care or treatment by the United States Department of Veterans Affairs or another ~~other~~ agency of the

United States Government, the court, upon receipt of a certificate from the United States Department of Veterans Affairs or such other agency showing that facilities are available and that the individual ~~person~~ is eligible for care or treatment therein, may place that individual ~~person~~ with the United States Department of Veterans Affairs or other federal agency. The individual ~~person whose placement is sought~~ shall be personally served with notice of the pending placement proceeding in the manner as provided in this part.~~, and nothing in~~ This section does not ~~shall~~ affect the individual's ~~his or her~~ right to appear and be heard in the proceeding. Upon placement, the individual is ~~person shall be~~ subject to the ~~rules and~~ regulations of the United States Department of Veterans Affairs or other federal agency.

(3)~~(2)~~ The judgment or order of placement issued by a court of competent jurisdiction of another state or of the District of Columbia which places an individual~~, placing a person~~ with the United States Department of Veterans Affairs or other federal agency for care or treatment has~~, shall have~~ the same force and effect in this state as in the jurisdiction of the court entering the judgment or making the order.~~; and~~ The courts of the placing state or of the District of Columbia shall retain ~~be deemed to have retained~~ jurisdiction of the individual ~~person~~ ~~so~~ placed. Consent is hereby given to the application of the law of the placing state or district with respect to the authority of the chief officer of any facility of the United States Department of Veterans Affairs or other federal agency operated in this state to retain custody or to transfer, parole, or discharge the individual ~~person~~.

(4)~~(3)~~ Upon receipt of a certificate of the United States Department of Veterans Affairs or another ~~such other~~ federal agency that facilities are available for the care or treatment of individuals who have mental illness or substance abuse impairment ~~mentally ill persons~~ and that an individual ~~the person~~ is eligible for that care or treatment, the administrator of the receiving or treatment facility may ~~cause the~~ transfer ~~of~~ that individual ~~person~~ to the United States Department of Veterans Affairs or other federal agency. Upon ~~effecting~~ such transfer, the committing court shall be notified by the transferring agency. An individual may not ~~No person shall~~ be transferred ~~to the United States Department of Veterans Affairs or other federal agency~~ if he or she is confined pursuant to the conviction of any felony or misdemeanor or if he or she has been acquitted of the charge solely on the ground of insanity~~,~~ unless prior to transfer the court placing the individual ~~such person~~ enters an order for the transfer after appropriate motion and hearing and without objection by the United States Department of Veterans Affairs.

(5)~~(4)~~ An individual ~~Any person~~ transferred as provided in this section is ~~shall be~~ deemed to be placed with the United States Department of Veterans Affairs or other federal agency pursuant to the original placement.

Section 16. Paragraph (a) of subsection (1) of section 394.875, Florida Statutes, is amended to read:

394.875 Crisis stabilization units, residential treatment facilities, and residential treatment centers for children and adolescents; authorized services; license required.—

(1)(a) The purpose of a crisis stabilization unit is to

stabilize and redirect a client to the most appropriate and least restrictive community setting available, consistent with the client's needs. Crisis stabilization units may screen, assess, and admit for stabilization persons who present themselves to the unit and persons who are brought to the unit under s. 394.463. Clients may be provided 24-hour observation, medication prescribed by a physician or psychiatrist, and other appropriate services. Crisis stabilization units shall provide services regardless of the client's ability to pay ~~and shall be limited in size to a maximum of 30 beds~~.

Section 17. Section 765.401, Florida Statutes, is transferred and renumbered as section 765.311, Florida Statutes.

Section 18. Section 765.404, Florida Statutes, is transferred and renumbered as section 765.312, Florida Statutes.

Section 19. The Division of Law Revision and Information is directed to rename part IV of chapter 765, Florida Statutes, as "Mental Health and Substance Abuse Advance Directives."

Section 20. Section 765.4015, Florida Statutes, is created to read:

765.4015 Short title.—Sections 765.402-765.411 may be cited as the "Jennifer Act."

Section 21. Section 765.402, Florida Statutes, is created to read:

765.402 Legislative findings.—

(1) The Legislature recognizes that an individual with capacity has the ability to control decisions relating to his or her own mental health care or substance abuse treatment. The Legislature finds that:

(a) Substance abuse and some mental illnesses cause

individuals to fluctuate between capacity and incapacity;

(b) During periods when an individual's capacity is unclear, the individual may be unable to provide informed consent necessary to access needed treatment;

(c) Early treatment may prevent an individual from becoming so ill that involuntary treatment is necessary; and

(d) Individuals with substance abuse impairment or mental illness need an established procedure to express their instructions and preferences for treatment and provide advance consent to or refusal of treatment. This procedure should be less expensive and less restrictive than guardianship.

(2) The Legislature further recognizes that:

(a) A mental health or substance abuse treatment advance directive must provide the individual with a full range of choices.

(b) For a mental health or substance abuse directive to be an effective tool, individuals must be able to choose how they want their directives to be applied, including the right of revocation, during periods when they are incompetent to consent to treatment.

(c) There must be a clear process so that treatment providers can abide by an individual's treatment choices.

Section 22. Section 765.403, Florida Statutes, is created to read:

765.403 Definitions.—As used in this section, the term:

(1) "Adult" means any individual who has attained the age of majority or is an emancipated minor.

(2) "Capacity" means that an adult has not been found to be incapacitated pursuant to s. 394.463.

(3) "Health care facility" means a hospital, nursing home, hospice, home health agency, or health maintenance organization licensed in this state, or any facility subject to part I of chapter 394.

(4) "Incapacity" or "incompetent" means an adult who is:

(a) Unable to understand the nature, character, and anticipated results of proposed treatment or alternatives or the recognized serious possible risks, complications, and anticipated benefits of treatments and alternatives, including nontreatment;

(b) Physically or mentally unable to communicate a willful and knowing decision about mental health care or substance abuse treatment;

(c) Unable to communicate his or her understanding or treatment decisions; or

(d) Determined incompetent pursuant to s. 394.463.

(5) "Informed consent" means consent voluntarily given by a person after a sufficient explanation and disclosure of the subject matter involved to enable that person to have a general understanding of the treatment or procedure and the medically acceptable alternatives, including the substantial risks and hazards inherent in the proposed treatment or procedures or nontreatment, and to make knowing mental health care or substance abuse treatment decisions without coercion or undue influence.

(6) "Interested person" means, for the purposes of this chapter, any person who may reasonably be expected to be affected by the outcome of the particular proceeding involved, including anyone interested in the welfare of an incapacitated

person.

(7) "Mental health or substance abuse treatment advance directive" means a written document in which the principal makes a declaration of instructions or preferences or appoints a surrogate to make decisions on behalf of the principal regarding the principal's mental health or substance abuse treatment, or both.

(8) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals licensed pursuant to chapter 458, chapter 464, chapter 490, or chapter 491.

(9) "Principal" means a competent adult who executes a mental health or substance abuse treatment advance directive and on whose behalf mental health care or substance abuse treatment decisions are to be made.

(10) "Surrogate" means any competent adult expressly designated by a principal to make mental health care or substance abuse treatment decisions on behalf of the principal as set forth in the principal's mental health or substance abuse treatment advance directive or self-binding arrangement as those terms are defined in this part.

Section 23. Section 765.405, Florida Statutes, is created to read:

765.405 Mental health or substance abuse treatment advance directive; execution; allowable provisions.—

(1) An adult with capacity may execute a mental health or substance abuse treatment advance directive.

(2) A directive executed in accordance with this section is presumed to be valid. The inability to honor one or more

provisions of a directive does not affect the validity of the remaining provisions.

(3) A directive may include any provision relating to mental health or substance abuse treatment or the care of the principal. Without limitation, a directive may include:

(a) The principal's preferences and instructions for mental health or substance abuse treatment.

(b) Consent to specific types of mental health or substance abuse treatment.

(c) Refusal to consent to specific types of mental health or substance abuse treatment.

(d) Descriptions of situations that may cause the principal to experience a mental health or substance abuse crisis.

(e) Suggested alternative responses that may supplement or be in lieu of direct mental health or substance abuse treatment, such as treatment approaches from other providers.

(f) The principal's nomination of a guardian, limited guardian, or guardian advocate as provided chapter 744.

(4) A directive may be combined with or be independent of a nomination of a guardian, other durable power of attorney, or other advance directive.

Section 24. Section 765.406, Florida Statutes, is created to read:

765.406 Execution of a mental health or substance abuse advance directive; effective date; expiration.—

(1) A directive must:

(a) Be in writing.

(b) Contain language that clearly indicates that the principal intends to create a directive.

(c) Be dated and signed by the principal or, if the principal is unable to sign, at the principal's direction in the principal's presence.

(d) Be witnessed by two adults, each of whom must declare that he or she personally knows the principal and was present when the principal dated and signed the directive, and that the principal did not appear to be incapacitated or acting under fraud, undue influence, or duress. The person designated as the surrogate may not act as a witness to the execution of the document designating the mental health or substance abuse care treatment surrogate. At least one person who acts as a witness must be neither the principal's spouse nor his or her blood relative.

(2) A directive is valid upon execution, but all or part of the directive may take effect at a later date as designated by the principal in the directive.

(3) A directive may:

(a) Be revoked, in whole or in part, pursuant to s. 765.407; or

(b) Expire under its own terms.

(4) A directive does not or may not:

(a) Create an entitlement to mental health, substance abuse, or medical treatment or supersede a determination of medical necessity.

(b) Obligate any health care provider, professional person, or health care facility to pay the costs associated with the treatment requested.

(c) Obligate a health care provider, professional person, or health care facility to be responsible for the nontreatment

or personal care of the principal or the principal's personal affairs outside the scope of services the facility normally provides.

(d) Replace or supersede any will or testamentary document or supersede the provision of intestate succession.

(e) Be revoked by an incapacitated principal unless that principal selected the option to permit revocation while incapacitated at the time his or her directive was executed.

Section 25. Section 765.407, Florida Statutes, is created to read:

765.407 Revocation; waiver.—

(1) A principal with capacity may, by written statement of the principal or at the principal's direction in the principal's presence, revoke a directive in whole or in part.

(2) The principal shall provide a copy of his or her written statement of revocation to his or her agent, if any, and to each health care provider, professional person, or health care facility that received a copy of the directive from the principal.

(3) The written statement of revocation is effective as to a health care provider, professional person, or health care facility upon receipt. The professional person, health care provider, or health care facility, or persons acting under their direction, shall make the statement of revocation part of the principal's medical record.

(4) A directive also may:

(a) Be revoked, in whole or in part, expressly or to the extent of any inconsistency, by a subsequent directive; or

(b) Be superseded or revoked by a court order, including

any order entered in a criminal matter. The individual's family, the health care facility, the attending physician, or any other interested person who may be directly affected by the surrogate's decision concerning any health care may seek expedited judicial intervention pursuant to rule 5.900 of the Florida Probate Rules, if that person believes:

1. The surrogate's decision is not in accord with the individual's known desires;

2. The advance directive is ambiguous, or the individual has changed his or her mind after execution of the advance directive;

3. The surrogate was improperly designated or appointed, or the designation of the surrogate is no longer effective or has been revoked;

4. The surrogate has failed to discharge duties, or incapacity or illness renders the surrogate incapable of discharging duties;

5. The surrogate has abused powers; or

6. The individual has sufficient capacity to make his or her own health care decisions.

(5) A directive that would have otherwise expired but is effective because the principal is incapacitated remains effective until the principal is no longer incapacitated unless the principal elected to be able to revoke while incapacitated and has revoked the directive.

(6) When a principal with capacity consents to treatment that differs from, or refuses treatment consented to in, his or her directive, the consent or refusal constitutes a waiver of a particular provision and does not constitute a revocation of the

provision or the directive unless that principal also revokes the provision or directive.

Section 26. Section 765.410, Florida Statutes, is created to read:

765.410 Immunity from liability; weight of proof; presumption.—

(1) A health care facility, provider, or other person who acts under the direction of a health care facility or provider is not subject to criminal prosecution or civil liability, and may not be deemed to have engaged in unprofessional conduct, as a result of carrying out a mental health care or substance abuse treatment decision made in accordance with this section. The surrogate who makes a mental health care or substance abuse treatment decision on a principal's behalf, pursuant to this section, is not subject to criminal prosecution or civil liability for such action.

(2) This section applies unless it is shown by a preponderance of the evidence that the person authorizing or carrying out a mental health or substance abuse treatment decision did not, in good faith, comply with this section.

Section 27. Section 765.411, Florida Statutes, is created to read:

765.411 Recognition of mental health and substance abuse treatment advance directive executed in another state.—A mental health or substance abuse treatment advance directive executed in another state in compliance with the law of that state is validly executed for the purposes of this chapter.

Section 28. Section 916.185, Florida Statutes, is created to read:

916.185 Forensic Hospital Diversion Pilot Program.—

(1) LEGISLATIVE FINDINGS AND INTENT.—The Legislature finds that many jail inmates who have serious mental illnesses and who are committed to state forensic mental health treatment facilities for restoration of competency to proceed could be served more effectively and at less cost in community-based alternative programs. The Legislature further finds that many individuals who have serious mental illnesses and who have been discharged from state forensic mental health treatment facilities could avoid recidivism in the criminal justice and forensic mental health systems if they received specialized treatment in the community. Therefore, it is the intent of the Legislature to create the Forensic Hospital Diversion Pilot Program to serve individuals who have mental illnesses or co-occurring mental illnesses and substance use disorders and who are admitted to or are at risk of entering state forensic mental health treatment facilities, prisons, jails, or state civil mental health treatment facilities.

(2) DEFINITIONS.—As used in this section, the term:

(a) "Best practices" means treatment services that incorporate the most effective and acceptable interventions available in the care and treatment of individuals who are diagnosed as having mental illnesses or co-occurring mental illnesses and substance use disorders.

(b) "Community forensic system" means the community mental health and substance use forensic treatment system, including the comprehensive set of services and supports provided to individuals involved in or at risk of becoming involved in the criminal justice system.

(c) "Evidence-based practices" means interventions and strategies that, based on the best available empirical research, demonstrate effective and efficient outcomes in the care and treatment of individuals who are diagnosed as having mental illnesses or co-occurring mental illnesses and substance use disorders.

(3) CREATION.—There is created a Forensic Hospital Diversion Pilot Program to provide, when appropriate, competency-restoration and community-reintegration services in locked residential treatment facilities, based on considerations of public safety, the needs of the individual, and available resources.

(a) The department shall implement a Forensic Hospital Diversion Pilot Program in Alachua, Escambia, Hillsborough, and Miami-Dade Counties, in conjunction with the Eighth Judicial Circuit, the First Judicial Circuit, the Thirteenth Judicial Circuit, and the Eleventh Judicial Circuit, respectively, which shall be modeled after the Miami-Dade Forensic Alternative Center, taking into account local needs and subject to the availability of local resources.

(b) In creating and implementing the program, the department shall include a comprehensive continuum of care and services which uses evidence-based practices and best practices to treat individuals who have mental health and co-occurring substance use disorders.

(c) The department and the respective judicial circuits shall implement this section within available resources. State funding may be made available through a specific appropriation.

(4) ELIGIBILITY.—Participation in the Forensic Hospital

Diversion Pilot Program is limited to individuals who:

(a) Are 18 years of age or older;

(b) Are charged with a felony of the second degree or a felony of the third degree;

(c) Do not have a significant history of violent criminal offenses;

(d) Have been adjudicated incompetent to proceed to trial or not guilty by reason of insanity under this part;

(e) Meet public safety and treatment criteria established by the department for placement in a community setting; and

(f) Would be admitted to a state mental health treatment facility if not for the availability of the Forensic Hospital Diversion Pilot Program.

(5) TRAINING.—The Legislature encourages the Florida Supreme Court, in consultation and cooperation with the Task Force on Substance Abuse and Mental Health Issues in the Courts, to develop educational training on the community forensic system for judges in the pilot program areas.

(6) RULEMAKING.—The department may adopt rules to administer this section.

(7) REPORT.—The Office of Program Policy Analysis and Government Accountability shall review and evaluate the Forensic Hospital Diversion Pilot Program and submit a report to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2016. The report shall examine the efficiency and cost-effectiveness of providing forensic mental health services in secure, outpatient, community-based settings. In addition, the report shall examine the impact of the Forensic Hospital Diversion Pilot Program on

public health and safety.

Section 29. Paragraph (a) of subsection (3) of section 39.407, Florida Statutes, is amended to read:

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

(3)(a)1. Except as otherwise provided in subparagraph (b)1. or paragraph (e), before the department provides psychotropic medications to a child in its custody, the prescribing physician shall attempt to obtain express and informed consent, as defined in s. 394.455(13) ~~s. 394.455(9)~~ and as described in s. 394.459(3)(a), from the child's parent or legal guardian. The department must take steps necessary to facilitate the inclusion of the parent in the child's consultation with the physician. However, if the parental rights of the parent have been terminated, the parent's location or identity is unknown or cannot reasonably be ascertained, or the parent declines to give express and informed consent, the department may, after consultation with the prescribing physician, seek court authorization to provide the psychotropic medications to the child. Unless parental rights have been terminated and if it is possible to do so, the department shall continue to involve the parent in the decisionmaking process regarding the provision of psychotropic medications. If, at any time, a parent whose parental rights have not been terminated provides express and informed consent to the provision of a psychotropic medication, the requirements of this section that the department seek court authorization do not apply to that medication until such time as the parent no longer consents.

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

Section 30. Subsection (2) of section 394.4612, Florida Statutes, is amended to read:

394.4612 Integrated adult mental health crisis stabilization and addictions receiving facilities.—

(2) An integrated mental health crisis stabilization unit and addictions receiving facility may provide services under this section to adults who are 18 years of age or older and who fall into one or more of the following categories:

(a) An adult meeting the requirements for voluntary admission for mental health treatment under s. 394.4625.

(b) An adult meeting the criteria for involuntary examination for mental illness under s. 394.463.

~~(c) An adult qualifying for voluntary admission for substance abuse treatment under s. 397.601.~~

~~(d) An adult meeting the criteria for involuntary admission for substance abuse impairment under s. 397.675.~~

Section 31. Paragraphs (a) and (c) of subsection (3) of section 394.495, Florida Statutes, are amended to read:

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

(3) Assessments must be performed by:

(a) A professional as defined in s. 394.455(6), (31), (34), (35), or (36) ~~s. 394.455(2), (4), (21), (23), or (24)~~;

(c) A person who is under the direct supervision of a

professional as defined in s. 394.455(6), (31), (34), (35), or (36) ~~s. 394.455(2), (4), (21), (23), or (24)~~ or a professional licensed under chapter 491.

The department shall adopt by rule statewide standards for mental health assessments, which must be based on current relevant professional and accreditation standards.

Section 32. Subsection (6) of section 394.496, Florida Statutes, is amended to read:

394.496 Service planning.—

(6) A professional as defined in s. 394.455(6), (31), (34), (35), or (36) ~~s. 394.455(2), (4), (21), (23), or (24)~~ or a professional licensed under chapter 491 must be included among those persons developing the services plan.

Section 33. Subsection (2) of section 394.499, Florida Statutes, is amended to read:

394.499 Integrated children's crisis stabilization unit/juvenile addictions receiving facility services.—

(2) Children eligible to receive integrated children's crisis stabilization unit/juvenile addictions receiving facility services include:

(a) A person under 18 years of age for whom voluntary application is made by his or her guardian, if such person is found to show evidence of mental illness and to be suitable for treatment pursuant to s. 394.4625. A person under 18 years of age may be admitted for integrated facility services only after a hearing to verify that the consent to admission is voluntary.

(b) A person under 18 years of age who may be taken to a receiving facility for involuntary examination, if there is

reason to believe that he or she is mentally ill and because of his or her mental illness, pursuant to s. 394.463:

1. Has refused voluntary examination after conscientious explanation and disclosure of the purpose of the examination; or

2. Is unable to determine for himself or herself whether examination is necessary; and

a. Without care or treatment is likely to suffer from neglect or refuse to care for himself or herself; such neglect or refusal poses a real and present threat of substantial harm to his or her well-being; and it is not apparent that such harm may be avoided through the help of willing family members or friends or the provision of other services; or

b. There is a substantial likelihood that without care or treatment he or she will cause serious bodily harm to himself or herself or others in the near future, as evidenced by recent behavior.

~~(c) A person under 18 years of age who wishes to enter treatment for substance abuse and applies to a service provider for voluntary admission, pursuant to s. 397.601.~~

~~(d) A person under 18 years of age who meets the criteria for involuntary admission because there is good faith reason to believe the person is substance abuse impaired pursuant to s. 397.675 and, because of such impairment:~~

~~1. Has lost the power of self-control with respect to substance use; and~~

~~2.a. Has inflicted, or threatened or attempted to inflict, or unless admitted is likely to inflict, physical harm on himself or herself or another; or~~

~~b. Is in need of substance abuse services and, by reason of~~

~~substance abuse impairment, his or her judgment has been so impaired that the person is incapable of appreciating his or her need for such services and of making a rational decision in regard thereto; however, mere refusal to receive such services does not constitute evidence of lack of judgment with respect to his or her need for such services.~~

(c) ~~(c)~~ A person under 18 years of age who meets the criteria for examination or admission under paragraph (b) ~~or paragraph (d)~~ and has a coexisting mental health and substance abuse disorder.

Section 34. Subsection (18) of section 394.67, Florida Statutes, is amended to read:

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

(18) "Person who is experiencing an acute substance abuse crisis" means a child, adolescent, or adult who is experiencing a medical or emotional crisis because of the use of alcoholic beverages or any psychoactive or mood-altering substance. ~~The term includes an individual who meets the criteria for involuntary admission specified in s. 397.675.~~

Section 35. Subsection (2) of section 394.674, Florida Statutes, is amended to read:

394.674 Eligibility for publicly funded substance abuse and mental health services; fee collection requirements.—

(2) Crisis services, as defined in s. 394.67, must, within the limitations of available state and local matching resources, be available to each person who is eligible for services under subsection (1), regardless of the person's ability to pay for such services. A person who is experiencing a mental health crisis and who does not meet the criteria for involuntary

examination under s. 394.463(1)~~, or a person who is experiencing a substance abuse crisis and who does not meet the involuntary admission criteria in s. 397.675,~~ must contribute to the cost of his or her care and treatment pursuant to the sliding fee scale developed under subsection (4), unless charging a fee is contraindicated because of the crisis situation.

Section 36. Subsection (6) of section 394.9085, Florida Statutes, is amended to read:

394.9085 Behavioral provider liability.—

(6) For purposes of this section, the terms "detoxification services," "addictions receiving facility," and "receiving facility" have the same meanings as those provided in ss. 397.311(18)(a)4., 397.311(18)(a)1., and 394.455(27) ~~394.455(26)~~, respectively.

Section 37. Paragraph (d) of subsection (1) of section 395.0197, Florida Statutes, is amended to read:

395.0197 Internal risk management program.—

(1) Every licensed facility shall, as a part of its administrative functions, establish an internal risk management program that includes all of the following components:

(d) A system for informing a patient or an individual identified pursuant to s. 765.311(1) ~~s. 765.401(1)~~ that the patient was the subject of an adverse incident, as defined in subsection (5). Such notice shall be given by an appropriately trained person designated by the licensed facility as soon as practicable to allow the patient an opportunity to minimize damage or injury.

Section 38. Section 395.1051, Florida Statutes, is amended to read:

395.1051 Duty to notify patients.—An appropriately trained person designated by each licensed facility shall inform each patient, or an individual identified pursuant to s. 765.311(1) ~~s. 765.401(1)~~, in person about adverse incidents that result in serious harm to the patient. Notification of outcomes of care that result in harm to the patient under this section shall not constitute an acknowledgment or admission of liability, nor can it be introduced as evidence.

Section 39. Subsection (11) and paragraph (a) of subsection (18) of section 397.311, Florida Statutes, are amended to read:

397.311 Definitions.—As used in this chapter, except part VIII, the term:

(11) "Habitual abuser" means a person who is brought to the attention of law enforcement for being substance impaired~~, who meets the criteria for involuntary admission in s. 397.675,~~ and who has been taken into custody for such impairment three or more times during the preceding 12 months.

(18) Licensed service components include a comprehensive continuum of accessible and quality substance abuse prevention, intervention, and clinical treatment services, including the following services:

(a) "Clinical treatment" means a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle. As defined by rule, "clinical treatment services" include, but are not limited to, the following licensable service components:

1. "Addictions receiving facility" is a secure, acute care facility that provides, at a minimum, detoxification and

stabilization services and~~,~~ is operated 24 hours per day, 7 days per week; and is designated by the department to serve individuals found to be substance use impaired ~~as described in s. 397.675~~ who meet the placement criteria for this component.

2. "Day or night treatment" is a service provided in a nonresidential environment, with a structured schedule of treatment and rehabilitative services.

3. "Day or night treatment with community housing" means a program intended for individuals who can benefit from living independently in peer community housing while participating in treatment services for a minimum of 5 hours a day for a minimum of 25 hours per week.

4. "Detoxification" is a service involving subacute care that is provided on an inpatient or an outpatient basis to assist individuals to withdraw from the physiological and psychological effects of substance abuse and who meet the placement criteria for this component.

5. "Intensive inpatient treatment" includes a planned regimen of evaluation, observation, medical monitoring, and clinical protocols delivered through an interdisciplinary team approach provided 24-hours-per-day ~~24 hours per day~~, 7-days-per-week ~~7 days per week~~, in a highly structured, live-in environment.

6. "Intensive outpatient treatment" is a service that provides individual or group counseling in a more structured environment, is of higher intensity and duration than outpatient treatment, and is provided to individuals who meet the placement criteria for this component.

7. "Medication-assisted treatment for opiate addiction" is

a service that uses methadone or other medication as authorized by state and federal law, in combination with medical, rehabilitative, and counseling services in the treatment of individuals who are dependent on opioid drugs.

8. "Outpatient treatment" is a service that provides individual, group, or family counseling by appointment during scheduled operating hours for individuals who meet the placement criteria for this component.

9. "Residential treatment" is a service provided in a structured live-in environment within a nonhospital setting on a 24-hours-per-day, 7-days-per-week basis, and is intended for individuals who meet the placement criteria for this component.

Section 40. Subsection (3) of section 397.431, Florida Statutes, is amended to read:

397.431 Individual responsibility for cost of substance abuse impairment services.—

(3) The parent, legal guardian, or legal custodian of a minor is not liable for payment for any substance abuse services provided to the minor without parental consent ~~pursuant to s. 397.601(4),~~ unless the parent, legal guardian, or legal custodian participates or is ordered to participate in the services, and only for the substance abuse services rendered. If the minor is receiving services as a juvenile offender, the obligation to pay is governed by the law relating to juvenile offenders.

Section 41. Paragraph (b) of subsection (2) of section 397.702, Florida Statutes, is amended to read:

397.702 Authorization of local ordinances for treatment of habitual abusers in licensed secure facilities.—

(2) Ordinances for the treatment of habitual abusers must provide:

(b) That when seeking treatment of a habitual abuser, the county or municipality, through an officer or agent specified in the ordinance, must file with the court a petition which alleges the following information about the alleged habitual abuser (the respondent):

1. The name, address, age, and gender of the respondent.

2. The name of any spouse, adult child, other relative, or guardian of the respondent, if known to the petitioner, and the efforts, if any, by the petitioner~~, if any,~~ to ascertain this information.

3. The name of the petitioner, the name of the person who has physical custody of the respondent, and the current location of the respondent.

4. That the respondent has been taken into custody for impairment in a public place, or has been arrested for an offense committed while impaired, three or more times during the preceding 12 months.

~~5. Specific facts indicating that the respondent meets the criteria for involuntary admission in s. 397.675.~~

5.~~6.~~ Whether the respondent was advised of his or her right to be represented by counsel and to request that the court appoint an attorney if he or she is unable to afford one, and whether the respondent indicated to petitioner his or her desire to have an attorney appointed.

Section 42. Paragraph (a) of subsection (1) of section 397.94, Florida Statutes, is amended to read:

397.94 Children's substance abuse services; information and

referral network.—

(1) The substate entity shall determine the most cost-effective method for delivering this service and may select a new provider or utilize an existing provider or providers with a record of success in providing information and referral services.

(a) The plan must provide assurances that the information and referral network will include a resource directory that contains information regarding the children's substance abuse services available, including, but not limited to:

~~1. Public and private resources by service component, including resources for involuntary admissions under s. 397.675.~~

1.~~2.~~ Hours of operation and hours during which services are provided.

2.~~3.~~ Ages of persons served.

3.~~4.~~ Description of services.

4.~~5.~~ Eligibility requirements.

5.~~6.~~ Fee schedules.

Section 43. Section 402.3057, Florida Statutes, is amended to read:

402.3057 Persons not required to be refingerprinted or rescreened.—Any provision of law to the contrary notwithstanding, human resource personnel who have been fingerprinted or screened pursuant to chapters 393, 394, 397, 402, and 409, and teachers and noninstructional personnel who have been fingerprinted pursuant to chapter 1012, who have not been unemployed for more than 90 days thereafter, and who under the penalty of perjury attest to the completion of such fingerprinting or screening and to compliance with the

provisions of this section and the standards for good moral character as contained in such provisions as ss. 110.1127(2)(c), 393.0655(1), ~~394.457(6),~~ 397.451, 402.305(2), and 409.175(6), shall not be required to be refingerprinted or rescreened in order to comply with any caretaker screening or fingerprinting requirements.

Section 44. Section 409.1757, Florida Statutes, is amended to read:

409.1757 Persons not required to be refingerprinted or rescreened.—Any law to the contrary notwithstanding, human resource personnel who have been fingerprinted or screened pursuant to chapters 393, 394, 397, 402, and this chapter, teachers who have been fingerprinted pursuant to chapter 1012, and law enforcement officers who meet the requirements of s. 943.13, who have not been unemployed for more than 90 days thereafter, and who under the penalty of perjury attest to the completion of such fingerprinting or screening and to compliance with this section and the standards for good moral character as contained in such provisions as ss. 110.1127(2)(c), 393.0655(1), ~~394.457(6),~~ 397.451, 402.305(2), 409.175(6), and 943.13(7), are not required to be refingerprinted or rescreened in order to comply with any caretaker screening or fingerprinting requirements.

Section 45. Paragraph (b) of subsection (1) of section 409.972, Florida Statutes, is amended to read:

409.972 Mandatory and voluntary enrollment.—

(1) The following Medicaid-eligible persons are exempt from mandatory managed care enrollment required by s. 409.965, and may voluntarily choose to participate in the managed medical

assistance program:

(b) Medicaid recipients residing in residential commitment facilities operated through the Department of Juvenile Justice or mental health treatment facilities as defined by s. 394.455(47) ~~s. 394.455(32)~~.

Section 46. Section 456.0575, Florida Statutes, is amended to read:

456.0575 Duty to notify patients.—Every licensed health care practitioner shall inform each patient, or an individual identified pursuant to s. 765.311(1) ~~s. 765.401(1)~~, in person about adverse incidents that result in serious harm to the patient. Notification of outcomes of care that result in harm to the patient under this section shall not constitute an acknowledgment of admission of liability, nor can such notifications be introduced as evidence.

Section 47. Subsection (7) of section 744.704, Florida Statutes, is amended to read:

744.704 Powers and duties.—

(7) A public guardian shall not commit a ward to a mental health treatment facility, as defined in s. 394.455(47) ~~s. 394.455(32)~~, without an involuntary placement proceeding as provided by law.

Section 48. Subsection (15) of section 765.101, Florida Statutes, is amended to read:

765.101 Definitions.—As used in this chapter:

(15) "Proxy" means a competent adult who has not been expressly designated to make health care decisions for a particular incapacitated individual, but who, nevertheless, is authorized pursuant to s. 765.311 ~~s. 765.401~~ to make health care

decisions for such individual.

Section 49. Subsection (4) of section 765.104, Florida Statutes, is amended to read:

765.104 Amendment or revocation.—

(4) Any patient for whom a medical proxy has been recognized under s. 765.311 ~~s. 765.401~~ and for whom any previous legal disability that precluded the patient's ability to consent is removed may amend or revoke the recognition of the medical proxy and any uncompleted decision made by that proxy. The amendment or revocation takes effect when it is communicated to the proxy, the health care provider, or the health care facility in writing or, if communicated orally, in the presence of a third person.

Section 50. Paragraph (a) of subsection (2) of section 790.065, Florida Statutes, is amended to read:

790.065 Sale and delivery of firearms.—

(2) Upon receipt of a request for a criminal history record check, the Department of Law Enforcement shall, during the licensee's call or by return call, forthwith:

(a) Review any records available to determine if the potential buyer or transferee:

1. Has been convicted of a felony and is prohibited from receipt or possession of a firearm pursuant to s. 790.23;

2. Has been convicted of a misdemeanor crime of domestic violence, and therefore is prohibited from purchasing a firearm;

3. Has had adjudication of guilt withheld or imposition of sentence suspended on any felony or misdemeanor crime of domestic violence unless 3 years have elapsed since probation or any other conditions set by the court have been fulfilled or

expunction has occurred; or

4. Has been adjudicated mentally defective or has been committed to a mental institution by a court or as provided in sub-sub-subparagraph b.(II), and as a result is prohibited by state or federal law from purchasing a firearm.

a. As used in this subparagraph, "adjudicated mentally defective" means a determination by a court that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease, is a danger to himself or herself or to others or lacks the mental capacity to contract or manage his or her own affairs. The phrase includes a judicial finding of incapacity under s. 744.331(6)(a), an acquittal by reason of insanity of a person charged with a criminal offense, and a judicial finding that a criminal defendant is not competent to stand trial.

b. As used in this subparagraph, "committed to a mental institution" means:

(I) Involuntary commitment, commitment for mental defectiveness or mental illness, and commitment for substance abuse. The phrase includes involuntary inpatient placement as defined in s. 394.467~~,~~ or involuntary outpatient placement as defined in s. 394.4655~~, involuntary assessment and stabilization under s. 397.6818, and involuntary substance abuse treatment under s. 397.6957~~, but does not include a person in a mental institution for observation or discharged from a mental institution based upon the initial review by the physician or a voluntary admission to a mental institution; or

(II) Notwithstanding sub-sub-subparagraph (I), voluntary admission to a mental institution for outpatient or inpatient

treatment of a person who had an involuntary examination under s. 394.463, where each of the following conditions have been met:

(A) An examining physician found that the person is an imminent danger to himself or herself or others.

(B) The examining physician certified that if the person did not agree to voluntary treatment, a petition for involuntary outpatient or inpatient treatment would have been filed under s. 394.463(2)(g) ~~s. 394.463(2)(i)4.~~, or the examining physician certified that a petition was filed and the person subsequently agreed to voluntary treatment prior to a court hearing on the petition.

(C) Before agreeing to voluntary treatment, the person received written notice of that finding and certification, and written notice that as a result of such finding, he or she may be prohibited from purchasing a firearm, and may not be eligible to apply for or retain a concealed weapon or firearms license under s. 790.06 and the person acknowledged such notice in writing, in substantially the following form:

"I understand that the doctor who examined me believes I am a danger to myself or to others. I understand that if I do not agree to voluntary treatment, a petition will be filed in court to require me to receive involuntary treatment. I understand that if that petition is filed, I have the right to contest it. In the event a petition has been filed, I understand that I can subsequently agree to voluntary treatment prior to a court hearing. I understand that by agreeing to voluntary treatment in either of these situations, I may be prohibited from buying

firearms and from applying for or retaining a concealed weapons or firearms license until I apply for and receive relief from that restriction under Florida law."

(D) A judge or a magistrate has, pursuant to sub-sub-subparagraph c.(II), reviewed the record of the finding, certification, notice, and written acknowledgment classifying the person as an imminent danger to himself or herself or others, and ordered that such record be submitted to the department.

c. In order to check for these conditions, the department shall compile and maintain an automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.

(I) Except as provided in sub-sub-subparagraph (II), clerks of court shall submit these records to the department within 1 month after the rendition of the adjudication or commitment. Reports shall be submitted in an automated format. The reports must, at a minimum, include the name, along with any known alias or former name, the sex, and the date of birth of the subject.

(II) For persons committed to a mental institution pursuant to sub-sub-subparagraph b.(II), within 24 hours after the person's agreement to voluntary admission, a record of the finding, certification, notice, and written acknowledgment must be filed by the administrator of the receiving or treatment facility, as defined in s. 394.455, with the clerk of the court for the county in which the involuntary examination under s. 394.463 occurred. No fee shall be charged for the filing under

this sub-sub-subparagraph. The clerk must present the records to a judge or magistrate within 24 hours after receipt of the records. A judge or magistrate is required and has the lawful authority to review the records ex parte and, if the judge or magistrate determines that the record supports the classifying of the person as an imminent danger to himself or herself or others, to order that the record be submitted to the department. If a judge or magistrate orders the submittal of the record to the department, the record must be submitted to the department within 24 hours.

d. A person who has been adjudicated mentally defective or committed to a mental institution, as those terms are defined in this paragraph, may petition the circuit court that made the adjudication or commitment, or the court that ordered that the record be submitted to the department pursuant to sub-sub-subparagraph c.(II), for relief from the firearm disabilities imposed by such adjudication or commitment. A copy of the petition shall be served on the state attorney for the county in which the person was adjudicated or committed. The state attorney may object to and present evidence relevant to the relief sought by the petition. The hearing on the petition may be open or closed as the petitioner may choose. The petitioner may present evidence and subpoena witnesses to appear at the hearing on the petition. The petitioner may confront and cross-examine witnesses called by the state attorney. A record of the hearing shall be made by a certified court reporter or by court-approved electronic means. The court shall make written findings of fact and conclusions of law on the issues before it and issue a final order. The court shall grant the relief requested in the

petition if the court finds, based on the evidence presented with respect to the petitioner's reputation, the petitioner's mental health record and, if applicable, criminal history record, the circumstances surrounding the firearm disability, and any other evidence in the record, that the petitioner will not be likely to act in a manner that is dangerous to public safety and that granting the relief would not be contrary to the public interest. If the final order denies relief, the petitioner may not petition again for relief from firearm disabilities until 1 year after the date of the final order. The petitioner may seek judicial review of a final order denying relief in the district court of appeal having jurisdiction over the court that issued the order. The review shall be conducted de novo. Relief from a firearm disability granted under this sub-subparagraph has no effect on the loss of civil rights, including firearm rights, for any reason other than the particular adjudication of mental defectiveness or commitment to a mental institution from which relief is granted.

e. Upon receipt of proper notice of relief from firearm disabilities granted under sub-subparagraph d., the department shall delete any mental health record of the person granted relief from the automated database of persons who are prohibited from purchasing a firearm based on court records of adjudications of mental defectiveness or commitments to mental institutions.

f. The department is authorized to disclose data collected pursuant to this subparagraph to agencies of the Federal Government and other states for use exclusively in determining the lawfulness of a firearm sale or transfer. The department is

also authorized to disclose this data to the Department of Agriculture and Consumer Services for purposes of determining eligibility for issuance of a concealed weapons or concealed firearms license and for determining whether a basis exists for revoking or suspending a previously issued license pursuant to s. 790.06(10). When a potential buyer or transferee appeals a nonapproval based on these records, the clerks of court and mental institutions shall, upon request by the department, provide information to help determine whether the potential buyer or transferee is the same person as the subject of the record. Photographs and any other data that could confirm or negate identity must be made available to the department for such purposes, notwithstanding any other provision of state law to the contrary. Any such information that is made confidential or exempt from disclosure by law shall retain such confidential or exempt status when transferred to the department.

Section 51. Part IV of chapter 397, Florida Statutes, consisting of s. 397.601, Florida Statutes, is repealed.

Section 52. Part V of chapter 397, Florida Statutes, consisting of ss. 397.675-397.6977, Florida Statutes, is repealed.

Section 53. This act shall take effect July 1, 2015.

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 Judiciary

BILL:	SB 238
INTRODUCER:	Senator Ring
SUBJECT:	Athletic Coaches
DATE:	April 6, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	**Favorable**
2.	Stearns	Yeatman	CA	**Favorable**
3.	Procaccini	Cibula	JU	**Pre-meeting**
4.			FP	

I. Summary:

SB 238 requires an independent sanctioning authority to dismiss an athletic coach who is ejected from a game in a league of children who are 12 years of age or younger. The dismissal remains in effect at least until the following sport season.

The bill also requires an independent sanctioning authority to establish a process for coaches to appeal an ejection.

II. Present Situation:

Current law defines the term "athletic coach" as a person who is authorized by an independent sanctioning authority to work as a coach, assistant coach, or referee for 20 or more hours within a calendar year, whether for compensation or as a volunteer, for a youth athletic team based in this state and who has direct contact with one or more minors on the youth athletic team.[1]

The term "independent sanctioning authority" is defined as a private, nongovernmental entity that organizes, operates, or coordinates a youth athletic team in this state if the team includes one or more minors and is not affiliated with a private school as defined in s. 1002.01, F.S.[2] An independent sanctioning authority is required to do the following:

- Conduct a level 1 background screening pursuant to s. 435.03, F.S., of each current and prospective athletic coach and maintain certain documentation of those screenings for at least 5 years.

[1] Section 943.0438, F.S.
[2] *Id*.

- Adopt policies related to requirements for parents or guardians of a young athlete to annually sign and return an informed consent that explains the nature and risk of concussion and head injury, including the risk of continuing to play after a concussion or head injury.
- Adopt policies related to continued participation and return to participation by a young athlete who is suspected of sustaining a concussion or head injury.[3]

The application process to become a coach, assistant coach, or manager, most often uncompensated, for youth athletic organizations, such as a Little League or City Parks and Recreation teams, may involve criminal background checks and interviews, and often include coaching and safety training.[4] The Little League organizations have established rules for the suspension of their coaches which grant the Little League board of directors the authority to suspend or remove a coach or manager. The board of directors also considers concerns about coaches or mangers from parents or anyone else.[5] Other youth athletic organizations such as Pop Warner and city leagues have also suspended coaches for improper conduct or lack of coaching responsibility.[6]

III. Effect of Proposed Changes:

Section 1 amends s. 943.0438, F.S., to require an independent sanctioning authority to immediately dismiss an athletic coach who has been ejected from a game in a league in which the children are 12 years of age or younger. The dismissed coach may resume work as a coach the following sport season or any time thereafter if the authority determines the coach is still qualified. A procedure for a coach to appeal an ejection is also required to be established by a sanctioning authority.

Section 2 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

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[3] *Id*.
[4] Little League Softball and Baseball, *Coach's/Manager's Role*, http://www.littleleague.org/managersandcoaches/coachrole.htm (Apr. 6, 2015).
[5] *Id.*
[6] Gary Mihoces, *Pop Warner investigates, suspends coaches*, USA TODAY, (Oct. 24, 2012) http://www.usatoday.com/story/sports/2012/10/24/pop-warner-coach-suspensions/1655795/ (This article describes a situation in which two opposing coaches were suspended from their coaching role after five players on the losing team left the field with concussions.).

D. Other Constitutional Issues:

Under existing case law, members of a purely social club have no due process rights prior to expulsion from the club.[7] However, some due process rights may exist for members of other organizations. An organization may be "held to reasonable standards of due process and fairness" if disciplinary action against a member "may have an import which transcends the organization itself because it conveys to the community that the disciplined member was found lacking by his peers.[8] The appellate process provided by the bill likely provides a sufficient amount of due process protections to coaches who are ejected from a game.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Because the bill imposes a significant penalty on a coach who is ejected from a game, coaches and sanctioning organizations will likely make use of the procedures to appeal a dismissal from a league. There will likely be costs associated with the appellate process.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 943.0438, 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.

[7] *McCune v. Wilson*, 237 So. 2d 169 (Fla. 1970).
[8] *Id.* at 172.

B. Amendments:

None.

By Senator Ring

29-00149-15 2015238__

A bill to be entitled

An act relating to athletic coaches; amending s. 943.0438, F.S.; requiring an independent sanctioning authority to dismiss an athletic coach ejected from a game for the remainder of that sport season under certain circumstances; authorizing such athletic coach to resume working under certain circumstances; requiring an independent sanctioning authority to establish a procedure for an athletic coach to appeal certain decisions; providing an effective date.

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

Section 1. Paragraph (h) is added to subsection (2) of section 943.0438, Florida Statutes, to read:

943.0438 Athletic coaches for independent sanctioning authorities.—

(2) An independent sanctioning authority shall:

(h) Immediately dismiss an athletic coach who is ejected from a game in a league of children 12 years of age or younger for the remainder of the sport season.

1. Except as provided in subparagraph 2., the independent sanctioning authority may allow an athletic coach dismissed under this paragraph to resume working as an athletic coach for the league the following sport season or any time thereafter if the authority determines that the person remains qualified to work as an athletic coach.

2. The independent sanctioning authority must establish a procedure of due process to ensure that an athletic coach

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ejected from a game in a league of children 12 years of age or younger has the opportunity to appeal the ejection to the independent sanctioning authority. The authority shall expedite the appeal process so that disposition of the appeal can be made before the end of the applicable sport season, if possible. If the athletic coach is successful in his or her appeal, the athletic coach shall be reinstated and allowed to continue coaching for the remainder of the sport season and thereafter.

Section 2. This act shall take effect July 1, 2015.

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 Judiciary

BILL:	CS/SB 748
INTRODUCER:	Regulated Industries Committee and Senator Ring
SUBJECT:	Residential Properties
DATE:	April 6, 2015
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.	Wiehle	Cibula	JU	**Pre-meeting**
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 748 relates to the governance of condominium, cooperative, and homeowners' associations (residential properties or community associations). The bill provides for the calculation of the documentary stamp tax property in an association that is subject to an assessment.

The bill permits corporations not for profit to use a copy, facsimile, or other reliable reproduction of the original proxy for any purpose for which the original proxy could be used if it is a complete reproduction of the entire proxy. In current law, community associations may be corporations for profit or corporations not for profit.

Regarding condominium associations, the bill permits the association to charge a fee against the unit owners for use of common elements or association property if the fee is authorized by a majority vote of the voting interests present, in person or by proxy, at a meeting of the association in which a quorum has been established. Current law authorizes such a vote but does not specify that it can be by proxy. Currently, the vote must be by vote of the association (majority of the membership). The bill also provides additional events that trigger the transfer of control of a condominium board of administration from a developer to unit owners other than the developer.

The bill provides the duties and rights of bulk-unit purchasers and lender-unit purchasers of condominium units and parcels, and to provide protections for the interests of other lenders, unit owners, and condominium associations.

Regarding condominium, cooperative, and homeowners' associations, the bill provides that association members may not post tape or video recordings of a meeting of the board or a meeting of the membership on any website or other media that can be readily viewed by persons who are not members of the association. The bill prohibits designees of the board and persons who reside with the designee of the board from sitting on the committee charged with reviewing fines and penalties against members of the association. The bill also creates a mechanism for electronic voting in condominium, cooperative, and homeowners' associations.

Regarding condominium associations, the bill permits condominium associations to post meeting notices on association property in addition to condominium property.

Regarding condominium, cooperative, and homeowners' associations, the bill permits associations to recover from the unit owner any reasonable charges imposed upon the association under a written contract with its management, bookkeeping company, or collection agent, incurred in connection with collecting a delinquent assessment. The bill specifies the order in which payments from a homeowner must be applied to his or her unpaid debts. The bill also permits the associations to file a lien on unpaid authorized administrative late fees, and reasonable costs for collection services contracted by the associations.

Regarding homeowners' associations, the bill provides that the board may only levy fines up to $100, unless otherwise provided in the association's governing documents. It provides that a homeowners' association member who fails to pay a fine may be suspended from the board of directors or barred from running for a seat on the board. It also provides that a homeowners' association's failure to provide notice of the recording of an amendment does not affect the validity or enforceability of the amendment.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Documentary Stamp Tax

Section 201.02(1), F.S., imposes the documentary stamp tax on documents that transfer an interest in Florida real property. The tax is calculated based on the "consideration" of the transfer. Consideration includes money paid or to be paid, the discharge of an obligation, and the amount of any mortgage or other encumbrance. The current tax is $0.70 for each $100 of consideration.

Subsections 201.02(6) through (9), F.S., provide exemptions and limitations on the imposition of the documentary stamp tax, including certain judicial sales of real property under a foreclosure order. Currently, there is no exemption or limitation for a transfer in lieu of foreclosure of an assessment lien when the property is transferred to a condominium, cooperative, or homeowners' association, or to a vacation or timeshare plan.

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."[1] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[2] A declaration is like a constitution in that it:

> Strictly 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.[3]

A declaration "may include covenants and restrictions concerning the use, occupancy, and transfer of the units permitted by law with reference to real property."[4] A declaration of condominium may be amended as provided in the declaration.[5] If the declaration does not provide a method for amendment, it may generally be amended as to any matter by a vote of not fewer than the owners of two-thirds of the units.[6] Condominiums are administered by a board of directors referred to as a "board of administration."[7]

Section 718.103(3), F.S., defines the term "association property" to mean:

> that property, real and personal, which is owned or leased by, or is dedicated by a recorded plat to, the association for the use and benefit of its members.

Section 718.103(8), F.S., defines the term "common elements" to mean the portions of the condominium property not included in the units.

Section 718.103(13), F.S., defines the term "condominium property" to mean:

> the lands, leaseholds, and personal property that are subjected to condominium ownership, whether or not contiguous, and all improvements thereon and all easements and rights appurtenant thereto intended for use in connection with the condominium.

Section 718.103(16), F.S., defines a developer as one "who creates a condominium or offers condominium [units] for sale or lease in the ordinary course of business . . . ." There are two classes of developers: those who create the condominium by executing and recording the condominium documents and those who offer condominium units for sale or lease in the

[1] Section 718.103(11), F.S.
[2] Section 718.104(2), F.S.
[3] *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003) (internal citations omitted).
[4] Section 718.104(5), F.S.
[5] *See* s. 718.110(1)(a), F.S.
[6] Section 718.110(1)(a), F.S. *But see*, s. 718.110(4) and (8), F.S., which provides exceptions to the subject matter and procedure for amendments to a declaration of condominium.
[7] Section 718.103(4), F.S.

ordinary course of business. Current law excludes a bulk assignee and a bulk buyer from the definition of developer.[8]

Condominiums - Insurance

Section 718.111(11)(j), F.S., provides that any portion of the condominium property that is damaged by an insurable event must be repaired or replaced by the association as a common expense. If the damage is not the result of an insurable event, the association or the unit owner is responsible for the repair or replacement, as determined by the declaration or bylaws. All property insurance deductibles, uninsured losses, and other damages in excess of property insurance coverage under the property insurance policies maintained by the association are a common expense of the condominium, except for those losses that are the responsibility of the insured.[9]

Condominium – Assessments and Foreclosures

Section 718.103(1), F.S., defines the term "assessment" to mean "a share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner."

"Special assessment" is defined to mean "any assessment levied against a unit owner other than the assessment required by a budget adopted annually."[10]

A unit owner is jointly and severally liable with the previous owner for all unpaid assessments that come due up to the time of transfer of title.[11] This liability is without prejudice to any right the owner may have to recover from the previous owner the amounts paid by the owner.[12]

If a first mortgagee, (e.g., the mortgage lending bank) or its successor or assignee, acquires title to a condominium unit by foreclosure or by deed in lieu of foreclosure, the first mortgagee's liability for unpaid assessments is limited to the amount of assessments that came due during the 12 months immediately preceding the acquisition of title or one percent of the original mortgage debt, whichever is less.[13] However, this limitation applies only if the first mortgagee joined the association as a defendant in the foreclosure action.[14] This gives the association the right to defend its claims for unpaid assessments in the foreclosure proceeding. A first mortgagee who acquires title to a foreclosed condominium unit is exempt from liability for all unpaid assessments if the first mortgage was recorded prior to April 1, 1992.[15] The successor or assignee, in respect to the first mortgagee, includes only a subsequent holder of the first mortgage.[16]

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[8] *See Distressed Condominium Relief Act* discussion below.
[9] *See* s. 718.111(11)(j)1.-4., F.S.
[10] Section 718.103(24), F.S.
[11] Section 718.116(1)(a), F.S.
[12] *Id.* The term "without prejudice" means "without loss of any rights; in a way that does not harm or cancel the legal rights or privileges of a party." BLACK'S LAW DICTIONARY 770 (2d pocket ed. 2001).
[13] Section 718.116(1)(b), F.S.
[14] *Id.*
[15] Section 718.116(1)(e), F.S.
[16] Section 718.116(1)(g), F.S.

Section 718.116(3), F.S., provides for the accrual of interest on unpaid assessments. Unpaid assessments and installments on assessments accrue interest at the rate provided in the declaration from the due date until paid. The rate may not exceed the rate allowed by law.[17] If no rate is specified in the declaration, the interest accrues at the rate of 18 percent per year. The association may also charge an administrative late fee of up to the greater of $25 or 5 percent of each installment of the assessment for each delinquent installment for which the payment is late. Payments are applied first to the interest accrued, then the administrative late fee, then to any reasonable attorney fees incurred in collection, and then to the delinquent assessment.

Section 718.111(4), F.S., permits condominium associations to make and collect assessments and to lease, maintain, repair, and replace the common elements or association property. The association may not charge a use fee against a unit owner for the use of common elements or association property. However, the association may charge a fee against the unit owners for use of common elements or association property if:

- The fee is provided for in the declaration of condominium;
- The fee is authorized by a majority vote of the association; and
- The charges relate to expenses incurred by an owner having exclusive use of the common elements or association property.

Condominiums – Annual Budget and Developer Control

Section 718.112(2)(f)2., F.S., provides that, before the developer has relinquished control of the board to the non-developer unit owners, the developer may vote the voting interests allocated to its units to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e), F.S., or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first. After that period, reserves may be waived or reduced only upon the vote of a majority of all non-developer voting interests voting in person or by limited proxy at a duly called meeting of the association.

Condominiums - Transfer of Control

Section 718.301, F.S., requires that the control of a condominium association be turned over to the non-developer unit owners upon the occurrence of specified events, including three years after 50 percent of the units have been conveyed, when some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer, or when the developer files a petition seeking bankruptcy protection.

Condominiums – Agreements Entered into by the Association

Section 718.302, F.S., provides that contracts for the operation, maintenance, or management of a condominium association entered into by a developer and contracts that require the association

[17] Section 687.02(2), F.S., prohibits as usurious interest rates that are higher than the equivalent of 18 percent per annum simple interest.

to purchase condominium property or lease condominium property to another party are subject to cancellation by non-developer unit owners once certain conditions are met.

Distressed Condominium Relief Act

The "Distressed Condominium Relief Act"[18] in part VII of ch. 718, F.S., defines the extent to which successors to the developer, including the construction lender after a foreclosure and other bulk buyers and bulk assignees of condominium units, may be responsible for implied warranties. Enacted in 2010,[19] the act was intended to relieve developers, lenders, unit owners, and condominium associations from specified provisions of ch. 718, F.S., including warranty provisions, in order to enable economic opportunities for successor purchasers of distressed condominiums.[20]

Section 718.703(1), F.S., defines the term "bulk assignee" to mean 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, as a separate instrument recorded in the public records in the county where the condominium is located, or pursuant to a final judgment or certificate of title at a foreclosure sale.

Section 718.703(2), F.S., defines the term "bulk buyer" as 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 this section.

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 parcels are acquired prior to July 1, 2016. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

Condominium Developer Warranties

Section 718.203, F.S., provides that a developer grants an implied warranty of fitness and merchantability as to each unit, improvements, personal property, and other components associated with the sale of a unit.

Cooperative Associations

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

> that 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

[18] Sections 718.701 – 718.708, F.S.
[19] Chapter 2010-174, L.O.F.
[20] *See* s. 718.702, F.S.

> 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 cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.[21]

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.[22]

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."[23] 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.[24]

Homeowners' associations are administered by a board of directors whose members are elected.[25] 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.[26] The officers and members of a homeowners' association have a fiduciary relationship to the members who are served by the association.[27]

Homeowners' Associations - Amendments to Governing Documents

Section 720.306(1)(b), F.S., provides that a homeowners' association may amend its governing documents. The process for amendment, and the vote required is generally found in the governing documents. Once adopted, an amendment to the governing documents must be recorded in the public records. Generally, a homeowners' association must furnish each member with a copy of an amendment within 30 days after recording; however, in lieu of providing a copy of the recorded amendment, the association may provide notice to members that the amendment was adopted and identify the book and page number or instrument number of the recorded amendment.

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[21] *See* ss. 719.106(1)(g) and 719.107, F.S.
[22] *See* s. 720.302(1), F.S.
[23] Section 720.301(9), F.S.
[24] Section 720.302(5), F.S.
[25] *See* ss. 720.303 and 720.307, F.S.
[26] *See* ss. 720.301 and 720.303, F.S.
[27] Section 720.303(1), F.S.

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums and cooperatives are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) in accordance with ch. 718, F.S., and ch. 719, F.S. The division is afforded complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., and ch. 719, F.S., with respect to associations that are still under developer control.[28] The division also has the authority to investigate complaints against developers involving improper turnover or failure to turn over control to the association, pursuant to ss. 718.301, F.S., and 719.301, F.S., respectively.[29] After control of the condominium or cooperative 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.[30]

As part of the division's authority to investigate complaints, s. 718.501(1), F.S., and s. 719.501(1), F.S., authorize the division to subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties (fines) against developers and associations.

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

Condominiums and cooperatives are regulated by the division, but homeowners' associations are not regulated. Chapter 718, F.S., relating to condominiums, ch. 719, F.S., relating to cooperatives, and ch. 720, F.S., relating to homeowners' associations, provide many comparable requirements for the governance of these associations. For example, they delineate requirements for notices of meetings,[31] official records, including which records are accessible to the members of the association,[32] and financial reporting.[33] Timeshare condominiums are generally governed by ch. 721, F.S., the "Florida Vacation Plan and Timesharing Act."

Condominium, cooperative, and homeowners associations (collectively, community associations) may be a Florida corporation for profit or a Florida corporation not for profit. If the association is a corporation for profit, the provision of ch. 607, the Florida Business Corporation Act, would apply. If the association is a corporation not for profit, the provisions of ch. 617, F.S., the Florida Not for Profit Corporation Act, would apply.[34]

[28] Section 718.501(1), F.S., s. 719.501(1), F.S.
[29] *Id.*
[30] *Id.*, *See* Peter M. Dunbar, The Condominium Concept: *A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 12 ed. (2010-2011) s. 14.2.
[31] *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.
[32] *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.
[33] *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.
[34] *See* ss. 718.111(1)(a), 719.1035, and 720.303(1), F.S.

Community Associations - Voting

A condominium association is required to have an annual meeting at which directors are elected.[35] Votes must be cast by written ballot or voting machine.[36] Proxies may not be used in the election.[37] The division's rules for condominium associations also provide voting and election procedures, such as requiring that paper ballots be mailed in double envelopes.[38] Similar requirements apply to cooperative associations.[39]

A homeowners association is also required to hold board of director elections at its annual meeting or as provided in its governing documents.[40] Elections are conducted in accordance with the procedures set forth in the governing documents of the association.[41] Additionally, proxies may be used in the election unless otherwise provided in the governing documents.[42]

Community Association Meetings

Condominium, cooperative, and homeowners' association members have the right to attend meetings of the board and its committees and the right to speak at such meetings. Any member may tape record or videotape meetings of the board.[43]

Community Associations – Fines and Penalties

Condominium, cooperative, and homeowners' associations may levy fines against members of the association who violate the association's rules or other governing documents.[44] A fine may only be levied after the association has provided the member with notice and a hearing. The hearing most be held before a committee of other members who are not board members or persons residing in the board member's household. [45]

A fine may not exceed $100 per violation, or $1000 in the aggregate.[46] If a member is more than 90 days delinquent on a monetary obligation, the association may suspend his or her right to use common elements, facilities, or areas and may suspend his or her voting rights. If the association member fails to pay a monetary obligation, he or she is barred from being nominated for a seat on the board.[47] If the board member or officer of a condominium association is more than 90 days delinquent on a monetary obligation, the board member or officer is deemed to have abandoned his or her seat on the board.[48]

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[35] Section 718.112(2)(d)1., F.S.; *see* Peter M. Dunbar, *The Condominium Concept: A Practical Guide for Officers, Owners, Realtors, Attorneys, and Directors of Florida Condominiums*, 40-57 (14th. ed.)
[36] Section 718.112(2)(d)4., F.S.
[37] *Id*.
[38] Rule 61B-23.0021, F.A.C.
[39] Section 719.106(1)(d), F.S., and rule 61B-75.005, F.A.C.
[40] Section 720.306(2), F.S.
[41] Section 720.306(9)(a), F.S.
[42] Section 720.306(8), F.S.
[43] Sections 718.112(2)(c), 719.106(1)(c), and 723.078(c)4., F.S.
[44] Sections 718.303(3), 719.303(3), and 720.305(1), F.S.
[45] *Id*.
[46] Sections 718.303(3), 719.303(3), 720.305(2), F.S.
[47] Sections 718.303(4), 719.303(4), and 720.305(3), F.S
[48] Section 718.112(2)(n), F.S.

Section 719.303(5), F.S., provides that when a cooperative association member's voting rights have been suspended, the total number of voting interests of the association must be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action. Chapter 718, F.S., and ch. 720, F.S., do not provide a comparable provision for condominium and homeowners' associations, respectively.

III. Effect of Proposed Changes:

Documentary Stamp Tax

The bill (section 1) amends s. 201.02(9), F.S., to provide that a document that transfers property to a condominium, cooperative, or homeowners' associations, or vacation and timeshare management or owners' association in lieu of foreclosure of an assessment lien is subject to documentary stamp tax based solely on the amount of unpaid assessments on the date of the transfer.

Proxy Voting

The bill (section 2) amends s. 617.0721(2), F.S., to permit, notwithstanding any provision to the contrary in the articles of incorporation or bylaws, corporations not for profit to use a copy, facsimile, or other reliable reproduction of the original proxy for any purpose for which the original proxy could be used if it is a complete reproduction of the entire proxy.

Condominiums – Definitions

The bill (section 3) creates s. 718.103(12), F.S., to define the term "condominium documents" to mean all duly adopted and recorded amendments, supplements, and exhibits of the declaration, the recorded articles of incorporation and bylaws, duly adopted and recorded amendments of the declaration, and rules and regulations.

The bill (section 6) amends s. 718.113(7), F.S., to replace the term "governing documents" with the term "condominium documents."

The bill (section 3) amends the definition of the term "developer" in s. 718.103(16), F.S., to exclude bulk-unit purchasers and lender-unit purchasers to reflect their creation and regulation in the bill (section 13). The bill also excludes from the definition of "developer":

- A person who owns 7 or fewer units operated by an association consisting of 40 or fewer units or who owns less than 20 percent of the units operated by an association consisting of more than 40 units; and
- The trustee and any related trust association of a timeshare trust.

Condominiums – Assessments for Use of Common Elements.

The bill (section 4) amends s. 718.111(4), F.S., to provide that the association may charge a fee against the unit owners for use of common elements or association property if the fee is

authorized by a majority vote of the voting interests present, in person or by proxy, at a meeting of the association in which a quorum has been established.

Condominiums - Insurance

The bill (section 4) amends s. 718.111(11)(j), F.S., to provide that, in cases where damage to condominium property is not the result of an insurable event, the maintenance provisions of the declaration or bylaws determine whether the association or the unit owners are responsible for the repair or replacement.

The bill also amends s. 718.111(11)(j), F.S., to delete uninsured losses from the list of items that are deemed a common expense of the condominium. It is not clear whether the effect of this provision is that uninsured losses are "damages in excess of property insurance coverage" and thus deemed a common expense of the condominium as provided in this section.

Community Associations – Recording Meetings

The bill (section 5) amends s. 718.112(2)(c) and (d), F.S., to provide that association members may not post tape or video recordings of meetings of the board or of the membership on any website or other media that can be readily viewed by persons who are not members of the association.

The bill also amends s. 719.106(1)(c) and (d), F.S., for cooperatives (section 16), and s. 720.306(10), F.S., for homeowners' associations (section 23), to provide a comparable provision for recording of cooperative and homeowners' association board and member meetings.

Condominium – Meeting Notices

The bill (section 5) amends s. 718.112(2)(d), F.S., to permit condominium associations to post meeting notices on association property in addition to condominium property.

Condominium – Annual Budget and Developers

The bill (section 5) amends s. 718.112(2)(f)2.b., F.S., to clarify that, for the period before turnover of control, the developer's vote to reduce or waive the funding of reserves is based on the developers voting interests allocated to its units.

Community Associations – Assessments and Foreclosure

The bill (section7) amends s. 718.116, F.S., to provide that a condominium unit owner is liable for any special assessments or installments on special assessments coming due during his or her period of ownership, regardless of when it was levied. It also provides that a unit owner is jointly and severally liable with the previous unit owner for all interest, late fees, costs, and reasonable attorney fees incurred by the association in collecting unpaid assessments up to the time of transfer of title. It provides that the joint and several liability does not apply to an owner who acquires title through purchase of a tax deed. The bill also limits the liability of a first mortgagee

or its successor or assignee who acquires title to a unit by foreclosure or by deed in lieu of foreclosure for unpaid interest, late fees, costs and reasonable attorney fees, and any other fee, cost, or expense incurred by the association in the collection process.

The bill amends s. 718.116(3), F.S., to permit condominium associations to recover from the unit owner any reasonable charges imposed upon the association under a written contract with its management or bookkeeping company or collection agent, incurred in connection with collecting a delinquent assessment.

The provision applies to the collection charges that are in a liquidated amount and must be based on the actual time expended performing necessary, non-duplicative services. The association may not recover fees for collection services for the period after the matter has been referred to the association's legal counsel. Any payment received from the unit owner must be applied in the following order: first to the interest accrued, then the administrative late fee, then costs and reasonable attorney fees incurred in collection, then the bill adds the payment for any reasonable costs for collection services contracted by the association, and then to the delinquent assessment. The bill provides that this payment priority applies notwithstanding s. 673.3111, F.S.,[49] or any purported accord and satisfaction. This statement of application is intended to clarify existing law.

The bill amends s. 718.116(5)(b), F.S., to permit the condominium association to file a lien on unpaid authorized administrative late fees and reasonable costs for collection services contracted by the associations.

Condominiums – Electronic Voting

The bill creates ss. 718.128 (section 8), 719.129 (section 18), and 720.317 (section 25), F.S., to provide that a condominium, cooperative, and homeowners' associations, respectively, may elect to conduct elections by electronic voting in the manner provided in these provisions.

The bill does not define the term "electronic voting."[50]

Each member must consent, in writing, to vote electronically. The association must provide each member with a method to:

- Authenticate the member's identity to the electronic voting system;
- Secure the member's vote from, among other things, malicious software and the ability of others to remotely monitor or control the electronic voting platform;
- Communicate with the electronic voting system;
- Review an electronic ballot before its transmission to the electronic voting system;

[49] Section 673.3111, F.S., relates to accord and satisfaction by negotiable instrument, which provides the method for resolving a dispute on a debt with a statement on the negotiable instrument to the effect that the instrument was tendered as full satisfaction of the claim.

[50] The term "electronic voting" is not defined in the Florida Statutes. Section 101.5603(4), F.S., defines the term "electronic or electromechanical voting system" to mean a system of casting votes by use of voting devices or marking devices and counting ballots by employing automatic tabulating equipment or data processing equipment, and the term includes touchscreen systems."

- Transmit an electronic ballot to the electronic voting system that ensures the secrecy and integrity of each ballot;
- Verify the authenticity of receipts sent from the electronic voting system;
- Confirm, at least 14 days before the voting deadline, that the member's electronic voting platform can successfully communicate with the electronic voting system; and
- Vote by mail or to deliver a ballot in person in the event of a disruption of the electronic voting system.

In addition, an electronic voting system must be:
- Accessible to members with disabilities;
- Secure from, among other things, malicious software and the ability of others to remotely monitor or control the system;
- Able to authenticate the member's identity;
- Able to communicate with each member's electronic voting platform;
- Able to authenticate the validity of each electronic ballot to ensure that the ballot is not altered in transit;
- Able to transmit a receipt from the electronic voting system to each member who casts an electronic ballot;
- Able to permanently separate any authentication or identifying information from the electronic ballot, rendering it impossible to tie a ballot to a specific member;
- Able to allow the member to confirm that his or her ballot has been received and counted; and
- Able to store and keep electronic ballots accessible to election officials for recount, inspection, and review purposes.

Members who vote electronically must be counted as being in attendance at the meeting for purposes of determining a quorum.

These electronic voting provisions do not apply unless the association bylaws provide for and allow electronic voting. The electronic voting provisions may be applied to some or all matters for which a vote of the membership is required.

Condominiums - Transfer of Developer Control

The bill (section 9) amends s. 718.301(1), F.S., to include the following additional events that trigger transfer of control from the developer to the non-developer unit owners:
- When a bulk-unit purchaser who owns a majority of the units files a bankruptcy petition;
- When a receiver for a bulk-unit purchaser who owns a majority of the units is appointed by a circuit court and is not discharged within 30 days after such appointment; and
- Five years after the date of recording of the first conveyance to a bulk-unit purchaser that owns a majority of the units.

The bill also amends s. 718.301(4), F.S., to apply the post-turnover requirements in this section to bulk-unit purchasers, including requirements for the relinquishment of specified records.

Condominiums – Agreements Entered into by the Association

The bill (section 10) amends s. 718.302, F.S., to prohibit a lender-unit purchaser from voting on the cancellation of a contract made by the association while the association is under control of that lender-unit purchaser. It also provides for the voting rights of a lender-unit purchaser or a bulk-unit purchaser as they relate to the voting rights of the developer in various ownership situations.

Community Associations – Fines and Penalties

The bill amends ss. 718.303 (section 11), 719.303 (section 19), and 720.305 (section 22), F.S., to revise the fine and penalty provisions for condominium, cooperative, and homeowners' associations, respectively. The board of the association is to levy any fines and an impartial committee is to be formed solely for the purpose of determining whether to confirm or reject the fine or suspension recommended by the board. Neither the board's authorized designee nor persons residing in the home of the board's designee may sit on the committee.

With regard to condominium and homeowners' associations, when an owner or member's voting rights have been suspended, the total number of voting interests of the association must be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action. This provision is comparable to the restriction on voting by a suspended member of a cooperative association in existing s. 719.303(5), F.S.

For condominium and homeowners' associations, any suspensions imposed apply even if the suspension arose from less than all of the units or parcels owned by the member. There is no comparable provision for cooperative associations.

The bill (section 23) also amends s. 720.306(9)(b), F.S., to provide that an association member's failure to pay a fee, fine, or other monetary obligation bars him or her from being nominated for the board, and, if he or she is currently a board member, failure to pay after 90 days results in abandonment of his or her seat on the board. This provision is comparable to the current restriction in s. 718.112(2)(n), F.S., for members of a condominium board.

Division of Florida Condominiums, Timeshares, and Mobile Homes

This bill (section 12) amends s. 718.501, F.S., to provide that the department has jurisdiction and regulatory authority over bulk-unit purchasers and lender-unit purchasers.

Distressed Condominium Relief Act

The bill (section 13) creates s. 718.709, F.S., to provide that ss. 718.701-718.108, F.S., the Distressed Condominium Relief Act, apply to title to units acquired on or after July 1, 2010 (the effective date of the act), but before July 1, 2016 (the final date for classification as a bulk buyer or bulk assignee).

Condominiums - Bulk-Unit Purchasers and Lender-Unit Purchasers

The bill (section 14) creates Part VIII of ch. 718, F.S., consisting of ss. 718.801-718.813, F.S., entitled "Bulk-Unit Purchasers and Lender-Unit Purchasers."

New s. 718.801, F.S., provides a statement of legislative intent that it is the public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to bulk-unit purchasers or lender-unit purchasers of condominium units and that there is a need to balance such interests by limiting the applicability of the Distressed Condominium Relief Act.

Definitions

The bill creates s. 718.802, F.S., to define the terms "bulk assignee," "bulk-unit purchaser," "bulk buyer," and "lender-unit purchaser."

The definition of "bulk assignee" is similar to the definition of that term under the Distressed Condominium Relief Act.

"Bulk-unit purchaser is defined as a person who acquires title to the greater of at least eight units or 20 percent of the units that ultimately will be operated by the same association. A person who acquires units or timeshare interests in a condominium that will be included in a timeshare plan, may elect to be a bulk-unit purchaser. The term does not include a purchaser who acquired title to defraud or harm a purchaser, unit owner, or the association; where the acquirer would be an insider of the bulk-unit purchaser or the developer; or where the acquisition is a fraudulent transfer under ch. 726, F.S.

"Bulk buyer" is defined as a person who acquired parcels as a bulk buyer under the Distressed Condominium Relief Act. The term also includes a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of any developer rights or receives only some or all of the specified rights. The rights include:

- The right to conduct sales, leasing, and marketing activities within the condominium.
- The right to be exempt from the payment of working capital contributions to the condominium association; and
- The right to be exempt from any rights of first refusal.

"Lender-unit purchaser" is defined as a mortgagee, who holds a mortgage from a developer or bulk-unit purchaser, who subsequently obtains title to the units through foreclosure or deed in lieu of foreclosure, and who elects to become a lender-unit purchaser by providing written notice of the election to the condominium association.

Developer Rights of Bulk-Unit Purchasers and Lender-Unit Purchasers

The bill creates s. 718.803, F.S., relating to the developer rights of bulk-unit purchasers and lender-unit purchasers. Generally, a lender-unit purchaser may exercise any developer rights that the lender-unit purchaser acquires. However, a bulk-unit purchaser may only exercise the following developer rights, provided they are contained in the condominium declaration:

- The right to conduct sales, leasing, and marketing activities within the condominium;

- The right to assign limited common elements and use rights to common elements and association property which were not assigned before the bulk-unit purchaser acquired title; and
- For a phase condominium, the right to add phases.

If a bulk-unit purchaser exercises developer rights other than those specified, it is no longer deemed to be a bulk-unit purchaser.

The bill also provides a time-frame by which a bulk-unit purchaser must pay a working capital contribution to the association in situations where the initial purchaser of a unit from the developer is required to make a working capital contribution to the association.

Compliance with Existing Sales and Reservation Laws

The bill creates s. 718.804, F.S., to require bulk-unit purchasers and lender-unit purchasers to comply with the requirements of s. 718.202, F.S.,[51] and Part V of ch. 718, F.S.,[52] in connection with any units they own or sell.

Voting Rights Related to Funding of Reserves

The bill creates s. 718.805, F.S., to provide that for the first two years following the first conveyance of a unit to a bulk-unit purchaser or lender-unit purchaser, the bulk-unit purchaser or lender-unit purchaser may vote the voting interests allocated to its units to waive reserves or reduce the funding of reserves. After these two years, the bulk-unit purchaser or lender-unit purchaser may not make such votes until it holds less than a majority of the voting interests in the association.

Assessment Liability and Election of Directors

The bill creates s. 718.806, F.S., relating to the liability of bulk-unit purchasers and lender-unit purchasers for assessments. A bulk-unit purchaser is liable for all assessments on its units that become due while it holds title to the units. The bulk-unit purchaser is jointly and severally liable with the previous owner for all unpaid assessments which became due before the acquisition of title, for all other monetary obligations accrued which are secured by the association's lien, and for all costs advanced by the association for the maintenance and repair of the units acquired by the bulk-unit purchaser.

A lender-unit purchaser's liability for assessments for the units the lender-unit purchaser owns is limited to the lesser of the units' unpaid regular assessments that accrued during the 12 months immediately preceding the lender-unit purchaser's acquisition of title or one percent of the original mortgage debt.

The lender-unit purchaser acquiring title must comply with s. 718.116(1)(c), F.S., which requires that the person acquiring title must pay the amount owed to the association within 30 days after transfer of title.

[51] Section 718.202, F.S., relates to sales or reservation deposits made prior to closing.
[52] Part V of ch. 718, F.S., regulates sales and disclosures prior to sales of residential condominiums.

Amendments and Material Alterations

The bill creates s. 718.807, F.S., to provide that the following amendments or alterations may not be made unless they are approved by a majority vote of unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser:

- An amendment related to the configuration of a unit or to create a timeshare;
- An amendment creating, changing, or terminating leasing restrictions;
- An amendment of the declaration pertaining to the condominium's status as housing for older persons;
- An amendment related to reclassification as a limited common element; and
- Material alterations to the common elements or association property any time a bulk-unit purchaser, a lender-unit purchaser, developer, or a combination thereof owns a percentage of voting interests equal to or greater than the percentage required to approve the amendment.

The bill requires consent of the developer, a bulk-unit purchaser, or a lender-unit purchaser for an amendment that would otherwise require the approval of their voting interests as required by the declaration, articles of incorporation, bylaws, or current law.

Warranties and Disclosures

The bill creates s. 718.808, F.S., related to the warranties and disclosures that bulk-unit purchasers and lender-unit purchasers are required to provide. A bulk-unit purchaser or lender-unit purchaser grants an implied warranty of fitness and merchantability to a purchaser of each unit sold for a period of 3 years, which begins on the date of the completion of repairs or improvements that the bulk-unit purchaser or lender-unit purchaser makes to the unit, common elements, or limited common elements.

The bill tolls the statute of limitations in s. 718.203, F.S., which provides the applicable periods for warranties granted by the developer, while the bulk-unit purchaser begins the process of appointing or electing a majority of the board.

A bulk-unit purchaser or lender-unit purchaser must include a disclosure to purchasers on any sales contract that states that the seller is not the developer of the condominium for any purpose under the ch. 718, F.S. A lender-unit purchaser must also disclose that it took title to the units being sold by foreclosure or deed in lieu of foreclosure.

At or before the signing of a contract to sell a unit, a bulk-unit purchaser or lender-unit purchaser must provide a condition report to the prospective purchaser. The condition report must include a reasonably detailed description of the repairs or replacements necessary to cure construction defects identified in the report. The report must be prepared before the bulk-unit purchaser or the lender-unit purchaser enters into its first sales contract, but not more than 6 months before the first sales contract is agreed upon. It must be updated no later than 1 year after the first closing and each year thereafter.

If during the course of preparing the condition report the architect or engineer becomes aware of a component that violates an applicable building code or law or that deviates from the building plans, the architect or engineer must disclose such information in the report. The architect or

engineer must make written inquiry to the applicable local government of any building code violations and include in the condition report the government's response or failure to respond.

If a condition report is not provided to a purchaser, the bulk-unit purchaser or lender-unit purchaser grants implied warranties of fitness and merchantability, which are not limited to the construction, improvements, or repairs that it undertakes to the condominium.

Joint and Several Liability

The bill creates s. 718.809, F.S., to provide that for the purposes of ch. 718, F.S., if there are multiple bulk-unit purchasers, the units owned by the bulk-unit purchasers and the rights of the bulk-unit purchasers will be aggregated as if there were only one bulk-unit purchaser. Each bulk-unit purchaser is jointly and severally liable with his or her predecessor bulk-unit purchasers for compliance with the chapter.

Construction Disputes

The bill creates s. 718.810, F.S., to provide that a condominium board of administration composed of a majority of directors elected or appointed by a bulk-unit purchaser may not resolve a construction dispute that is subject to ch. 558, F.S.,[53] unless the resolution is approved by a majority of the voting interests of the unit owners other than the developer and a bulk-unit purchaser.

Noncompliance

The bill creates s. 718.811, F.S., to provide that a bulk-unit purchaser or a lender-unit purchaser who fails to comply with the requirements of ch. 718, F.S., relating to the obligations and rights of bulk-unit purchasers and lender-unit purchasers, forfeits all protections provided under the Condominium Act.

Documents to be Delivered upon Turnover

The bill creates s. 718.812, F.S., to provide that when a bulk-unit purchaser is no longer entitled to elect the majority of the board, the bulk-unit purchaser must deliver all of the items specified in s. 718.301(4), F.S., that are in the bulk-unit purchaser's possession to the association. The bulk-unit purchaser must try to get turnover materials from the original developer and must list materials that it was unable to obtain.

Timeshare Condominiums

The bill creates s. 718.813, F.S., to provide that, with respect to acquisition of units or timeshare interests that are ultimately to be included in a timeshare plan under ch. 721, F.S., a person who is otherwise qualified to be a bulk-unit purchaser is only a bulk-unit purchaser if the person elects to be by providing notice to the condominium association. Additionally, when selling units or timeshare interests, the bulk-unit purchaser must disclose to buyers that the seller is not the developer of the condominium for any purpose under the Condominium Act.

[53] Chapter 558, F.S., provides for presuit notice and an opportunity to cure construction defects.

Homeowners' Associations – Governing Documents

The bill (section 20) amends s. 720.301, F.S., to revise the definition of the term "governing documents," to include the rules and regulations adopted under the authority of the association's declaration, articles of incorporation, or bylaws.

Homeowners' Association Act

The bill (section 21) creates s. 720.3015, F.S., to provide that ch. 720, F.S., may be cited as the "Homeowners' Association Act."

Homeowners' Associations - Amendments to Governing Documents

The bill (section 23) amends s. 720.306(1)(b), F.S., to provide that the association's failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

Effective Date

The bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The bill prohibits members of a community association from posting tape or video recordings of meetings of the board or of the membership on any website or other media that can be readily viewed by persons who are not members of the association. This provision may raise free speech issues under the First Amendment of the U.S. Constitution and Article I, Section 4 of the Florida Constitution, which guarantee freedom of speech and promote the free exchange of ideas and information by prohibiting the government from restricting speech because of its content. Prior restraints on speech and publication are the most serious and least tolerable infringement on First Amendment rights. As such, prior restraints are presumed unconstitutional. Therefore, only in "exceptional cases," will the courts consider censorship of publication acceptable.[54]

[54] See *Post–Newsweek Stations Orlando, Inc. v. Guetzloe*, 968 So.2d 608, 610 (Fla. 5th DCA 2007).

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill permits community associations to recover from their members fees for collection services and to file a lien on unpaid authorized administrative late fees, and reasonable costs for collection services contracted by the associations.

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: 202.02, 617.0721, 718.103, 718.111, 718.112, 718.113, 718.116, 718.301, 718.302, 718.303, 718.501, 719.104, 719.106, 719.108, 719.303, 720.301, 720.3015, 720.303, 720.306, and 720.3085.

This bill creates the following sections of the Florida Statutes: 718.128, 718.709, 718.801, 718.802, 718.803, 718.804, 718.805, 718.806, 718.807, 718.808, 718.809, 718.810, 718.811, 718.812, 718.813, 719.129, and 720.317.

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 March 18, 2015:
The committee substitute (CS) amends s. 201.02(9), F.S., to provide that a document that transfers property to a condominium, cooperative, or homeowners' associations, or vacation and timeshare management or owners' association in lieu of foreclosure of an assessment lien is subject to documentary stamp tax based solely on the amount of unpaid assessments on the date of the transfer.

The CS creates s. 718.103(12), F.S., to define the term "condominium documents." It also amends s. 718.103(16), F.S., to exclude from the definition of the term "developer" bulk-unit purchasers and lender-unit purchasers. It also excludes from the definition

persons who own seven or fewer units operated by an association consisting of 40 or fewer units or who own less than 20 percent of the units operated by an association consisting of more than 40 units, and the trustee and any related trust association of a timeshare trust.

The CS amends s. 718.111(11)(j), F.S., to provide that in cases where the damage is not the result of an insurable event, the maintenance provisions of declaration or bylaws determine whether the association or the unit owners are responsible for the repair or replacement. It also amends this section to delete uninsured losses from the list of items that are deemed a common expense of the condominium.

The CS amends s. 718.112(2)(f)2.b., F.S., to clarify that, for the period before turnover of control, the developer's vote to reduce or waive the funding of reserves is based on the developers voting interests allocated to its units.

The CS amends s. 718.113(7), F.S., to replace the term "governing documents" with the term "condominium documents."

The CS amends s. 718.116(3), F.S., to include s. 673.3111, F.S., or any purported accord and satisfaction in the list of matters that this order for applying payments is notwithstanding.

The CS creates ss. 718.128, 719.129, and s. 720.317, F.S., to provide that a condominium, cooperative, and homeowners' association, respectively, may elect to conduct elections by electronic voting in the manner provided.

The CS amends s. 718.301(1), F.S., to include three additional events that trigger transfer of control from the developer to the non-developer unit owners, and to apply the post-turnover requirement to bulk-unit purchasers.

The CS amends s. 718.302, F.S., to prohibit a lender-unit purchaser from voting on the cancellation of a contract, grant, reservation made by the association while the association is under control of that lender-unit purchaser. It also amends s. 718.302, F.S., relating to the rights of the developer unit owner to vote on making and cancelling agreements, to include the voting interests of the lender-unit purchasers and the bulk-unit purchasers juxtaposed to the voting rights of the developer.

The CS amends ss. 718.303, 719.303, 720.305, and 720.306, F.S., to revise the fine and penalty provisions for condominium, cooperative, and homeowners' associations.

The CS amends s. 718.501, F.S., to provide that the department has jurisdiction and regulatory authority over bulk-unit purchasers and lender-unit purchasers.

The bill creates s. 718.709, F.S., to provide that ss. 718.701-718.108, F.S., apply to title to units acquired on or after July 1, 2010, but before July 1, 2016.

The CS creates Part VIII of ch. 718, F.S., consisting of ss. 718.801-718.812, F.S., entitled "Bulk-Unit Purchasers and Lender-Unit Purchasers."

The CS amends s. 720.301, F.S., to revise the definition of the term "governing documents," to include the rules and regulations adopted under the authority of the association's declaration, articles of incorporation, or bylaws.

The CS creates s. 720.3015, F.S., to provide that ch. 720, F.S., may be cited as the "Homeowners' Association Act."

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

. . . . .

The Committee on Judiciary (Ring) recommended the following:

Senate Amendment (with title amendment)

Delete lines 645 - 2912

and insert:

allowed by the applicable bylaws or declaration or any law. ~~If authorized by the bylaws,~~ 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.

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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; however, a unit owner may not post the recording on any website or other media that can readily be viewed by persons who are not members of the association.

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.

(f) Annual budget.—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any ~~if~~ applicable~~, but not limited to, those~~ expenses listed in s. 718.504(21). A multicondominium association shall adopt a separate budget of common expenses for each condominium the association operates and shall adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they need not be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement

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resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and ~~for~~ any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to an adopted budget in which the members of an association have determined, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection.

b. Before ~~However, prior to~~ turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 718.301, the developer may vote the voting interests allocated to its units to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine

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whether to waive or reduce the funding of reserves~~,~~ and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Before ~~Prior to~~ turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may ~~shall~~ not vote to use reserves for purposes other than those ~~that~~ 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.

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must ~~shall~~ contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING

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RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

Section 6. Subsection (7) 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.—

(7) Notwithstanding the provisions of this section or the condominium ~~governing~~ documents of a condominium or a multicondominium association, the board of administration may, without any requirement for approval of the unit owners, install upon or within the common elements or association property solar collectors, clotheslines, or other energy-efficient devices based on renewable resources for the benefit of the unit owners.

Section 7. Paragraphs (a) and (b) of subsection (1), subsection (3), and paragraph (b) of subsection (5) of section 718.116, Florida Statutes, are amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.—

(1)(a) A unit owner, regardless of how the unit owner has acquired ~~his or her~~ title ~~has been acquired~~, including, but not limited to, ~~by~~ purchase at a foreclosure sale or ~~by~~ deed in lieu of foreclosure, is liable for all assessments that ~~which~~ come due while he or she is the unit owner, including any special assessments or installments on special assessments coming due during the period of ownership, regardless of when the special assessment was levied. Additionally, a unit owner is jointly and severally liable with the previous unit owner for all unpaid monthly and special assessments, interest and late fees on both

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unpaid assessments and unpaid special assessments, and costs and reasonable attorney fees incurred by the association in an attempt to collect all such amounts that came due up to the time of transfer of title. This joint and several liability of a subsequent unit owner does not apply to an owner who acquires title through purchase of a tax deed and is without prejudice to any right the present unit owner may have to recover from the previous unit owner the amounts paid by the present unit owner. For the purposes of this section ~~paragraph~~, the term "previous unit owner" does not include an association that acquires title to a unit ~~delinquent property~~ through foreclosure or by deed in lieu of foreclosure. A present unit owner's liability for unpaid assessments, interest, late fees, and costs and reasonable attorney fees is limited to any unpaid assessments, interest, late fees, and costs and reasonable attorney fees that accrued before the association acquired title to the unit ~~delinquent property~~ through foreclosure or by deed in lieu of foreclosure.

(b)1. The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments, interest, late fees, costs and reasonable attorney fees, and any other fee, cost, or expense incurred by or on behalf of the association in the collection process which ~~that~~ became due before the mortgagee's acquisition of title is limited to the lesser of:

a. The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or


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b. One percent of the original mortgage debt. The provisions of this paragraph apply only if the first mortgagee joined the association as a defendant in the foreclosure action. Joinder of the association is not required if, on the date the complaint is filed, the association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee.

2. An association, or its successor or assignee, that acquires title to a unit through the foreclosure of its lien for assessments is not liable for any unpaid assessments, late fees, interest, or reasonable attorney ~~attorney's~~ fees and costs that came due before the association's acquisition of title in favor of any other association, as defined in s. 718.103(2) or s. 720.301(9), which holds a superior lien interest on the unit. This subparagraph is intended to clarify existing law.

(3) Assessments and installments on assessments which are not paid when due bear interest at the rate provided in the declaration, from the due date until paid. The rate may not exceed the rate allowed by law, and, if no rate is provided in the declaration, interest accrues at the rate of 18 percent per year. If provided by the declaration or bylaws, the association may, in addition to such interest, charge an administrative late fee of up to the greater of $25 or 5 percent of each delinquent installment for which the payment is late. The association may also recover from the unit owner any reasonable charges imposed upon the association under a written contract with its management or bookkeeping company or collection agent which are incurred in connection with collecting a delinquent assessment. Such charges must be based on the actual time expended

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performing necessary, nonduplicative services. Fees for collection are not recoverable for the period after referral of the matter to an association's legal counsel. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney ~~attorney's~~ fees incurred in collection, then to any reasonable costs for collection services contracted by the association, and then to the delinquent assessment. The foregoing is applicable notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law. A late fee is not subject to chapter 687 or s. 718.303(4).

(5)

(b) To be valid, a claim of lien must state the description of the condominium parcel, the name of the record owner, the name and address of the association, the amount due, and the due dates. It must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as

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well as interest, authorized administrative late fees, and all reasonable costs and attorney ~~attorney's~~ fees incurred by the association incident to the collection process, including, but not limited to, any reasonable costs for collection services contracted for by the association. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

Section 8. Section 718.128, Florida Statutes, is created to read:

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

(1) The association provides each unit owner with:

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

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

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

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

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

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

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

(d) For elections of the board of administration, able to

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permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific unit owner.

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

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

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

(5) A unit owner’s consent to online voting is valid until

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the unit owner opts out of online voting according to the procedures established by the board of administration pursuant to paragraph (4).

(6) This section may apply to any matter that requires a vote of the unit owners.

Section 9. Subsections (1) and (4) of section 718.301, Florida Statutes, are amended to read:

718.301 Transfer of association control; claims of defect by association.—

(1) If unit owners other than the developer own 15 percent or more of the units ~~in a condominium~~ that ultimately will be operated ~~ultimately~~ by an association, as provided in the declaration, articles of incorporation, or bylaws as originally recorded, the unit owners other than the developer are entitled to elect at least one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect at least a majority of the members of the board of administration of an association~~,~~ upon the first ~~to occur of any~~ of the following events that occur:

(a) Three years after 50 percent of the units that ultimately will be operated ~~ultimately~~ by the association, as provided in the declaration, articles of incorporation, or bylaws as originally recorded, have been conveyed to purchasers.~~;~~

(b) Three months after 90 percent of the units that ultimately will be operated ~~ultimately~~ by the association, as provided in the declaration, articles of incorporation, or bylaws as originally recorded, have been conveyed to purchasers.~~;~~

(c) When all the units that ultimately will be operated ~~ultimately~~ by the association, as provided in the declaration, articles of incorporation, or bylaws as originally recorded, have been completed, some of them have been conveyed to purchasers, and none of the others is ~~are~~ being offered for sale by the developer in the ordinary course of business.~~;~~

(d) When some of the units have been conveyed to purchasers and none of the others is ~~are~~ being constructed or offered for sale by the developer in the ordinary course of business.~~;~~

(e) When the developer files a petition seeking protection in bankruptcy.~~;~~

(f) When a bulk-unit purchaser who owns a majority of the units that ultimately will be operated by the association, as provided in the declaration, articles of incorporation, or bylaws as originally recorded, files a petition seeking protection in bankruptcy.

(g) ~~(f)~~ When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members.~~; or~~

(h) When a receiver for a bulk-unit purchaser who owns a majority of the units that ultimately will be operated by the association, as provided in the declaration, articles of incorporation, or bylaws as originally recorded, is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members.

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(i) Five years after the date of recording of the first conveyance to a bulk-unit purchaser who owns a majority of the units that ultimately will be operated by the association, as provided in the declaration, articles of incorporation, or bylaws as originally recorded. Notwithstanding that unit owners other than the developer are entitled to elect a majority of the members of the board of administration and notwithstanding s. 718.112(2)(f)2., 5 years after the date of recording of the first conveyance of a unit to a bulk-unit purchaser who owns a majority of the units, the bulk-unit purchaser may exercise the right to vote for each unit owned by the bulk-unit purchaser in the same manner as any other unit owner except for the purposes of reacquiring control of the association or electing or appointing a majority of the members of the board of administration.

(j) ~~(g)~~ Seven years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first; or, in the case of an association that ~~may~~ ultimately may operate more than one condominium, 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, for the first condominium it operates; or, in the case of an association operating a phase

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condominium created pursuant to s. 718.403, 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.

The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units, of the units in a condominium operated by the association. After the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the association or selecting a ~~the~~ majority of the members of the board of administration.

(4) At the time that unit owners other than the developer elect a majority of the members of the board of administration of an association, the developer or bulk-unit purchaser shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purposes of paragraph (c) not more than 90 days thereafter, the developer or bulk-unit purchaser shall deliver to the association, at the developer's or bulk-unit purchaser's expense, all property of the unit owners and of the association which is held or controlled by the developer or bulk-unit purchaser, including, but not limited to, the following items, if applicable, as to each condominium


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operated by the association:

(a)1. The original or a photocopy of the recorded declaration of condominium and all amendments thereto. If a photocopy is provided, it must be certified by affidavit of the developer, a bulk-unit purchaser, or an officer or agent of the developer or bulk-unit purchaser as being a complete copy of the actual recorded declaration.

2. A certified copy of the articles of incorporation of the association or, if the association was created before ~~prior to~~ the effective date of this act and it is not incorporated, copies of the documents creating the association.

3. A copy of the bylaws.

4. The minute books, including all minutes, and other books and records of the association, if any.

5. Any house rules and regulations that have been adopted ~~promulgated~~.

(b) Resignations of officers and members of the board of administration who are required to resign because the developer or bulk-unit purchaser is required to relinquish control of the association.

(c) The financial records, including financial statements of the association, and source documents from the incorporation of the association through the date of turnover. The records must be audited for the period from the incorporation of the association or from the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation, by an independent certified public accountant. All financial statements must be prepared in accordance with generally accepted accounting principles and must be audited in

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accordance with generally accepted auditing standards, as prescribed by the Florida Board of Accountancy, pursuant to chapter 473. The accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices, to determine whether ~~if~~ expenditures were for association purposes and the billings, cash receipts, and related records to determine whether ~~that~~ the developer or bulk-unit purchaser was charged and paid the proper amounts of assessments.

(d) Association funds or control thereof.

(e) All tangible personal property that is property of the association, which is represented by the developer or bulk-unit purchaser to be part of the common elements or which is ostensibly part of the common elements, and an inventory of that property.

(f) A copy of the plans and specifications used ~~utilized~~ in the construction or remodeling of improvements and the supplying of equipment to the condominium and in the construction and installation of all mechanical components serving the improvements and the site with a certificate in affidavit form of the developer, the bulk-unit purchaser, or the developer's or bulk-unit purchaser's agent or an architect or engineer authorized to practice in this state that such plans and specifications represent, to the best of his or her knowledge and belief, the actual plans and specifications used ~~utilized~~ in the construction and improvement of the condominium property and for the construction and installation of the mechanical components serving the improvements. If the condominium property has been declared a condominium more than 3 years after the

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completion of construction or remodeling of the improvements, ~~the requirements of~~ this paragraph does ~~do~~ not apply.

(g) A list of the names and addresses of all contractors, subcontractors, and suppliers used ~~utilized~~ in the construction or remodeling of the improvements and in the landscaping of the condominium or association property which the developer or bulk-unit purchaser had knowledge of at any time in the development of the condominium.

(h) Insurance policies.

(i) Copies of any certificates of occupancy that may have been issued for the condominium property.

(j) Any other permits applicable to the condominium property which have been issued by governmental bodies and are in force or were issued within 1 year before ~~prior to~~ the date the unit owners other than the developer or bulk-unit purchaser took control of the association.

(k) All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that are still effective.

(l) A roster of unit owners and their addresses and telephone numbers, if known, as shown on the developer's or bulk-unit purchaser's records.

(m) Leases of the common elements and other leases to which the association is a party.

(n) Employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons

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performing the service.

(o) All other contracts to which the association is a party.

(p) A report included in the official records, under seal of an architect or engineer authorized to practice in this state, attesting to required maintenance, useful life, and replacement costs of the following applicable common elements comprising a turnover inspection report:

1. Roof.
2. Structure.
3. Fireproofing and fire protection systems.
4. Elevators.
5. Heating and cooling systems.
6. Plumbing.
7. Electrical systems.
8. Swimming pool or spa and equipment.
9. Seawalls.
10. Pavement and parking areas.
11. Drainage systems.
12. Painting.
13. Irrigation systems.

(q) A copy of the certificate of a surveyor and mapper recorded pursuant to s. 718.104(4)(e) or the recorded instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer <u>or bulk-unit purchaser</u> rights in favor of the grantee of such unit, whichever occurred first.

Section 10. Subsections (1) through (4) of section 718.302, Florida Statutes, are amended to read:

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718.302 Agreements entered into by the association.—

(1) A ~~Any~~ grant or reservation made by a declaration, lease, or other document, and a ~~any~~ contract made by an association before ~~prior to~~ assumption of control of the association by unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser, which ~~that~~ provides for operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium must ~~shall~~ be fair and reasonable, and such grant, reservation, or contract may be canceled by unit owners other than the developer or a bulk-unit purchaser. A lender-unit purchaser may not vote on cancellation of a grant, reservation, or contract made by the association while the association is under control of that lender-unit purchaser.~~:~~

(a) If the association operates only one condominium and the unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser have assumed control of the association, or if the unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser own at least ~~not less than~~ 75 percent of the voting interests in the condominium, the cancellation shall be by concurrence of the owners of at least ~~not less than~~ 75 percent of the voting interests other than the voting interests owned by the developer, a bulk-unit purchaser, or a lender-unit purchaser. If a grant, reservation, or contract is so canceled and the unit owners other than the developer or a bulk-unit purchaser have not assumed control of the association, the association shall make a new contract or otherwise provide for maintenance, management, or operation in lieu of the canceled obligation, at the direction of the owners


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of ~~not less than~~ a majority of the voting interests in the condominium other than the voting interests owned by the developer, a bulk-unit purchaser, or a lender-unit purchaser.

(b) If the association operates more than one condominium and the unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser have not assumed control of the association, and if the unit owners other than the developer or a bulk-unit purchaser own at least 75 percent of the voting interests in a condominium operated by the association, any grant, reservation, or contract for maintenance, management, or operation of buildings containing the units in that condominium or of improvements used only by the unit owners of that condominium may be canceled by concurrence of the owners of at least 75 percent of the voting interests in the condominium other than the voting interests owned by the developer or a bulk-unit purchaser. A ~~No~~ grant, reservation, or contract for maintenance, management, or operation of recreational areas or any other property serving more than one condominium, and operated by more than one association, may not be canceled except pursuant to paragraph (d).

(c) If the association operates more than one condominium and the unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser have assumed control of the association, the cancellation shall be by concurrence of the owners of at least ~~not less than~~ 75 percent of the total number of voting interests in all condominiums operated by the association other than the voting interests owned by the developer or a bulk-unit purchaser.

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(d) If the owners of units in a condominium have the right to use property in common with owners of units in other condominiums and those condominiums are operated by more than one association, a ~~no~~ grant, reservation, or contract for maintenance, management, or operation of the property serving more than one condominium may not be canceled until the unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser have assumed control of all of the associations operating the condominiums that are to be served by the recreational area or other property, after which cancellation may be effected by concurrence of the owners of at least ~~not less than~~ 75 percent of the total number of voting interests in those condominiums other than voting interests owned by the developer, a bulk-unit purchaser, or a lender-unit purchaser.

(2) A ~~Any~~ grant or reservation made by a declaration, lease, or other document, or a ~~any~~ contract made by the developer or association before ~~prior to the time when~~ unit owners other than the developer or a bulk-unit purchaser elect a majority of the board of administration, which grant, reservation, or contract requires the association to purchase condominium property or to lease condominium property to another party, shall be deemed ratified unless rejected by a majority of the voting interests of the unit owners other than the developer or a bulk-unit purchaser within 18 months after the unit owners other than the developer or a bulk-unit purchaser elect a majority of the board of administration. A lender-unit purchaser may not vote on cancellation of a grant, reservation, or contract made by the association while the association is under

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control of that lender-unit purchaser. This subsection does not apply to a ~~any~~ grant or reservation made by a declaration under which ~~whereby~~ persons other than the developer or the developer's or bulk-unit purchaser's heirs, assigns, affiliates, directors, officers, or employees are granted the right to use the condominium property, if ~~so long as~~ such persons are obligated to pay at least~~, at a minimum,~~ a proportionate share of the cost associated with such property.

(3) A ~~Any~~ grant or reservation made by a declaration, lease, or other document, and a ~~any~~ contract made by an association, whether before or after assumption of control of the association by unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser, which ~~that~~ provides for operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium may ~~shall~~ not ~~be in~~ conflict with the powers and duties of the association or the rights of the unit owners as provided in this chapter. This subsection is intended only as a clarification of existing law.

(4) A ~~Any~~ grant or reservation made by a declaration, lease, or other document, and a ~~any~~ contract made by an association before ~~prior to~~ assumption of control of the association by unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser, must ~~shall~~ be fair and reasonable.

Section 11. Subsections (3), (4), and (5) of section 718.303, Florida Statutes, are amended, and subsection (7) is added to that section, to read:

718.303 Obligations of owners and occupants; remedies.—

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(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 or its authorized designee on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before an impartial committee as provided in paragraph (b). However, the fine may not exceed $100 per violation, or $1,000 in the aggregate.

(a) 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. This paragraph does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators.

(b) A fine or suspension levied by the board of administration or its authorized designee may not be imposed unless the board ~~association~~ first provides at least 14 days' written notice and an opportunity for a hearing to the unit owner and, if applicable, its occupant, licensee, or invitee. The hearing must be held before an impartial ~~a~~ committee of other unit owners who are neither board members, ~~nor~~ persons residing in a board member's household, the board's authorized designee, nor persons residing in the household of the board's

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authorized designee. The role of the impartial committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the impartial committee does not agree, the fine or suspension may not be imposed.

(4) If a unit owner is more than 90 days delinquent in paying a fee, fine, or other monetary obligation due to the association, the association may suspend the right of the unit owner or the unit's occupant, licensee, or invitee to use common elements, common facilities, or any other association property until the fee, fine, or other monetary obligation is paid in full. This subsection does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators. The notice and hearing requirements under subsection (3) do not apply to suspensions imposed under this subsection.

(5) An association may suspend the voting rights of a unit or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than 90 days delinquent. A voting interest or consent right allocated to a unit or member which has been suspended by the association shall be subtracted from ~~may not be counted towards~~ the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests may not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of

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voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

(7) The suspensions permitted by paragraph (3)(a) and subsections (4) and (5) apply to a member and, when appropriate, the member's tenants, guests, or invitees, even if the delinquency or failure that resulted in the suspension arose from less than all of the multiple units owned by the member.

Section 12. Subsection (1) of section 718.501, Florida Statutes, is amended to read:

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The division may enforce and ensure compliance with ~~the provisions of~~ this chapter and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under the control of the developer, the control of a bulk-unit purchaser or lender-unit purchaser, or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk-unit purchasers, lender-unit purchasers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover,

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pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate only complaints related ~~only~~ to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12).

(a)1. The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms.

2. The division may submit any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst to be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to this chapter.

(b) The division may require or permit any person to file a statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter that ~~which~~ is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any

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books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure of ~~by~~ a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all affected persons, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of ~~any provision of~~ this chapter or a related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or his or her ~~its~~ assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding under which ~~whereby~~ orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, bulk buyer, association, developer-designated officer, or developer-designated member of the board of administration, or his or her ~~developer-designated~~ assignees or agents, the ~~bulk assignee-designated assignees or agents, bulk buyer-designated assignees or agents,~~ community association manager, or the ~~community~~

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~~association~~ management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division to carry out the purposes of this chapter. If the division finds that a developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or his or her ~~its~~ assignees or agents, is violating or is about to violate ~~any provision of~~ this chapter, any rule adopted or order issued by the division, or any written agreement entered into with the division~~,~~ and the violation presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective for 90 days. If the division begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

3. If a developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer~~,~~ fails to pay ~~any~~ restitution determined by the division to be owed and~~, plus~~ any accrued interest charged at the highest rate permitted by law, within 30 days after expiration of any appellate time period of a final order requiring payment of restitution or the conclusion of any appeal thereof, whichever is later, the division shall ~~must~~ bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other available remedy. The division may also temporarily revoke its acceptance of the filing for the developer, bulk-unit purchaser,

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or lender-unit purchaser, to which the restitution relates until payment of restitution is made.

4. The division may petition the court for appointment of a receiver or conservator who, ~~.~~ if appointed, ~~the receiver or conservator~~ may take action to implement the court order to ensure the performance of the order and to remedy any breach thereof. In addition to all other means provided by law for the enforcement of an injunction or temporary restraining order, the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and related records, and allow the examination and use of the property by the division and a court-appointed receiver or conservator.

5. The division may apply to the circuit court for an order of restitution under which ~~whereby~~ the defendant in an action brought pursuant to subparagraph 4. is ordered to make restitution of those sums shown by the division to have been obtained by the defendant in violation of this chapter. At the option of the court, such restitution is payable to the conservator or receiver appointed pursuant to subparagraph 4. or directly to the persons whose funds or assets were obtained in violation of this chapter.

6. The division may impose a civil penalty against a developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, ~~or~~ bulk buyer, or association, or its assignee or agent, for a ~~any~~ violation of this chapter or a related rule. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly violates ~~a provision of~~ this chapter, an adopted rule, or a final order of the division; may order the removal of such individual as an

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officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with ~~the requirements of~~ this chapter, a rule adopted under this chapter, or a final order of the division. ~~The division,~~ Before initiating formal agency action under chapter 120, the division must afford the officer or board member an opportunity to voluntarily comply, and an officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but the penalty for any offense may not exceed $5,000. ~~By January 1, 1998,~~ The division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such other factors deemed relevant by the division. ~~For example,~~ The division may consider whether the violations were committed by a developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer, or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of

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penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those that ~~which~~ endanger the health, safety, or welfare of ~~the~~ condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association fails to pay the civil penalty, the division shall pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order is not effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

7. If a unit owner presents the division with proof that the unit owner has requested access to official records in writing by certified mail, and that after 10 days the unit owner

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again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena requiring production of the requested records where the records are kept pursuant to s. 718.112.

8. In addition to subparagraph 6., the division may seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause under paragraph (r). The civil penalty shall be at least $500 but no more than $5,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney ~~attorney's~~ fees and, if the division prevails, may also award reasonable costs of investigation.

(e) The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(f) The division may adopt rules to administer and enforce ~~the provisions of~~ this chapter.

(g) The division shall establish procedures for providing notice to an association and the developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer during the period in which the developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer controls the association if the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing such condominium community.

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(h) The division shall furnish each association that pays the fees required by paragraph (2)(a) a copy of this chapter, as amended, and the rules adopted thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.

(j) The division shall provide training and educational programs for condominium association board members and unit owners. The training may, at ~~in~~ the division's discretion, include web-based electronic media~~,~~ and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers, ~~and~~ shall maintain a current list of approved programs and providers, and shall make such list available to board members and unit owners in a reasonable and cost-effective manner.

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. Upon request, the division shall provide~~, upon request,~~ a list of such mediators to any association, unit owner, or other participant in arbitration proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of volunteer mediators only the names of individuals ~~persons~~ who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the

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division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which must be related to experience, education, or background. In order to continue to be certified, an individual ~~Any person~~ initially certified as a paid mediator by the division must~~, in order to continue to be certified,~~ comply with the factors or requirements adopted by rule.

(m) If a complaint is made, the division shall ~~must~~ conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant as to whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any

right to a hearing pursuant to ss. 120.569 and 120.57.

(n) Condominium association directors, officers, and employees; condominium developers; bulk-unit purchasers, lender-unit purchasers, bulk assignees, bulk buyers, and community association managers; and community association management firms have an ongoing duty to reasonably cooperate with the division in any investigation pursuant to this section. The division shall refer to local law enforcement authorities any person who ~~whom~~ the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department's investigation.

(o) The division may:

1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or

2. Accept grants-in-aid from any source.

(p) The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and rules and common administrative practices.

(q) The division shall consider notice to a developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer to be complete when it is delivered to the address of the developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer currently on file with the division.

(r) In addition to its enforcement authority, the division may issue a notice to show cause, which must provide for a hearing, upon written request, in accordance with chapter 120.

(s) The division shall submit to the Governor, the

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President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report that includes, but need not be limited to, the number of training programs provided for condominium association board members and unit owners;~~,~~ the number of complaints received, by type;~~,~~ the number and percent of complaints acknowledged in writing within 30 days and the number and percent of investigations acted upon within 90 days in accordance with paragraph (m);~~,~~ and the number of investigations exceeding the 90-day requirement. The annual report must also include an evaluation of the division's core business processes and make recommendations for improvements, including statutory changes. The report shall be submitted by September 30 following the end of the fiscal year.

Section 13. Section 718.709, Florida Statutes, is created to read:

718.709 Applicability.—Sections 718.701-718.708, relating to the Distressed Condominium Relief Act, apply to title to units acquired on or after July 1, 2010, but before July 1, 2016.

Section 14. Part VIII of chapter 718, Florida Statutes, consisting of sections 718.801-718.813, is created to read:

PART VIII

BULK-UNIT PURCHASERS AND LENDER-UNIT PURCHASERS

718.801 Legislative intent.—The Legislature declares that it is the public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to bulk-unit purchasers or lender-unit purchasers of condominium units and that there is a need to

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balance such interests by limiting the applicability of the Distressed Condominium Relief Act. Notwithstanding the limitation, the Distressed Condominium Relief Act applies to title acquired on or after July 1, 2010, but before July 1, 2016.

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

(1) "Bulk assignee" means a person who is not a bulk buyer and who:

(a) Acquires more than seven condominium parcels in a single condominium;

(b) Receives an assignment of any of the developer rights, other than or in addition to those rights described in subsection (3), as set forth in the declaration of condominium or this chapter:

1. By a written instrument recorded as part of or as an exhibit of the deed;

2. By a separate instrument recorded in the public records of the county in which the condominium is located; or

3. Pursuant to a final judgment or certificate of title issued in favor of a purchaser at a foreclosure sale; and

(c) Acquired condominium parcels on or after July 1, 2010, but before July 1, 2016. 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.

A mortgagee or its assignee may not be deemed a bulk assignee or

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developer by reason of the acquisition of condominium units and receipt of an assignment of some or all of a developer's rights unless the mortgage or its assignee exercises any of the developer rights other than those described in subsection (3).

(2)"Bulk-unit purchaser" means a person who acquires title to the greater of at least eight units or 20 percent of the units that ultimately will be operated by the same association, as provided in the declaration, articles of incorporation, or bylaws as originally recorded. Multiple bulk-unit purchasers may be members of an association simultaneously or successively. There may be one or more bulk-unit purchasers while the developer still owns units operated by the association. A person who acquires title to units or timeshare interests in a condominium, which units or timeshare interests are or ultimately will be included in a timeshare plan governed by chapter 721, may elect to be a bulk-unit purchaser pursuant to s. 718.813. The term does not include a lender-unit purchaser. Further, the term does not include an acquirer of units if any transfer of title to the acquirer is made:

(a) With intent to defraud or materially harm a purchaser, a unit owner, or the association;

(b) Where the acquirer is a person or limited liability company that would be an insider, as defined in s. 726.102, of the bulk-unit purchaser or of the developer; or

(c) As a fraudulent transfer under chapter 726.

(3) "Bulk buyer" means a person who acquired condominium parcels on or after July 1, 2010, but before July 1, 2016, and the date of acquisition shall be determined in the same manner as in subsection (1). Further, the term means a person who

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acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of any developer rights or receives only some or all of the following rights:

(a) The right to conduct sales, leasing, and marketing activities within the condominium.

(b) The right to be exempt from the payment of working capital contributions to the condominium association arising out of, or in connection with, the bulk buyer's acquisition of the units.

(c) The right to be exempt from any rights of first refusal which may be held by the condominium association and would otherwise be applicable to subsequent transfers of title from the bulk buyer to a third-party purchaser concerning one or more units.

(4) "Lender-unit purchaser" means a person, or the person's successors, assigns, or wholly owned subsidiaries, who holds a mortgage from a developer or from a bulk-unit purchaser on the greater of at least eight units or 20 percent of the units that, as provided in the declaration, articles of incorporation, or bylaws as originally recorded, ultimately will be operated by the same association; who subsequently obtains title to such units through foreclosure or deed in lieu of foreclosure; and who makes the election to become a lender-unit purchaser pursuant to 718.808(4). However, a mortgagee or its wholly owned subsidiary that acquires and sells units to one or more bulk-unit purchasers is not a developer or a lender-unit purchaser with respect to the sale.

718.803 Exercise of rights.—

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(1) A bulk-unit purchaser may exercise only the following developer rights, provided such rights are contained in the declaration:

(a) The right to conduct sales, leasing, and marketing activities within the condominium, including the use of the sales and leasing office.

(b) The right to assign limited common elements and use rights to common elements and association property which were not assigned before the bulk-unit purchaser acquired title to the units. Such rights may include, without limitation, the rights to garages, parking spaces, storage areas, and cabanas. If there is more than one bulk-unit purchaser, this right must be established in a written assignment from the developer which specifies the bulk-unit purchaser who has such a right as to specified limited common elements, common elements, and association property.

(c) For a phase condominium, the right to add phases.

(2) If the initial purchaser of a unit from the developer is required to make a working capital contribution to the association, a bulk-unit purchaser shall pay a working capital contribution to the association, which must be calculated in the same manner for each unit acquired, upon the earlier of:

(a) Sale of a unit by the bulk-unit purchaser to a third party other than the bulk-unit purchaser; or

(b) Five years from the date of acquisition of title to a unit by the bulk-unit purchaser.

(3) If a bulk-unit purchaser exercises developer rights other than those specified in subsection (1), he or she is no longer deemed to be a bulk-unit purchaser, and this part does

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not apply to such person.

(4) Except as set forth in this part, a lender-unit purchaser may exercise any developer rights that the lender-unit purchaser acquires.

718.804 Compliance.—A bulk-unit purchaser and a lender-unit purchaser shall comply with all applicable requirements of s. 718.202 and part V of this chapter in connection with any units that they own or sell.

718.805 Voting rights.—

(1) For the first 2 fiscal years following the first conveyance of a unit to a bulk-unit purchaser or lender-unit purchaser, the bulk-unit purchaser or lender-unit purchaser may vote the voting interests allocated to his or her units to waive reserves or reduce the funding of reserves. After these 2 fiscal years, the bulk-unit purchaser or lender-unit purchaser may not vote his or her voting interests to waive reserves or reduce the funding of reserves until the bulk-unit purchaser or lender-unit purchaser holds less than a majority of the voting interests in the association.

(2) A bulk-unit purchaser or lender-unit purchaser may not transfer his or her right to vote to waive reserves or reduce the funding of reserves to other bulk-unit purchasers or lender-unit purchasers to extend the time period in subsection (1).

718.806 Assessment liability; election of directors.—

(1) BULK-UNIT PURCHASER ASSESSMENT LIABILITY.—A bulk-unit purchaser is liable for all assessments on his or her units which become due while the bulk-unit purchaser holds title to such units. Additionally, the bulk-unit purchaser is jointly and severally liable with the previous owner for all unpaid regular

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periodic assessments and special assessments that became due before the acquisition of title, for all other monetary obligations accrued which are secured by the association's lien, and for all costs advanced by the association for the maintenance and repair of the units acquired by the bulk-unit purchaser.

(2) LENDER-UNIT PURCHASER ASSESSMENT LIABILITY.—The liability of a lender-unit purchaser or his or her successors or assignees for the units that the lender-unit purchaser owns is limited to the lesser of:

(a) The units' unpaid common expenses and the regular periodic assessments that accrued or became due during the 12 months immediately preceding the lender-unit purchaser's acquisition of title and for which payment in full has not been received by the association; or

(b) One percent of the original mortgage debt.

The lender-unit purchaser acquiring title must comply with s. 718.116(1)(c).

(3) DIRECTOR ELECTED BY BULK-UNIT PURCHASER.—A director who has been elected or appointed by a bulk-unit purchaser is automatically suspended from board service for 30 days following the failure of the bulk-unit purchaser to timely pay monetary obligations on a unit the bulk-unit purchaser owns. The remaining directors may temporarily fill the vacancy created by the suspension. Once the bulk-unit purchaser has cured all outstanding delinquencies on the unit, the suspended director shall replace the temporary appointee and resume service on the board for the unexpired term.

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718.807 Amendments and material alterations.—

(1) The following amendments or alterations may not go into effect unless approved by a majority vote of unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser:

(a) An amendment described in s. 718.110(4) or (8).

(b) An amendment creating, changing, or terminating leasing restrictions.

(c) An amendment of the declaration pertaining to the condominium's status as housing for older persons.

(d) An amendment pursuant to s. 718.110(14) or an amendment that otherwise reclassifies a portion of the common elements as a limited common element or that authorizes the association to change the limited common elements assigned to any unit.

(e) Material alterations or substantial additions to the common elements or association property any time one of the following owns a percentage of voting interests equal to or greater than the percentage required to approve the amendment:

1. A bulk-unit purchaser;

2. A lender-unit purchaser;

3. The developer and a bulk-unit purchaser;

4. The developer and a lender-unit purchaser; or

5. A bulk-unit purchaser and a lender-unit purchaser.

(2) Notwithstanding subsection (1), consent of the developer, a bulk-unit purchaser, or a lender-unit purchaser is required for an amendment that would otherwise require the approval of such voting interests based upon the requirements of the declaration, articles of incorporation, or bylaws or s. 718.110 or s. 718.113.

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718.808 Warranties and disclosures.—

(1) As the seller, a bulk-unit purchaser or lender-unit purchaser is deemed to have granted an implied warranty of fitness and merchantability to a purchaser of each unit sold for a period of 3 years, which begins on the date of the completion of repairs or improvements that the bulk-unit purchaser or lender-unit purchaser makes to the unit, common elements, or limited common elements. The bulk-unit purchaser or lender-unit purchaser is not deemed to have granted a warranty on improvements, repairs, or alterations to the condominium which he or she did not undertake.

(2) The statute of limitations in s. 718.203 is tolled while the bulk-unit purchaser begins the process of appointing or electing a majority of the board of administration.

(3) As the seller, the bulk-unit purchaser shall include the following disclosure to purchasers in conspicuous type on the first page of the sales contract:

SELLER IS A BULK-UNIT PURCHASER UNDER THE CONDOMINIUM ACT. SELLER IS NOT THE DEVELOPER OF THE CONDOMINIUM FOR ANY PURPOSE UNDER THE CONDOMINIUM ACT.

(4) A mortgagee who acquires units may elect to become a lender-unit purchaser by providing written notice of the election to the association addressed to the registered agent at the address specified in the records of the Department of State. The notice shall be delivered within the time period ending upon the earliest of:

(a) The date on which the mortgagee exercises any developer


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rights other than the developer rights described in s. 718.803(1)(a);

(b) Before the sale of a unit by the mortgagee; or

(c) One hundred eighty days after the recording of the certificate of title or of the deed in lieu of foreclosure if the mortgagee acquired the units by foreclosure or by deed in lieu of foreclosure.

(5) As the seller, the lender-unit purchaser shall include the following disclosure to purchasers in conspicuous type on the first page of the sales contract:

SELLER IS A LENDER-UNIT PURCHASER UNDER THE CONDOMINIUM ACT. SELLER IS NOT THE DEVELOPER OF THE CONDOMINIUM FOR ANY PURPOSE UNDER THE CONDOMINIUM ACT. SELLER TOOK TITLE TO THE UNIT(S) BEING SOLD TO PURCHASER BY FORECLOSURE OR DEED IN LIEU OF FORECLOSURE.

(6)(a) At or before the signing of a contract to sell a unit, the bulk-unit purchaser and the lender-unit purchaser must provide a condition report that complies with s. 718.616(2) and (3) and this section to the prospective purchaser and must obtain verification of delivery of such condition report. A condition report is not required in connection with a sale to a bulk-unit purchaser or in connection with a deed in lieu of foreclosure to a lender-unit purchaser. A mortgagee is not required to deliver to a bulk-unit purchaser a condition report even if the mortgagee acquires and transfers developer rights to such bulk-unit purchaser.

(b) The condition report must include a reasonably detailed

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description of the repairs or replacements necessary to cure defective construction identified in the condition report.

(c) If, during the course of preparing the condition report, the architect or engineer becomes aware of a component that violates an applicable building code or federal or state law or that deviates from the building plans approved by the permitting authority, the architect or engineer shall disclose such information in the condition report. The architect or engineer shall make written inquiry to the applicable local government authority of any building code violations and shall include in the condition report any of the authority's responses or its failure to respond.

(d) The condition report shall be prepared before the bulk-unit purchaser or the lender-unit purchaser enters into his or her first sales contract, but the condition report may not be prepared more than 6 months before the first sales contract is agreed upon. If the bulk-unit purchaser or lender-unit purchaser remains engaged in selling units, the condition report shall be updated no later than 1 year after the closing of the first sales contract and each year thereafter.

(e) If a bulk-unit purchaser or lender-unit purchaser fails to provide the condition report in accordance with this section, the bulk-unit purchaser or lender-unit purchaser is deemed to grant implied warranties of fitness and merchantability which are not limited to the construction, improvements, or repairs that he or she undertakes to the units, common elements, or limited common elements.

718.809 Joint and several liability.—For purposes of this chapter, if there are multiple bulk-unit purchasers within the

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same association, the units owned by the multiple bulk-unit purchasers and the rights of the bulk-unit purchasers shall be aggregated as if there were only one bulk-unit purchaser. Each bulk-unit purchaser is jointly and severally liable with his or her predecessor bulk-unit purchasers for compliance with this chapter.

718.810 Construction disputes.—A board of administration composed of a majority of directors elected or appointed by a bulk-unit purchaser may not resolve a construction dispute that is subject to chapter 558 unless such resolution is approved by a majority of the voting interests of the unit owners other than the developer and a bulk-unit purchaser.

718.811 Noncompliance.—A bulk-unit purchaser or a lender-unit purchaser who fails to substantially comply with the requirements of this chapter pertaining to the obligations and rights of bulk-unit purchasers and lender-unit purchasers forfeits all protections or exemptions provided under the Condominium Act.

718.812 Documents to be delivered upon turnover.—If a bulk-unit purchaser elects a majority of the board of administration and the unit owners other than the bulk-unit purchaser elect a majority, the bulk-unit purchaser must deliver all of the items specified in s. 718.301(4) to the association. However, the bulk-unit purchaser is not required to deliver items that were never in the possession of the bulk-unit purchaser. In conjunction with the acquisition of units, the bulk-unit purchaser shall undertake a good faith effort to obtain the items specified in s. 718.301(4) which must be delivered to the association. If the bulk-unit purchaser cannot obtain such

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items, the bulk-unit purchaser must deliver a certificate in writing to the association which names or describes items that were not obtainable by the bulk-unit purchaser and which describes the good faith efforts that were undertaken to obtain the items. Delivery of the certificate relieves the bulk-unit purchaser of his or her responsibility under s. 718.301 to deliver the documents and materials referenced in the certificate. The responsibility of the bulk-unit purchaser to conduct the audit required by s. 718.301(4)(c) begins on the date the bulk-unit purchaser elects or appoints a majority of the members of the board of administration and ends on the date the bulk-unit purchaser no longer controls the board.

718.813 Timeshare Condominiums.—With respect to the acquisition of title to units or timeshare interests in a condominium, which units or timeshare interests are or ultimately will be included in a timeshare plan governed by chapter 721:

(1) Any person otherwise qualified to be a bulk-unit purchaser pursuant to s. 718.802 is not a bulk-unit purchaser unless that person makes an election to become a bulk-unit purchaser by providing notice to the association addressed to the registered agent at the address specified in the records of the Department of State. The notice shall be delivered within the time period ending upon the earliest of:

(a) The date on which the person exercises any developer rights other than the developer rights described in s. 718.803(1)(a);

(b) The sale of any unit or timeshare interest by the person; or

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(c) One hundred eighty days after the recording of the deed or other instrument of conveyance by which the person acquired the units or timeshare interests.

(2) If a person has made an election to be a bulk-unit purchaser pursuant to subsection (1), the bulk-unit purchaser, when selling units or timeshare interests, shall include the following disclosure to purchasers in conspicuous type on the first page of the contract for sale of units or timeshare interests:

SELLER IS A BULK-UNIT PURCHASER UNDER THE CONDOMINIUM ACT. SELLER IS NOT THE DEVELOPER OF THE CONDOMINIUM FOR ANY PURPOSE UNDER THE CONDOMINIUM.

Section 15. Paragraph (a) of subsection (2) of section 719.104, Florida Statutes, is 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


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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 shall include, but not be limited to:

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

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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 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.

Section 16. Paragraphs (c) and (d) of subsection (1) of section 719.106, Florida Statutes, are amended to read:

719.106 Bylaws; cooperative ownership.—

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

(c) *Board of administration meetings.*—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

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or videotape meetings of the board of administration; however, a unit owner may not post the recordings on any website or other media that can readily be viewed by persons who are not members of the association. 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. 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

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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. 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

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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. Unless a unit owner waives in writing the right to receive

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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

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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

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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,


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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. ~~If authorized by the bylaws,~~ 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.

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; however, a unit owner may not post the recordings on any website or other media that can readily be viewed by persons who are not members of the association.

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

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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.

Section 17. Subsections (3) and (4) of section 719.108, Florida Statutes, are amended to read:

719.108 Rents and assessments; liability; lien and priority; interest; collection; cooperative ownership.—

(3) Rents and assessments, and installments on them, not paid when due bear interest at the rate provided in the cooperative documents from the date due until paid. This rate may not exceed the rate allowed by law and, if a rate is not provided in the cooperative documents, accrues at 18 percent per annum. If the cooperative documents or bylaws so provide, the association may charge an administrative late fee in addition to

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such interest, not to exceed the greater of $25 or 5 percent of each installment of the assessment for each delinquent installment that the payment is late. The association may also recover from the unit owner any reasonable charges imposed upon the association under a written contract with its management or bookkeeping company or collection agent which are incurred in connection with collecting a delinquent assessment. Such charges must be based on the actual time expended performing necessary, nonduplicative services. Fees for collection are not recoverable for the period after referral of the matter to an association's legal counsel. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, then to any reasonable costs for collection services contracted for by the association, and then to the delinquent assessment. The foregoing applies 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. A late fee is not subject to chapter 687 or s. 719.303(4).

(4) The association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, any reasonable costs for collection services contracted for by the association, and any ~~authorized~~ administrative late fees. If authorized by the cooperative documents, the lien also secures reasonable attorney fees incurred by the association incident to the collection of the rents and assessments or enforcement of such lien. The lien is effective from and after recording a

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claim of lien in the public records in the county in which the cooperative parcel is located which states the description of the cooperative parcel, the name of the unit owner, the amount due, and the due dates. Except as otherwise provided in this chapter, a lien may not be filed by the association against a cooperative parcel until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner.

(a) The notice must be sent to the unit owner at the address of the unit by first-class United States mail, and the notice must be in substantially the following form:

NOTICE OF INTENT

TO RECORD A CLAIM OF LIEN

RE: Unit ...(unit number)... of ...(name of cooperative)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days after your receipt of this letter. This letter shall serve as the association’s notice of intent to record a Claim of Lien against your property no sooner than 30 days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)... $.....

Late fee, if applicable $.....

Interest through ...(dates)...* $.....

Certified mail charges $.....

Other costs $.....

TOTAL OUTSTANDING $.....

*Interest accrues at the rate of .... percent per annum.

1. If the most recent address of the unit owner on the records of the association is the address of the unit, the

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notice must be sent by certified mail, return receipt requested, to the unit owner at the address of the unit.

2. If the most recent address of the unit owner on the records of the association is in the United States, but is not the address of the unit, the notice must be sent by certified mail, return receipt requested, to the unit owner at his or her most recent address.

3. If the most recent address of the unit owner on the records of the association is not in the United States, the notice must be sent by first-class United States mail to the unit owner at his or her most recent address.

(b) A notice that is sent pursuant to this subsection is deemed delivered upon mailing. A claim of lien must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid rents and assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorney fees incurred by the association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

(c) By recording a notice in substantially the following

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form, a unit owner or the unit owner's agent or attorney may require the association to enforce a recorded claim of lien against his or her cooperative parcel:

NOTICE OF CONTEST OF LIEN

TO: ...(Name and address of association)...:

You are notified that the undersigned contests the claim of lien filed by you on ...., ...(year)..., and recorded in Official Records Book .... at Page ...., of the public records of .... County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this .... day of ...., ...(year)....

Signed: ...(Owner or Attorney)...

After notice of contest of lien has been recorded, the clerk of the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment to it and shall certify to the service on the face of the notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce the lien. If the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time during which the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the unit owner or by any other person claiming an interest in the parcel.

(d) A release of lien must be in substantially the following form:

RELEASE OF LIEN

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The undersigned lienor, in consideration of the final payment in the amount of $...., hereby waives and releases its lien and right to claim a lien for unpaid assessments through ...., ...(year)..., recorded in the Official Records Book .... at Page ...., of the public records of .... County, Florida, for the following described real property:
THAT COOPERATIVE PARCEL WHICH INCLUDES UNIT NO. .... OF ...(NAME OF COOPERATIVE)..., A COOPERATIVE AS SET FORTH IN THE COOPERATIVE DOCUMENTS AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE ...., OF THE PUBLIC RECORDS OF .... COUNTY, FLORIDA.
...(Signature of Authorized Agent)... ...(Signature of Witness)...
...(Print Name)... ...(Print Name)...
...(Signature of Witness)...
...(Print Name)...
Sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of person making statement)....
...(Signature of Notary Public)...
...(Print, type, or stamp commissioned name of Notary Public)...
Personally Known .... OR Produced .... as identification.

Section 18. Section 719.129, Florida Statutes, is created to read:

719.129 Electronic voting.—The association may conduct elections and other unit owner votes through an Internet-based online voting system if a unit owner consents in writing to online voting and if the following requirements are met:

(1) The association provides each unit owner with:

(a) A method to authenticate the unit owner’s identity to

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the online voting system.

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

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

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

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

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

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

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

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

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

(4) This section applies to an association that provides for and authorizes an online voting system pursuant to this section by a board resolution. The board resolution must provide

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

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

(6) This section may apply to any matter that requires a vote of the unit owners.

Section 19. 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 of administration or its authorized designee on the basis of each day of a continuing violation, with a single notice and

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

(a) 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 cooperative documents or reasonable rules of the association. This paragraph does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators.

(b) A fine or suspension levied by the board of administration or its authorized designee may not be imposed unless the board first provides at least 14 days' written ~~except after giving reasonable~~ notice and an opportunity for a hearing to the unit owner and, if applicable, its occupant, ~~the unit's~~ licensee, or invitee. The hearing must be held before an impartial ~~a~~ committee of other unit owners who are neither board members, persons residing in a board member's household, nor the authorized designee or members of the authorized designee's household. The role of the impartial committee is limited to determining whether to confirm or reject the fine or suspension levied by the board or its authorized designee. If the impartial committee does not agree with the fine or suspension, it may not be imposed.

Section 20. Subsection (8) of section 720.301, Florida Statutes, is amended to read:

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

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(8) "Governing documents" means:

(a) The recorded declaration of covenants for a community~~,~~ and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; ~~and~~

(b) The articles of incorporation and bylaws of the homeowners' association~~,~~ and any duly adopted amendments thereto; and

(c) Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and duly adopted amendments thereto.

Section 21. Section 720.3015, Florida Statutes, is created to read:

720.3015 Short title.—This chapter may be cited as the "Homeowners' Association Act."

Section 22. Paragraph (c) of subsection (2) of section 720.303, Florida Statutes, is amended to read:

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

(2) BOARD MEETINGS.—

(c) The bylaws shall provide for giving notice to parcel owners and members of all board meetings and, if they do not do so, shall be deemed to 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 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 ~~bylaws or amended bylaws~~ may provide ~~for giving~~ 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; 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

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broadcast on closed-circuit cable television not less than 14 days before the meeting.

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

Section 23. 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.—

(1) Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter, the governing documents of the community, and the rules of the association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any member against:

(a) The association;

(b) A member;

(c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and

(d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

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The prevailing party in any such litigation is entitled to recover reasonable attorney ~~attorney's~~ fees and costs. A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney ~~attorney's~~ fees, may recover additional amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any other available right or remedy.

(2) The association may levy reasonable fines. A fine may not exceed ~~of up to~~ $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 or its authorized designee 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.

(a) An association may suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of

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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. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit ~~impair the right of~~ an owner or tenant of a parcel from having ~~to have~~ vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(b) A fine or suspension may not be imposed by the board of administration or its authorized designee without at least 14 days' notice to the person sought to be fined or suspended and an opportunity for a hearing before an impartial ~~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, or the board's designee or the designee's family. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. The role of the impartial committee is limited to determining whether to confirm or reject the fine or suspension levied by the board or its authorized designee. If the board of administration or its authorized designee ~~association~~ imposes a fine or suspension, the association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any tenant, licensee, or invitee of the parcel owner.

(3) If a member is more than 90 days delinquent in paying any fee, fine, or other ~~a~~ monetary obligation due to the

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association, the association may suspend the rights of the member, or the member's tenant, guest, or invitee, to use common areas and facilities until the fee, fine, or other monetary obligation is paid in full. This subsection does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may ~~does~~ not prohibit ~~impair the right of~~ an owner or tenant of a parcel from having ~~to have~~ vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. The notice and hearing requirements under subsection (2) do not apply to a suspension imposed under this subsection.

(4) An association may suspend the voting rights of a parcel or member for the nonpayment of any fee, fine, or other monetary obligation due to the association which ~~that~~ is more than 90 days delinquent. A voting interest or consent right allocated to a parcel or member which has been suspended by the association shall be subtracted from ~~may not be counted towards~~ the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests may not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the governing documents. The notice and hearing requirements under subsection (2) do not apply to a suspension imposed under

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this subsection. The suspension ends upon full payment of all obligations currently due or overdue to the association.

(5) All suspensions imposed pursuant to subsection (3) or subsection (4) must be approved at a properly noticed board meeting. Upon approval, the association must notify the parcel owner and, if applicable, the parcel's occupant, licensee, or invitee by mail or hand delivery.

(6) The suspensions permitted by paragraph (2)(a) and subsections (3) and (4) apply to a member and, when appropriate, the member's tenants, guests, or invitees, even if the delinquency or failure that resulted in the suspension arose from less than all of the multiple parcels owned by the member.

Section 24. Paragraph (b) of subsection (1) and subsections (9) and (10) of section 720.306, Florida Statutes, are amended to read:

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

(1) QUORUM; AMENDMENTS.—

(b) Unless otherwise provided in the governing documents or required by law, and other than those matters set forth in paragraph (c), any governing document of an association may be amended by the affirmative vote of two-thirds of the voting interests of the association. Within 30 days after recording an amendment to the governing documents, the association shall provide copies of the amendment to the members. However, if a copy of the proposed amendment is provided to the members before they vote on the amendment ~~and the proposed amendment is not changed before the vote~~, the association, in lieu of providing a copy of the amendment, may provide notice to the members that

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the amendment was adopted, identifying the official book and page number or instrument number of the recorded amendment and that a copy of the amendment is available at no charge to the member upon written request to the association. The copies and notice described in this paragraph may be provided electronically to those owners who previously consented to receive notice electronically. The failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

(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. 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.

(b) A person who is delinquent in the payment of any fee, fine, or other monetary obligation to the association on the day that he or she could last nominate himself or herself or be nominated for the board may not seek election to the board, and


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his or her name may not be listed on the ballot. A person serving as a board member who becomes more than 90 days delinquent in the payment of any fee, fine, or other monetary obligation to the association shall be deemed to have abandoned his or her seat on the board, creating a vacancy on the board to be filled according to law. For purposes of this paragraph, the term "any fee, fine, or other monetary obligation" means any delinquency to the association with respect to any parcel ~~for more than 90 days is not eligible for board membership~~. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, may not seek election to the board and is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date on which such person seeks election to the board. The validity of any action by the board is not affected if it is later determined that a person was ineligible to seek election to the board or that a member of the board is ineligible for board membership.

(c) Any election dispute between a member and an association must be submitted to mandatory binding arbitration with the division. Such proceedings must be conducted in the manner provided by s. 718.1255 and the procedural rules adopted by the division. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by an 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

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alternative, a board may hold an election to fill the vacancy, in which case the election procedures must conform to the requirements of the governing documents. Unless otherwise provided in the bylaws, a board member appointed or elected under this section is appointed for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by s. 720.303(10) and rules adopted by the division.

(10) RECORDING.—Any parcel owner may tape record or videotape meetings of the board of directors and meetings of the members; however, a parcel owner may not post the recordings on any website or other media that can readily be viewed by persons who are not members of the association. The board of directors of the association may adopt reasonable rules governing the taping of meetings of the board and the membership.

Section 24. Paragraph (a) of subsection (1) and subsection (3) of section 720.3085, Florida Statutes, are amended to read:

720.3085 Payment for assessments; lien claims.—

(1) When authorized by the governing documents, the association has a lien on each parcel to secure the payment of assessments and other amounts provided for by this section. Except as otherwise set forth in this section, the lien is effective from and shall relate back to the date on which the original declaration of the community was recorded. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the public records of the county in which the parcel is located. This subsection does not bestow upon any lien, mortgage, or certified judgment of record on July 1, 2008, including the lien for unpaid assessments created in this section, a priority that, by law, the lien,

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mortgage, or judgment did not have before July 1, 2008.

(a) To be valid, a claim of lien must state the description of the parcel, the name of the record owner, the name and address of the association, the assessment amount due, and the due date. The claim of lien secures all unpaid assessments that are due and that may accrue subsequent to the recording of the claim of lien and before entry of a certificate of title, as well as interest, late charges, and reasonable collection costs and attorney fees incurred by the association incident to the collection process. The person making payment is entitled to a satisfaction of the lien upon payment in full.

(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.

(a) If the declaration or bylaws so provide, the association may also charge an administrative late fee not to exceed the greater of $25 or 5 percent of the amount of each installment that is paid past the due date. The association may also recover from the parcel owner any reasonable charges imposed upon the association under a written contract with its management or bookkeeping company or collection agent which are incurred in connection with collecting a delinquent assessment. Such charges must be based on the actual time expended performing necessary, nonduplicative services. Fees for collection are not recoverable for the period after referral of the matter to an association’s legal counsel.

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(b) Any payment received by an association and accepted shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, then to any reasonable costs for collection services contracted for by the association, 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.

Section 25. Section 720.317, Florida Statutes, is created to read:

720.317 Electronic voting.—The association may conduct elections and other membership votes through an Internet-based online voting system if a member consents in writing to online voting and if the following requirements are met:

(1) The association provides each member with:

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

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

(c) A method that is consistent with the election and voting procedures in the association's bylaws.

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

(a) Able to authenticate the member's identity.

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

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

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(d) Able to permanently separate any authentication or identifying information from the electronic election ballot, rendering it impossible to tie an election ballot to a specific member. This paragraph only applies if the association's bylaws provide for secret ballots for the election of directors.

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

(3) A member voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum.

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

(5) A member's consent to online voting is valid until the member opts out of online voting pursuant to the procedures established by the board of administration pursuant to paragraph

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(4).

(6) This section may apply to any matter that requires a vote of the members.

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

And the title is amended as follows:

Delete lines 29 - 139

and insert:

electronically is counted toward a quorum; providing applicability; providing that a unit owner's consent to online voting is valid unit the unit owner opts out according to specified procedures; amending s. 718.301, F.S.; adding conditions under which certain unit owners are entitled to elect at least a majority of the members of the board of administration of an association; requiring a bulk-unit purchaser to relinquish control of the association under certain circumstances; requiring a bulk-unit purchaser to deliver certain items, at the bulk-unit purchaser's expense, during the transfer of association control from the bulk-unit purchaser; amending s. 718.302, F.S.; revising the conditions under which certain grants, reservations, or contracts made by an association may be cancelled; prohibiting a lender-unit purchaser from voting on cancellation of certain grants, reservations, or contracts while the association is under control of that lender-unit purchaser; amending s. 718.303, F.S.; providing that a fine may be levied by the board or its authorized

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designee under certain conditions; revising the requirements for levying a fine or suspension; amending s. 718.501, F.S.; conforming provisions of chapter 718, F.S., relating to the enforcement powers of the Division of Florida Condominiums, Timeshares, and Mobile Homes; creating s. 718.709, F.S.; providing applicability of the provisions relating to the Distressed Condominium Relief Act; creating part VIII of ch. 718, F.S.; providing legislative intent; providing definitions; authorizing a bulk-unit purchaser to exercise certain developer rights; requiring a bulk-unit purchaser to pay a working capital contribution under certain circumstances; providing applicability; authorizing a lender-unit purchaser to exercise any developer rights he or she acquires; requiring a bulk-unit purchaser and a lender-unit purchaser to comply with specified provisions under ch. 718, F.S.; limiting the rights of bulk-unit purchasers and lender-unit purchasers to vote on reserves or funding of reserves; prohibiting the transfer of such voting rights; providing assessment liability for bulk-unit purchasers and lender-unit purchasers; providing for suspension of a director who has been elected or appointed by a bulk-unit purchaser in certain circumstances; specifying amendments and alterations for which a majority approval of unit owners is required; requiring consent of a bulk-unit purchaser, lender-unit purchaser, or developer to certain amendments; requiring certain

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warranties and disclosures; requiring an architect or engineer to disclose specified information in a condition report under certain circumstances; subjecting multiple bulk-unit purchasers to joint and several liability; prohibiting a board of administration, a majority of which is elected by a bulk-unit purchaser, from resolving certain construction disputes unless other conditions are satisfied; providing that a bulk-unit purchaser or lender-unit purchaser who does not comply with ch. 718, F.S., forfeits all protections or exemptions under ch. 718, F.S.; clarifying conditions under which a bulk-unit purchaser must deliver certain items during the transfer of association control from the bulk-unit purchaser; providing conditions by which a person may become a bulk-unit purchaser following acquisition of title to timeshare interests that are or ultimately will be included in a timeshare plan; requiring disclosure to purchasers by certain bulk-unit purchasers of timeshare interests; amending s. 719.104, F.S.; revising what constitutes the official records of an association; amending s. 719.106, F.S.; revising the requirements for board of administration and shareholder meetings; amending s. 719.108, F.S.; revising applicability; revising the effect of a claim of lien; creating s. 719.129, F.S.; authorizing cooperative associations to conduct elections by electronic voting under certain conditions; providing that a member voting electronically is counted toward

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a quorum; providing applicability; providing that a unit owner's consent to online voting is valid unit the unit owner opts out according to specified procedures; amending s. 719.303, F.S.; providing that a fine may be levied by the board or its authorized designee under certain conditions; revising the requirements for levying a fine or suspension; amending s. 720.301, F.S.; revising the definition of the term "governing documents"; creating s. 720.3015, F.S.; providing a short title; amending s. 720.303, F.S.; authorizing a homeowners' association to provide notice by electronic transmission in certain circumstances; amending s. 720.305, F.S.; revising the requirements for levying a fine or suspension; revising the application of certain provisions; amending s. 720.306, F.S.; revising the requirements for the adoption of amendments to the governing documents; revising the requirements for the election of directors; revising the requirements for board of director and member meetings; amending s. 720.3085, F.S.; providing that the association may recover from the parcel owner a reasonable charge imposed by a management or bookkeeping company or a collection agent which are incurred in connection with a delinquent assessment; providing that such charges must be liquidated, noncontingent, and based upon actual time expended; providing that fees for collection are not recoverable in a certain circumstance; specifying the hierarchy for the

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application of payments received for collection services contracted for by the association; creating s. 720.317, F.S.; authorizing homeowners' associations to conduct elections by electronic voting under certain conditions; providing that a member voting electronically is counted toward a quorum; providing applicability; providing that a member's consent to online voting is valid unit the member opts out according to specified procedures; providing an

By the Committee on Regulated Industries; and Senator Ring

580-02525B-15 2015748c1

A bill to be entitled

An act relating to residential properties; amending s. 201.02, F.S.; providing that a certain deed, transfer, or conveyance from an owner of property is subject to certain taxes; amending s. 617.0721, F.S.; authorizing the use of a copy, facsimile transmission, or other reliable reproduction of an original proxy vote for certain purposes; amending s. 718.103, F.S.; revising and providing definitions; amending s. 718.111, F.S.; providing that the vote necessary to charge use fees for the use of the common elements or association property may be approved by a majority of the voting interests present, in person or by proxy, at a meeting of the association if a quorum has been established; revising the liability of unit owners under certain conditions; revising what constitutes official records of an association; amending s. 718.112, F.S.; revising the requirements for board of administration and unit owner meetings; clarifying the voting process for providing reserves; amending s. 718.113, F.S.; revising the term governing documents to condominium documents; amending s. 718.116, F.S.; revising the provisions relating to the liability of condominium unit owners and mortgagees; revising applicability; revising effect of a claim of lien; creating s. 718.128, F.S.; authorizing condominium associations to conduct elections by electronic voting under certain conditions; providing that a member voting electronically is counted toward a quorum; requiring

Florida Senate - 2015 CS for SB 748

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that the bylaws allow electronic voting of some or all matters; providing a definition; amending s. 718.301, F.S.; adding conditions under which certain unit owners are entitled to elect at least a majority of the members of the board of administration of an association; requiring a bulk-unit purchaser to relinquish control of the association under certain circumstances; requiring a bulk-unit purchaser to deliver certain items, at the bulk-unit purchaser's expense, during the transfer of association control from the bulk-unit purchaser; amending s. 718.302, F.S.; revising the conditions under which certain grants, reservations, or contracts made by an association may be cancelled; prohibiting a lender-unit purchaser from voting on cancellation of certain grants, reservations, or contracts while the association is under control of that lender-unit purchaser; amending s. 718.303, F.S.; providing that a fine may be levied by the board or its authorized designee under certain conditions; revising the requirements for levying a fine or suspension; amending s. 718.501, F.S.; conforming provisions of chapter 718, F.S., relating to the enforcement powers of the Division of Florida Condominiums, Timeshares, and Mobile Homes; creating s. 718.709, F.S.; providing applicability of the provisions relating to the Distressed Condominium Relief Act; creating part VIII of ch. 718, F.S.; providing legislative intent; providing definitions; authorizing a bulk-unit

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

purchaser to exercise certain developer rights; requiring a bulk-unit purchaser to pay a working capital contribution under certain circumstances; providing applicability; authorizing a lender-unit purchaser to exercise any developer rights he or she acquires; requiring a bulk-unit purchaser and a lender-unit purchaser to comply with specified provisions under ch. 718, F.S.; limiting the rights of bulk-unit purchasers and lender-unit purchasers to vote on reserves or funding of reserves; prohibiting the transfer of such voting rights; providing assessment liability for bulk-unit purchasers and lender-unit purchasers; providing for suspension of a director who has been elected or appointed by a bulk-unit purchaser in certain circumstances; specifying amendments and alterations for which a majority approval of unit owners is required; requiring consent of a bulk-unit purchaser, lender-unit purchaser, or developer to certain amendments; requiring certain warranties and disclosures; requiring an architect or engineer to disclose specified information in a condition report under certain circumstances; subjecting multiple bulk-unit purchasers to joint and several liability; prohibiting a board of administration, a majority of which is elected by a bulk-unit purchaser, from resolving certain construction disputes unless other conditions are satisfied; providing that a bulk-unit purchaser or lender-unit purchaser who does not comply with ch.

718, F.S., forfeits all protections or exemptions under ch. 718, F.S.; clarifying conditions under which a bulk-unit purchaser must deliver certain items during the transfer of association control from the bulk-unit purchaser; providing conditions by which a person may become a bulk-unit purchaser following acquisition of title to timeshare interests that are or ultimately will be included in a timeshare plan; requiring disclosure to purchasers by certain bulk-unit purchasers of timeshare interests; amending s. 719.104, F.S.; revising what constitutes the official records of an association; amending s. 719.106, F.S.; revising the requirements for board of administration and shareholder meetings; amending s. 719.108, F.S.; revising applicability; revising the effect of a claim of lien; creating s. 719.129, F.S.; authorizing cooperative associations to conduct elections by electronic voting under certain conditions; providing that a member voting electronically is counted toward a quorum; requiring that the bylaws allow electronic voting of some or all matters; providing a definition; amending s. 719.303, F.S.; providing that a fine may be levied by the board or its authorized designee under certain conditions; revising the requirements for levying a fine or suspension; amending s. 720.301, F.S.; revising the definition of the term "governing documents"; creating s. 720.3015, F.S.; providing a short title; amending s. 720.305, F.S.; revising the requirements for levying a fine or suspension;

revising the application of certain provisions; amending s. 720.306, F.S.; revising the requirements for the adoption of amendments to the governing documents; revising the requirements for the election of directors; revising the requirements for board of director and member meetings; amending s. 720.3085, F.S.; providing that the association may recover from the parcel owner a reasonable charge imposed by a management or bookkeeping company or a collection agent which are incurred in connection with a delinquent assessment; providing that such charges must be liquidated, noncontingent, and based upon actual time expended; providing that fees for collection are not recoverable in a certain circumstance; specifying the hierarchy for the application of payments received for collection services contracted for by the association; creating s. 720.317, F.S.; authorizing homeowners' associations to conduct elections by electronic voting under certain conditions; providing that a member voting electronically is counted toward a quorum; requiring that the bylaws allow electronic voting of some or all matters; providing a definition; providing an effective date.

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

Section 1. Subsection (9) of section 201.02, Florida Statutes, is amended to read:

201.02 Tax on deeds and other instruments relating to real property or interests in real property.—

(9)(a) A certificate of title issued by the clerk of court under s. 45.031(5) in a judicial sale of real property under an order or final judgment issued pursuant to a foreclosure proceeding is subject to the tax imposed by subsection (1). However, the amount of the tax shall be computed based solely on the amount of the highest and best bid received for the property at the foreclosure sale. This paragraph ~~subsection~~ is intended to clarify existing law and shall be applied retroactively.

(b) A deed, transfer, or conveyance from an owner of property, subject to assessments authorized by chapter 718, chapter 719, chapter 720, or chapter 721, to an association having lien rights against the property in lieu of the foreclosure of an assessment lien held by the association against such property is subject to the tax imposed by subsection (1). However, the amount of the tax shall be computed based solely on the amount of the unpaid assessments that are due and owing to the association on the date of said deed, transfer, or conveyance.

Section 2. Subsection (2) of section 617.0721, Florida Statutes, is amended to read:

617.0721 Voting by members.—

(2) A member who is entitled to vote may vote in person or, unless the articles of incorporation or the bylaws otherwise provide, may vote by proxy executed in writing by the member or by his or her duly authorized attorney in fact. Notwithstanding any provision to the contrary in the articles of incorporation or bylaws, any copy, facsimile transmission, or other reliable

reproduction of the original proxy may be substituted or used in lieu of the original proxy for any purpose for which the original proxy could be used if the copy, facsimile transmission, or other reproduction is a complete reproduction of the entire proxy. An appointment of a proxy is not valid after 11 months following the date of its execution unless otherwise provided in the proxy.

(a) If directors or officers are to be elected by members, the bylaws may provide that such elections may be conducted by mail.

(b) A corporation may reject a vote, consent, waiver, or proxy appointment if the secretary or other officer or agent authorized to tabulate votes, acting in good faith, has a reasonable basis for doubting the validity of the signature on it or the signatory's authority to sign for the member.

Section 3. Present subsections (12) through (30) of section 718.103, Florida Statutes, are redesignated as subsections (13) through (31), respectively, a new subsection (12) is added to that section, and present subsection (16) of that section is amended, to read:

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

(12) "Condominium documents" means:

(a) The recorded declaration of condominium for a community and all duly adopted and recorded amendments, supplements, and exhibits of the declaration;

(b) The recorded articles of incorporation and bylaws of the condominium association and any duly adopted and recorded amendments of the declaration; and

(c) Rules and regulations adopted under the authority of

the recorded declaration of condominium, articles of incorporation or bylaws, and duly adopted amendments of the declaration.

(17)~~(16)~~ "Developer" means a person who creates a condominium or offers condominium parcels for sale or lease in the ordinary course of business, but does not include:

(a) An owner or lessee of a condominium or cooperative unit who has acquired the unit for his or her own occupancy;

(b) A cooperative association that creates a condominium by conversion of an existing residential cooperative after control of the association has been transferred to the unit owners if, following the conversion, the unit owners are the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion;

(c) A bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer as defined in s. 718.802 ~~718.703~~;

(d) A person who acquires title to 7 or fewer units operated by the same association consisting of 40 or fewer units or who acquires title to less than 20 percent of the units operated by the same association consisting of more than 40 units, regardless of whether that person offers any of those units for sale;

(e) The trustee and any related trust association of a timeshare trust, interests in which are qualified as timeshare estates pursuant to s. 721.08 or s. 721.53; or

(f)~~(d)~~ A state, county, or municipal entity acting as a lessor and not otherwise named as a developer in the declaration of condominium.

Section 4. Subsection (4), paragraph (j) of subsection (11) and paragraph (a) of subsection (12) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(4) ASSESSMENTS; MANAGEMENT OF COMMON ELEMENTS.—The association has the power to make and collect assessments and to lease, maintain, repair, and replace the common elements or the association property; however, the association may not charge a use fee against a unit owner for the use of common elements or association property unless otherwise provided for in the declaration of condominium or by a majority of the voting interests present, in person or by proxy, at a meeting of the association if a quorum has been established ~~vote of the association~~ or unless the charges relate to expenses incurred by an owner having exclusive use of the common elements or association property.

(11) INSURANCE.—In order to protect the safety, health, and welfare of the people of the State of Florida and to ensure consistency in the provision of insurance coverage to condominiums and their unit owners, this subsection applies to every residential condominium in the state, regardless of the date of its declaration of condominium. It is the intent of the Legislature to encourage lower or stable insurance premiums for associations described in this subsection.

(j) Any portion of the condominium property that must be insured by the association against property loss pursuant to paragraph (f) which is damaged by an insurable event shall be reconstructed, repaired, or replaced as necessary by the association as a common expense. In the absence of an insurable

event, the association or the unit owners shall be responsible for the reconstruction, repair, or replacement, as determined by the maintenance provisions of the declaration or bylaws. All property insurance deductibles~~, uninsured losses,~~ and other damages in excess of property insurance coverage under the property insurance policies maintained by the association are a common expense of the condominium, except that:

1. A unit owner is responsible for the costs of repair or replacement of any portion of the condominium property not paid by insurance proceeds if such damage is caused by intentional conduct, negligence, or failure to comply with the terms of the declaration or the rules of the association by a unit owner, the members of his or her family, unit occupants, tenants, guests, or invitees, without compromise of the subrogation rights of the insurer.

2. The provisions of subparagraph 1. regarding the financial responsibility of a unit owner for the costs of repairing or replacing other portions of the condominium property also apply to the costs of repair or replacement of personal property of other unit owners or the association, as well as other property, whether real or personal, which the unit owners are required to insure.

3. To the extent the cost of repair or reconstruction for which the unit owner is responsible under this paragraph is reimbursed to the association by insurance proceeds, and the association has collected the cost of such repair or reconstruction from the unit owner, the association shall reimburse the unit owner without the waiver of any rights of subrogation.

4. The association is not obligated to pay for reconstruction or repairs of property losses as a common expense if the property losses were known or should have been known to a unit owner and were not reported to the association until after the insurance claim of the association for that property was settled or resolved with finality, or denied because it was untimely filed.

(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 electronic mailing addresses and facsimile numbers of unit

owners consenting to receive notice by electronic transmission. The 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 subparagraph (c)5. However, the association is not liable for an inadvertent disclosure of the electronic mail address or facsimile number for receiving electronic transmission of notices.

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

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

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

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

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

b. A current account and a monthly, bimonthly, or quarterly

statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

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

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

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

Section 5. Paragraphs (c), (d), and (f) 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:

(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; however, a unit owner may not post the recordings on any website or other media that can readily be viewed by persons who are not members of the association. 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 or association 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 or association 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. 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 or association 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 or association 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. 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 shall be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting 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 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. If the bylaws or articles of incorporation permit terms of no more than 2 years, the association board members may serve 2-year terms. 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 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 or association 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 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 or association 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. 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 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. If authorized by the bylaws, 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.

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; however, a unit owner may not post the recording on any website or other media that can readily be viewed by persons who are not members of the association.

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.

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any ~~if~~ applicable~~, but not limited to, those~~ expenses listed in s. 718.504(21). A multicondominium association shall adopt a separate budget of common expenses for each condominium the

association operates and shall adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they need not be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and ~~for~~ any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to an adopted budget in which the members of an association have determined, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection.

b. Before ~~However, prior to~~ turnover of control of an association by a developer to unit owners other than a developer

pursuant to s. 718.301, the developer may vote the voting interests allocated to its units to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves~~,~~ and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Before ~~Prior to~~ turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may ~~shall~~ not vote to use reserves for purposes other than those ~~that~~ 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.

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must ~~shall~~ contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

Section 6. Subsection (7) 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.—

(7) Notwithstanding the provisions of this section or the condominium ~~governing~~ documents of a condominium or a multicondominium association, the board of administration may, without any requirement for approval of the unit owners, install upon or within the common elements or association property solar collectors, clotheslines, or other energy-efficient devices based on renewable resources for the benefit of the unit owners.

Section 7. Paragraphs (a) and (b) of subsection (1), subsection (3), and paragraph (b) of subsection (5) of section

718.116, Florida Statutes, are amended to read:

718.116 Assessments; liability; lien and priority; interest; collection.—

(1)(a) A unit owner, regardless of how the unit owner has acquired ~~his or her~~ title ~~has been acquired~~, including, but not limited to, ~~by~~ purchase at a foreclosure sale or ~~by~~ deed in lieu of foreclosure, is liable for all assessments that ~~which~~ come due while he or she is the unit owner, including any special assessments or installments on special assessments coming due during the period of ownership, regardless of when the special assessment was levied. Additionally, a unit owner is jointly and severally liable with the previous unit owner for all unpaid monthly and special assessments, interest and late fees on both unpaid assessments and unpaid special assessments, and costs and reasonable attorney fees incurred by the association in an attempt to collect all such amounts that came due up to the time of transfer of title. This joint and several liability of a subsequent unit owner does not apply to an owner who acquires title through purchase of a tax deed and is without prejudice to any right the present unit owner may have to recover from the previous unit owner the amounts paid by the present unit owner. For the purposes of this section ~~paragraph~~, the term "previous unit owner" does not include an association that acquires title to a unit ~~delinquent property~~ through foreclosure or by deed in lieu of foreclosure. A present unit owner's liability for unpaid assessments, interest, late fees, and costs and reasonable attorney fees is limited to any unpaid assessments, interest, late fees, and costs and reasonable attorney fees that accrued before the association acquired title to the unit ~~delinquent~~

~~property~~ through foreclosure or by deed in lieu of foreclosure.

(b)1. The liability of a first mortgagee or its successor or assignees who acquire title to a unit by foreclosure or by deed in lieu of foreclosure for the unpaid assessments, interest, late fees, costs and reasonable attorney fees, and any other fee, cost, or expense incurred by or on behalf of the association in the collection process which ~~that~~ became due before the mortgagee's acquisition of title is limited to the lesser of:

a. The unit's unpaid common expenses and regular periodic assessments which accrued or came due during the 12 months immediately preceding the acquisition of title and for which payment in full has not been received by the association; or

b. One percent of the original mortgage debt. The provisions of this paragraph apply only if the first mortgagee joined the association as a defendant in the foreclosure action. Joinder of the association is not required if, on the date the complaint is filed, the association was dissolved or did not maintain an office or agent for service of process at a location which was known to or reasonably discoverable by the mortgagee.

2. An association, or its successor or assignee, that acquires title to a unit through the foreclosure of its lien for assessments is not liable for any unpaid assessments, late fees, interest, or reasonable attorney ~~attorney's~~ fees and costs that came due before the association's acquisition of title in favor of any other association, as defined in s. 718.103(2) or s. 720.301(9), which holds a superior lien interest on the unit. This subparagraph is intended to clarify existing law.

(3) Assessments and installments on assessments which are

not paid when due bear interest at the rate provided in the declaration, from the due date until paid. The rate may not exceed the rate allowed by law, and, if no rate is provided in the declaration, interest accrues at the rate of 18 percent per year. If provided by the declaration or bylaws, the association may, in addition to such interest, charge an administrative late fee of up to the greater of $25 or 5 percent of each delinquent installment for which the payment is late. The association may also recover from the unit owner any reasonable charges imposed upon the association under a written contract with its management or bookkeeping company or collection agent which are incurred in connection with collecting a delinquent assessment. Such charges must be in a liquidated and noncontingent amount and must be based on the actual time expended performing necessary, nonduplicative services. Fees for collection are not recoverable for the period after referral of the matter to an association's legal counsel. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney ~~attorney's~~ fees incurred in collection, then to any reasonable costs for collection services contracted by the association, and then to the delinquent assessment. The foregoing is applicable notwithstanding s. 673.3111, any purported accord and satisfaction, or any restrictive endorsement, designation, or instruction placed on or accompanying a payment. The preceding sentence is intended to clarify existing law. A late fee is not subject to chapter 687 or s. 718.303(4).

(5)

(b) To be valid, a claim of lien must state the description of the condominium parcel, the name of the record owner, the name and address of the association, the amount due, and the due dates. It must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commented. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner or any other person claiming an interest in the parcel. The claim of lien secures all unpaid assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest, authorized administrative late fees, and all reasonable costs and attorney ~~attorney's~~ fees incurred by the association incident to the collection process, including, but not limited to, any reasonable costs for collection services contracted for by the association. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

Section 8. Section 718.128, Florida Statutes, is created to read:

718.128 Electronic voting.—The association may conduct elections by electronic voting if a member consents, in writing, to voting electronically and the following requirements are met:

(1) The association provides each member with:

(a) A method to authenticate the member's identity to the electronic voting system.

(b) A method to secure the member's vote from, among other things, malicious software and the ability of others to remotely monitor or control the electronic voting platform.

(c) A method to communicate with the electronic voting system.

(d) A method to review an electronic ballot before its transmission to the electronic voting system.

(e) A method to transmit an electronic ballot to the electronic voting system which ensures the secrecy and integrity of each ballot.

(f) A method to allow members to verify the authenticity of receipts sent from the electronic voting system.

(g) A method to confirm, at least 14 days before the voting deadline, that the member's electronic voting platform can successfully communicate with the electronic voting system.

(h) In the event of a disruption of the electronic voting system, the ability to vote by mail or to deliver a ballot in person.

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

(a) Accessible to members with disabilities.

(b) Secure from, among other things, malicious software and the ability of others to remotely monitor or control the system.

(c) Able to authenticate the member's identity.

(d) Able to communicate with each member's electronic voting platform.

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

(f) Able to transmit a receipt from the electronic voting

system to each member who casts an electronic ballot.

(g) Able to permanently separate any authentication or identifying information from the electronic ballot, rendering it impossible to tie a ballot to a specific member.

(h) Able to allow the member to confirm that his or her ballot has been received and counted.

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

(3) A member voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum.

(4) The bylaws of an association must provide for and allow voting pursuant to this section before this section shall apply. This section may apply to some or all matters for which a vote of the membership is required.

Section 9. Subsections (1) and (4) of section 718.301, Florida Statutes, are amended to read:

718.301 Transfer of association control; claims of defect by association.—

(1) If unit owners other than the developer own 15 percent or more of the units ~~in a condominium~~ that ultimately will be operated ~~ultimately~~ by an association, as provided in the declaration, articles of incorporation, or bylaws as originally recorded, the unit owners other than the developer are entitled to elect at least one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect at least a majority of the members of the board of administration of an association~~,~~ upon the first ~~to occur of any~~ of the following events that occur:

(a) Three years after 50 percent of the units that ultimately will be operated ~~ultimately~~ by the association, as provided in the declaration, articles of incorporation, or bylaws as originally recorded, have been conveyed to purchasers.~~,~~

(b) Three months after 90 percent of the units that ultimately will be operated ~~ultimately~~ by the association, as provided in the declaration, articles of incorporation, or bylaws as originally recorded, have been conveyed to purchasers.~~,~~

(c) When all the units that ultimately will be operated ~~ultimately~~ by the association, as provided in the declaration, articles of incorporation, or bylaws as originally recorded, have been completed, some of them have been conveyed to purchasers, and none of the others is ~~are~~ being offered for sale by the developer in the ordinary course of business.~~,~~

(d) When some of the units have been conveyed to purchasers and none of the others is ~~are~~ being constructed or offered for sale by the developer in the ordinary course of business.~~,~~

(e) When the developer files a petition seeking protection in bankruptcy.~~,~~

(f) When a bulk-unit purchaser who owns a majority of the units that ultimately will be operated by the association, as provided in the declaration, articles of incorporation, or bylaws as originally recorded, files a petition seeking protection in bankruptcy.

(g) ~~(f)~~ When a receiver for the developer is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after

appointment of the receiver that transfer of control would be detrimental to the association or its members.~~; or~~

(h) When a receiver for a bulk-unit purchaser who owns a majority of the units that ultimately will be operated by the association, as provided in the declaration, articles of incorporation, or bylaws as originally recorded, is appointed by a circuit court and is not discharged within 30 days after such appointment, unless the court determines within 30 days after appointment of the receiver that transfer of control would be detrimental to the association or its members.

(i) Five years after the date of recording of the first conveyance to a bulk-unit purchaser who owns a majority of the units that ultimately will be operated by the association, as provided in the declaration, articles of incorporation, or bylaws as originally recorded. Notwithstanding that unit owners other than the developer are entitled to elect a majority of the members of the board of administration and notwithstanding s. 718.112(2)(f)2., 5 years after the date of recording of the first conveyance of a unit to a bulk-unit purchaser who owns a majority of the units, the bulk-unit purchaser may exercise the right to vote for each unit owned by the bulk-unit purchaser in the same manner as any other unit owner except for the purposes of reacquiring control of the association or electing or appointing a majority of the members of the board of administration.

(j)~~(g)~~ Seven years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit in the condominium which is not accompanied by a

recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first; or, in the case of an association that ~~may~~ ultimately may operate more than one condominium, 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first, for the first condominium it operates; or, in the case of an association operating a phase condominium created pursuant to s. 718.403, 7 years after the date of the recording of the certificate of a surveyor and mapper pursuant to s. 718.104(4)(e) or the recording of an instrument that transfers title to a unit which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit, whichever occurs first.

The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units, of the units in a condominium operated by the association. After the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the association or selecting a ~~the~~ majority of the members of the board of administration.

(4) At the time that unit owners other than the developer

elect a majority of the members of the board of administration of an association, the developer or bulk-unit purchaser shall relinquish control of the association, and the unit owners shall accept control. Simultaneously, or for the purposes of paragraph (c) not more than 90 days thereafter, the developer or bulk-unit purchaser shall deliver to the association, at the developer's or bulk-unit purchaser's expense, all property of the unit owners and of the association which is held or controlled by the developer or bulk-unit purchaser, including, but not limited to, the following items, if applicable, as to each condominium operated by the association:

(a)1. The original or a photocopy of the recorded declaration of condominium and all amendments thereto. If a photocopy is provided, it must be certified by affidavit of the developer, a bulk-unit purchaser, or an officer or agent of the developer or bulk-unit purchaser as being a complete copy of the actual recorded declaration.

2. A certified copy of the articles of incorporation of the association or, if the association was created before ~~prior to~~ the effective date of this act and it is not incorporated, copies of the documents creating the association.

3. A copy of the bylaws.

4. The minute books, including all minutes, and other books and records of the association, if any.

5. Any house rules and regulations that have been adopted ~~promulgated~~.

(b) Resignations of officers and members of the board of administration who are required to resign because the developer or bulk-unit purchaser is required to relinquish control of the

association.

(c) The financial records, including financial statements of the association, and source documents from the incorporation of the association through the date of turnover. The records must be audited for the period from the incorporation of the association or from the period covered by the last audit, if an audit has been performed for each fiscal year since incorporation, by an independent certified public accountant. All financial statements must be prepared in accordance with generally accepted accounting principles and must be audited in accordance with generally accepted auditing standards, as prescribed by the Florida Board of Accountancy, pursuant to chapter 473. The accountant performing the audit shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices, to determine whether ~~if~~ expenditures were for association purposes and the billings, cash receipts, and related records to determine whether ~~that~~ the developer or bulk-unit purchaser was charged and paid the proper amounts of assessments.

(d) Association funds or control thereof.

(e) All tangible personal property that is property of the association, which is represented by the developer or bulk-unit purchaser to be part of the common elements or which is ostensibly part of the common elements, and an inventory of that property.

(f) A copy of the plans and specifications used ~~utilized~~ in the construction or remodeling of improvements and the supplying of equipment to the condominium and in the construction and installation of all mechanical components serving the

improvements and the site with a certificate in affidavit form of the developer, the bulk-unit purchaser, or the developer's or bulk-unit purchaser's agent or an architect or engineer authorized to practice in this state that such plans and specifications represent, to the best of his or her knowledge and belief, the actual plans and specifications used ~~utilized~~ in the construction and improvement of the condominium property and for the construction and installation of the mechanical components serving the improvements. If the condominium property has been declared a condominium more than 3 years after the completion of construction or remodeling of the improvements, ~~the requirements of~~ this paragraph does ~~do~~ not apply.

(g) A list of the names and addresses of all contractors, subcontractors, and suppliers used ~~utilized~~ in the construction or remodeling of the improvements and in the landscaping of the condominium or association property which the developer or bulk-unit purchaser had knowledge of at any time in the development of the condominium.

(h) Insurance policies.

(i) Copies of any certificates of occupancy that may have been issued for the condominium property.

(j) Any other permits applicable to the condominium property which have been issued by governmental bodies and are in force or were issued within 1 year before ~~prior to~~ the date the unit owners other than the developer or bulk-unit purchaser took control of the association.

(k) All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that are still effective.

(l) A roster of unit owners and their addresses and telephone numbers, if known, as shown on the developer's or bulk-unit purchaser's records.

(m) Leases of the common elements and other leases to which the association is a party.

(n) Employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service.

(o) All other contracts to which the association is a party.

(p) A report included in the official records, under seal of an architect or engineer authorized to practice in this state, attesting to required maintenance, useful life, and replacement costs of the following applicable common elements comprising a turnover inspection report:

1. Roof.
2. Structure.
3. Fireproofing and fire protection systems.
4. Elevators.
5. Heating and cooling systems.
6. Plumbing.
7. Electrical systems.
8. Swimming pool or spa and equipment.
9. Seawalls.
10. Pavement and parking areas.
11. Drainage systems.

12. Painting.

13. Irrigation systems.

(q) A copy of the certificate of a surveyor and mapper recorded pursuant to s. 718.104(4)(e) or the recorded instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer or bulk-unit purchaser rights in favor of the grantee of such unit, whichever occurred first.

Section 10. Subsections (1) through (4) of section 718.302, Florida Statutes, are amended to read:

718.302 Agreements entered into by the association.—

(1) A ~~Any~~ grant or reservation made by a declaration, lease, or other document, and a ~~any~~ contract made by an association before ~~prior to~~ assumption of control of the association by unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser, which ~~that~~ provides for operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium must ~~shall~~ be fair and reasonable, and such grant, reservation, or contract may be canceled by unit owners other than the developer or a bulk-unit purchaser. A lender-unit purchaser may not vote on cancellation of a grant, reservation, or contract made by the association while the association is under control of that lender-unit purchaser.~~:~~

(a) If the association operates only one condominium and the unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser have assumed control of the association, or if the unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser own at least ~~not~~

~~less than~~ 75 percent of the voting interests in the condominium, the cancellation shall be by concurrence of the owners of at least ~~not less than~~ 75 percent of the voting interests other than the voting interests owned by the developer, a bulk-unit purchaser, or a lender-unit purchaser. If a grant, reservation, or contract is so canceled and the unit owners other than the developer or a bulk-unit purchaser have not assumed control of the association, the association shall make a new contract or otherwise provide for maintenance, management, or operation in lieu of the canceled obligation, at the direction of the owners of ~~not less than~~ a majority of the voting interests in the condominium other than the voting interests owned by the developer, a bulk-unit purchaser, or a lender-unit purchaser.

(b) If the association operates more than one condominium and the unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser have not assumed control of the association, and if the unit owners other than the developer or a bulk-unit purchaser own at least 75 percent of the voting interests in a condominium operated by the association, any grant, reservation, or contract for maintenance, management, or operation of buildings containing the units in that condominium or of improvements used only by the unit owners of that condominium may be canceled by concurrence of the owners of at least 75 percent of the voting interests in the condominium other than the voting interests owned by the developer or a bulk-unit purchaser. A ~~No~~ grant, reservation, or contract for maintenance, management, or operation of recreational areas or any other property serving more than one condominium, and operated by more than one

association, may not be canceled except pursuant to paragraph (d).

(c) If the association operates more than one condominium and the unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser have assumed control of the association, the cancellation shall be by concurrence of the owners of at least ~~not less than~~ 75 percent of the total number of voting interests in all condominiums operated by the association other than the voting interests owned by the developer or a bulk-unit purchaser.

(d) If the owners of units in a condominium have the right to use property in common with owners of units in other condominiums and those condominiums are operated by more than one association, a ~~no~~ grant, reservation, or contract for maintenance, management, or operation of the property serving more than one condominium may not be canceled until the unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser have assumed control of all of the associations operating the condominiums that are to be served by the recreational area or other property, after which cancellation may be effected by concurrence of the owners of at least ~~not less than~~ 75 percent of the total number of voting interests in those condominiums other than voting interests owned by the developer, a bulk-unit purchaser, or a lender-unit purchaser.

(2) A ~~Any~~ grant or reservation made by a declaration, lease, or other document, or a ~~any~~ contract made by the developer or association before ~~prior to the time when~~ unit owners other than the developer or a bulk-unit purchaser elect a

majority of the board of administration, which grant, reservation, or contract requires the association to purchase condominium property or to lease condominium property to another party, shall be deemed ratified unless rejected by a majority of the voting interests of the unit owners other than the developer or a bulk-unit purchaser within 18 months after the unit owners other than the developer or a bulk-unit purchaser elect a majority of the board of administration. A lender-unit purchaser may not vote on cancellation of a grant, reservation, or contract made by the association while the association is under control of that lender-unit purchaser. This subsection does not apply to a ~~any~~ grant or reservation made by a declaration under which ~~whereby~~ persons other than the developer or the developer's or bulk-unit purchaser's heirs, assigns, affiliates, directors, officers, or employees are granted the right to use the condominium property, if ~~so long as~~ such persons are obligated to pay at least~~, at a minimum,~~ a proportionate share of the cost associated with such property.

(3) A ~~Any~~ grant or reservation made by a declaration, lease, or other document, and a ~~any~~ contract made by an association, whether before or after assumption of control of the association by unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser, which ~~that~~ provides for operation, maintenance, or management of a condominium association or property serving the unit owners of a condominium may ~~shall~~ not ~~be in~~ conflict with the powers and duties of the association or the rights of the unit owners as provided in this chapter. This subsection is intended only as a clarification of existing law.

(4) A ~~Any~~ grant or reservation made by a declaration, lease, or other document, and a ~~any~~ contract made by an association before ~~prior to~~ assumption of control of the association by unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser, must ~~shall~~ be fair and reasonable.

Section 11. Subsections (3), (4), and (5) of section 718.303, Florida Statutes, are amended, and subsection (7) is added to that section, 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 or its authorized designee on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before an impartial committee as provided in paragraph (b). However, the fine may not exceed $100 per violation, or $1,000 in the aggregate.

(a) 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. This paragraph does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or

elevators.

(b) A fine or suspension levied by the board of administration or its authorized designee may not be imposed unless the board ~~association~~ first provides at least 14 days' written notice and an opportunity for a hearing to the unit owner and, if applicable, its occupant, licensee, or invitee. The hearing must be held before an impartial ~~a~~ committee of other unit owners who are neither board members, ~~nor~~ persons residing in a board member's household, the board's authorized designee, nor persons residing in the household of the board's authorized designee. The role of the impartial committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the impartial committee does not agree, the fine or suspension may not be imposed.

(4) If a unit owner is more than 90 days delinquent in paying a fee, fine, or other monetary obligation due to the association, the association may suspend the right of the unit owner or the unit's occupant, licensee, or invitee to use common elements, common facilities, or any other association property until the fee, fine, or other monetary obligation is paid in full. This subsection does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators. The notice and hearing requirements under subsection (3) do not apply to suspensions imposed under this subsection.

(5) An association may suspend the voting rights of a unit or member due to nonpayment of any fee, fine, or other monetary obligation due to the association which is more than 90 days

delinquent. A voting interest or consent right allocated to a unit or member which has been suspended by the association shall be subtracted from ~~may not be counted towards~~ the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the suspended voting interests may not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the declaration, articles of incorporation, or bylaws. The suspension ends upon full payment of all obligations currently due or overdue the association. The notice and hearing requirements under subsection (3) do not apply to a suspension imposed under this subsection.

(7) The suspensions permitted by paragraph (3)(a) and subsections (4) and (5) apply to a member and, when appropriate, the member's tenants, guests, or invitees, even if the delinquency or failure that resulted in the suspension arose from less than all of the multiple units owned by the member.

Section 12. Subsection (1) of section 718.501, Florida Statutes, is amended to read:

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The division may enforce and ensure compliance with ~~the provisions of~~ this chapter and rules relating to the

development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under the control of the developer, the control of a bulk-unit purchaser or lender-unit purchaser, or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk-unit purchasers, lender-unit purchasers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate only complaints related ~~only~~ to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12).

(a)1. The division may make necessary public or private investigations within or outside this state to determine whether any person has violated this chapter or any rule or order hereunder, to aid in the enforcement of this chapter, or to aid in the adoption of rules or forms.

2. The division may submit any official written report, worksheet, or other related paper, or a duly certified copy thereof, compiled, prepared, drafted, or otherwise made by and duly authenticated by a financial examiner or analyst to be admitted as competent evidence in any hearing in which the financial examiner or analyst is available for cross-examination and attests under oath that such documents were prepared as a result of an examination or inspection conducted pursuant to this chapter.

(b) The division may require or permit any person to file a

statement in writing, under oath or otherwise, as the division determines, as to the facts and circumstances concerning a matter to be investigated.

(c) For the purpose of any investigation under this chapter, the division director or any officer or employee designated by the division director may administer oaths or affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of any matter that ~~which~~ is relevant to the investigation, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of relevant facts or any other matter reasonably calculated to lead to the discovery of material evidence. Upon the failure of ~~by~~ a person to obey a subpoena or to answer questions propounded by the investigating officer and upon reasonable notice to all affected persons, the division may apply to the circuit court for an order compelling compliance.

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of ~~any provision of~~ this chapter or a related rule has occurred, the division may institute enforcement proceedings in its own name against any developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or his or her ~~its~~ assignees or agents, as follows:

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings

and enter into a consent proceeding under which ~~whereby~~ orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person.

2. The division may issue an order requiring the developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, bulk buyer, association, developer-designated officer, or developer-designated member of the board of administration, or his or her ~~developer-designated~~ assignees or agents, the ~~bulk assignee-designated assignees or agents, bulk buyer-designated assignees or agents,~~ community association manager, or the ~~community association~~ management firm to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division to carry out the purposes of this chapter. If the division finds that a developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or his or her ~~its~~ assignees or agents, is violating or is about to violate ~~any provision of~~ this chapter, any rule adopted or order issued by the division, or any written agreement entered into with the division~~,~~ and the violation presents an immediate danger to the public requiring an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective for 90 days. If the division begins nonemergency cease and desist proceedings, the emergency cease and desist order remains effective until the conclusion of the proceedings under ss. 120.569 and 120.57.

3. If a developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer~~,~~ fails to pay ~~any~~

restitution determined by the division to be owed and~~, plus~~ any accrued interest charged at the highest rate permitted by law, within 30 days after expiration of any appellate time period of a final order requiring payment of restitution or the conclusion of any appeal thereof, whichever is later, the division shall ~~must~~ bring an action in circuit or county court on behalf of any association, class of unit owners, lessees, or purchasers for restitution, declaratory relief, injunctive relief, or any other available remedy. The division may also temporarily revoke its acceptance of the filing for the developer, bulk-unit purchaser, or lender-unit purchaser, to which the restitution relates until payment of restitution is made.

4. The division may petition the court for appointment of a receiver or conservator who, ~~.~~ if appointed, ~~the receiver or conservator~~ may take action to implement the court order to ensure the performance of the order and to remedy any breach thereof. In addition to all other means provided by law for the enforcement of an injunction or temporary restraining order, the circuit court may impound or sequester the property of a party defendant, including books, papers, documents, and related records, and allow the examination and use of the property by the division and a court-appointed receiver or conservator.

5. The division may apply to the circuit court for an order of restitution under which ~~whereby~~ the defendant in an action brought pursuant to subparagraph 4. is ordered to make restitution of those sums shown by the division to have been obtained by the defendant in violation of this chapter. At the option of the court, such restitution is payable to the conservator or receiver appointed pursuant to subparagraph 4. or

directly to the persons whose funds or assets were obtained in violation of this chapter.

6. The division may impose a civil penalty against a developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, ~~or~~ bulk buyer, or association, or its assignee or agent, for a ~~any~~ violation of this chapter or a related rule. The division may impose a civil penalty individually against an officer or board member who willfully and knowingly violates ~~a provision of~~ this chapter, an adopted rule, or a final order of the division; may order the removal of such individual as an officer or from the board of administration or as an officer of the association; and may prohibit such individual from serving as an officer or on the board of a community association for a period of time. The term "willfully and knowingly" means that the division informed the officer or board member that his or her action or intended action violates this chapter, a rule adopted under this chapter, or a final order of the division and that the officer or board member refused to comply with ~~the requirements of~~ this chapter, a rule adopted under this chapter, or a final order of the division. ~~The division,~~ Before initiating formal agency action under chapter 120, the division must afford the officer or board member an opportunity to voluntarily comply, and an officer or board member who complies within 10 days is not subject to a civil penalty. A penalty may be imposed on the basis of each day of continuing violation, but the penalty for any offense may not exceed $5,000. ~~By January 1, 1998,~~ The division shall adopt, by rule, penalty guidelines applicable to possible violations or to categories of violations of this chapter or rules adopted by the division. The guidelines

must specify a meaningful range of civil penalties for each such violation of the statute and rules and must be based upon the harm caused by the violation, the repetition of the violation, and upon such other factors deemed relevant by the division. ~~For example,~~ The division may consider whether the violations were committed by a developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer, or owner-controlled association, the size of the association, and other factors. The guidelines must designate the possible mitigating or aggravating circumstances that justify a departure from the range of penalties provided by the rules. It is the legislative intent that minor violations be distinguished from those that ~~which~~ endanger the health, safety, or welfare of ~~the~~ condominium residents or other persons and that such guidelines provide reasonable and meaningful notice to the public of likely penalties that may be imposed for proscribed conduct. This subsection does not limit the ability of the division to informally dispose of administrative actions or complaints by stipulation, agreed settlement, or consent order. All amounts collected shall be deposited with the Chief Financial Officer to the credit of the Division of Florida Condominiums, Timeshares, and Mobile Homes Trust Fund. If a developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer fails to pay the civil penalty and the amount deemed to be owed to the association, the division shall issue an order directing that such developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent

jurisdiction. If an association fails to pay the civil penalty, the division shall pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order is not effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred.

7. If a unit owner presents the division with proof that the unit owner has requested access to official records in writing by certified mail, and that after 10 days the unit owner again made the same request for access to official records in writing by certified mail, and that more than 10 days has elapsed since the second request and the association has still failed or refused to provide access to official records as required by this chapter, the division shall issue a subpoena requiring production of the requested records where the records are kept pursuant to s. 718.112.

8. In addition to subparagraph 6., the division may seek the imposition of a civil penalty through the circuit court for any violation for which the division may issue a notice to show cause under paragraph (r). The civil penalty shall be at least $500 but no more than $5,000 for each violation. The court may also award to the prevailing party court costs and reasonable attorney ~~attorney's~~ fees and, if the division prevails, may also award reasonable costs of investigation.

(e) The division may prepare and disseminate a prospectus and other information to assist prospective owners, purchasers, lessees, and developers of residential condominiums in assessing the rights, privileges, and duties pertaining thereto.

(f) The division may adopt rules to administer and enforce ~~the provisions of~~ this chapter.

(g) The division shall establish procedures for providing notice to an association and the developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer during the period in which the developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer controls the association if the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing such condominium community.

(h) The division shall furnish each association that pays the fees required by paragraph (2)(a) a copy of this chapter, as amended, and the rules adopted thereto on an annual basis.

(i) The division shall annually provide each association with a summary of declaratory statements and formal legal opinions relating to the operations of condominiums which were rendered by the division during the previous year.

(j) The division shall provide training and educational programs for condominium association board members and unit owners. The training may, at ~~in~~ the division's discretion, include web-based electronic media~~,~~ and live training and seminars in various locations throughout the state. The division may review and approve education and training programs for board members and unit owners offered by providers, ~~and~~ shall maintain a current list of approved programs and providers, and shall make such list available to board members and unit owners in a reasonable and cost-effective manner.

(k) The division shall maintain a toll-free telephone number accessible to condominium unit owners.

(l) The division shall develop a program to certify both volunteer and paid mediators to provide mediation of condominium disputes. Upon request, the division shall provide~~, upon request,~~ a list of such mediators to any association, unit owner, or other participant in arbitration proceedings under s. 718.1255 requesting a copy of the list. The division shall include on the list of volunteer mediators only the names of individuals ~~persons~~ who have received at least 20 hours of training in mediation techniques or who have mediated at least 20 disputes. In order to become initially certified by the division, paid mediators must be certified by the Supreme Court to mediate court cases in county or circuit courts. However, the division may adopt, by rule, additional factors for the certification of paid mediators, which must be related to experience, education, or background. In order to continue to be certified, an individual ~~Any person~~ initially certified as a paid mediator by the division must~~, in order to continue to be certified,~~ comply with the factors or requirements adopted by rule.

(m) If a complaint is made, the division shall ~~must~~ conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant as to whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However,

the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57.

(n) Condominium association directors, officers, and employees; condominium developers; bulk-unit purchasers, lender-unit purchasers, bulk assignees, bulk buyers, and community association managers; and community association management firms have an ongoing duty to reasonably cooperate with the division in any investigation pursuant to this section. The division shall refer to local law enforcement authorities any person who ~~whom~~ the division believes has altered, destroyed, concealed, or removed any record, document, or thing required to be kept or maintained by this chapter with the purpose to impair its verity or availability in the department's investigation.

(o) The division may:

1. Contract with agencies in this state or other jurisdictions to perform investigative functions; or

2. Accept grants-in-aid from any source.

(p) The division shall cooperate with similar agencies in other jurisdictions to establish uniform filing procedures and forms, public offering statements, advertising standards, and

rules and common administrative practices.

(q) The division shall consider notice to a developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer to be complete when it is delivered to the address of the developer, bulk-unit purchaser, lender-unit purchaser, bulk assignee, or bulk buyer currently on file with the division.

(r) In addition to its enforcement authority, the division may issue a notice to show cause, which must provide for a hearing, upon written request, in accordance with chapter 120.

(s) The division shall submit to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairs of the legislative appropriations committees an annual report that includes, but need not be limited to, the number of training programs provided for condominium association board members and unit owners; ~~,~~ the number of complaints received, by type; ~~,~~ the number and percent of complaints acknowledged in writing within 30 days and the number and percent of investigations acted upon within 90 days in accordance with paragraph (m); ~~,~~ and the number of investigations exceeding the 90-day requirement. The annual report must also include an evaluation of the division's core business processes and make recommendations for improvements, including statutory changes. The report shall be submitted by September 30 following the end of the fiscal year.

Section 13. Section 718.709, Florida Statutes, is created to read:

718.709 Applicability.—Sections 718.701-718.708, relating to the Distressed Condominium Relief Act, apply to title to units acquired on or after July 1, 2010, but before July 1,

2016.

Section 14. Part VIII of chapter 718, Florida Statutes, consisting of sections 718.801-718.813, is created to read:

PART VIII

BULK-UNIT PURCHASERS AND LENDER-UNIT PURCHASERS

718.801 Legislative intent.—The Legislature declares that it is the public policy of this state to protect the interests of developers, lenders, unit owners, and condominium associations with regard to bulk-unit purchasers or lender-unit purchasers of condominium units and that there is a need to balance such interests by limiting the applicability of the Distressed Condominium Relief Act. Notwithstanding the limitation, the Distressed Condominium Relief Act applies to title acquired on or after July 1, 2010, but before July 1, 2016.

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

(1) "Bulk assignee" means a person who is not a bulk buyer and who:

(a) Acquires more than seven condominium parcels in a single condominium;

(b) Receives an assignment of any of the developer rights, other than or in addition to those rights described in subsection (3), as set forth in the declaration of condominium or this chapter:

1. By a written instrument recorded as part of or as an exhibit of the deed;

2. By a separate instrument recorded in the public records of the county in which the condominium is located; or

3. Pursuant to a final judgment or certificate of title

issued in favor of a purchaser at a foreclosure sale; and

(c) Acquired condominium parcels on or after July 1, 2010, but before July 1, 2016. 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.

A mortgagee or its assignee may not be deemed a bulk assignee or developer by reason of the acquisition of condominium units and receipt of an assignment of some or all of a developer's rights unless the mortgage or its assignee exercises any of the developer rights other than those described in subsection (3).

(2)"Bulk-unit purchaser" means a person who acquires title to the greater of at least eight units or 20 percent of the units that ultimately will be operated by the same association, as provided in the declaration, articles of incorporation, or bylaws as originally recorded. Multiple bulk-unit purchasers may be members of an association simultaneously or successively. There may be one or more bulk-unit purchasers while the developer still owns units operated by the association. A person who acquires title to units or timeshare interests in a condominium, which units or timeshare interests are or ultimately will be included in a timeshare plan governed by chapter 721, may elect to be a bulk-unit purchaser pursuant to s. 718.813. The term does not include a lender-unit purchaser. Further, the term does not include an acquirer of units if any transfer of title to the acquirer is made:

(a) With intent to defraud or materially harm a purchaser, a unit owner, or the association;

(b) Where the acquirer is a person or limited liability company that would be an insider, as defined in s. 726.102, of the bulk-unit purchaser or of the developer; or

(c) As a fraudulent transfer under chapter 726.

(3) "Bulk buyer" means a person who acquired condominium parcels on or after July 1, 2010, but before July 1, 2016, and the date of acquisition shall be determined in the same manner as in subsection (1). Further, the term means a person who acquires more than seven condominium parcels in a single condominium but who does not receive an assignment of any developer rights or receives only some or all of the following rights:

(a) The right to conduct sales, leasing, and marketing activities within the condominium.

(b) The right to be exempt from the payment of working capital contributions to the condominium association arising out of, or in connection with, the bulk buyer's acquisition of the units.

(c) The right to be exempt from any rights of first refusal which may be held by the condominium association and would otherwise be applicable to subsequent transfers of title from the bulk buyer to a third-party purchaser concerning one or more units.

(4) "Lender-unit purchaser" means a person, or the person's successors, assigns, or wholly owned subsidiaries, who holds a mortgage from a developer or from a bulk-unit purchaser on the greater of at least eight units or 20 percent of the units that,

as provided in the declaration, articles of incorporation, or bylaws as originally recorded, ultimately will be operated by the same association; who subsequently obtains title to such units through foreclosure or deed in lieu of foreclosure; and who makes the election to become a lender-unit purchaser pursuant to 718.808(4). However, a mortgagee or its wholly owned subsidiary that acquires and sells units to one or more bulk-unit purchasers is not a developer or a lender-unit purchaser with respect to the sale.

718.803 Exercise of rights.—

(1) A bulk-unit purchaser may exercise only the following developer rights, provided such rights are contained in the declaration:

(a) The right to conduct sales, leasing, and marketing activities within the condominium, including the use of the sales and leasing office.

(b) The right to assign limited common elements and use rights to common elements and association property which were not assigned before the bulk-unit purchaser acquired title to the units. Such rights may include, without limitation, the rights to garages, parking spaces, storage areas, and cabanas. If there is more than one bulk-unit purchaser, this right must be established in a written assignment from the developer which specifies the bulk-unit purchaser who has such a right as to specified limited common elements, common elements, and association property.

(c) For a phase condominium, the right to add phases.

(2) If the initial purchaser of a unit from the developer is required to make a working capital contribution to the

association, a bulk-unit purchaser shall pay a working capital contribution to the association, which must be calculated in the same manner for each unit acquired, upon the earlier of:

(a) Sale of a unit by the bulk-unit purchaser to a third party other than the bulk-unit purchaser; or

(b) Five years from the date of acquisition of title to a unit by the bulk-unit purchaser.

(3) If a bulk-unit purchaser exercises developer rights other than those specified in subsection (1), he or she is no longer deemed to be a bulk-unit purchaser, and this part does not apply to such person.

(4) Except as set forth in this part, a lender-unit purchaser may exercise any developer rights that the lender-unit purchaser acquires.

718.804 Compliance.—A bulk-unit purchaser and a lender-unit purchaser shall comply with all applicable requirements of s. 718.202 and part V of this chapter in connection with any units that they own or sell.

718.805 Voting rights.—

(1) For the first 2 fiscal years following the first conveyance of a unit to a bulk-unit purchaser or lender-unit purchaser, the bulk-unit purchaser or lender-unit purchaser may vote the voting interests allocated to his or her units to waive reserves or reduce the funding of reserves. After these 2 fiscal years, the bulk-unit purchaser or lender-unit purchaser may not vote his or her voting interests to waive reserves or reduce the funding of reserves until the bulk-unit purchaser or lender-unit purchaser holds less than a majority of the voting interests in the association.

(2) A bulk-unit purchaser or lender-unit purchaser may not transfer his or her right to vote to waive reserves or reduce the funding of reserves to other bulk-unit purchasers or lender-unit purchasers to extend the time period in subsection (1).

718.806 Assessment liability; election of directors.—

(1) BULK-UNIT PURCHASER ASSESSMENT LIABILITY.—A bulk-unit purchaser is liable for all assessments on his or her units which become due while the bulk-unit purchaser holds title to such units. Additionally, the bulk-unit purchaser is jointly and severally liable with the previous owner for all unpaid regular periodic assessments and special assessments that became due before the acquisition of title, for all other monetary obligations accrued which are secured by the association's lien, and for all costs advanced by the association for the maintenance and repair of the units acquired by the bulk-unit purchaser.

(2) LENDER-UNIT PURCHASER ASSESSMENT LIABILITY.—The liability of a lender-unit purchaser or his or her successors or assignees for the units that the lender-unit purchaser owns is limited to the lesser of:

(a) The units' unpaid common expenses and the regular periodic assessments that accrued or became due during the 12 months immediately preceding the lender-unit purchaser's acquisition of title and for which payment in full has not been received by the association; or

(b) One percent of the original mortgage debt.

The lender-unit purchaser acquiring title must comply with s. 718.116(1)(c).

(3) DIRECTOR ELECTED BY BULK-UNIT PURCHASER.—A director who has been elected or appointed by a bulk-unit purchaser is automatically suspended from board service for 30 days following the failure of the bulk-unit purchaser to timely pay monetary obligations on a unit the bulk-unit purchaser owns. The remaining directors may temporarily fill the vacancy created by the suspension. Once the bulk-unit purchaser has cured all outstanding delinquencies on the unit, the suspended director shall replace the temporary appointee and resume service on the board for the unexpired term.

718.807 Amendments and material alterations.—

(1) The following amendments or alterations may not go into effect unless approved by a majority vote of unit owners other than the developer, a bulk-unit purchaser, or a lender-unit purchaser:

(a) An amendment described in s. 718.110(4) or (8).

(b) An amendment creating, changing, or terminating leasing restrictions.

(c) An amendment of the declaration pertaining to the condominium's status as housing for older persons.

(d) An amendment pursuant to s. 718.110(14) or an amendment that otherwise reclassifies a portion of the common elements as a limited common element or that authorizes the association to change the limited common elements assigned to any unit.

(e) Material alterations or substantial additions to the common elements or association property any time one of the following owns a percentage of voting interests equal to or greater than the percentage required to approve the amendment:

1. A bulk-unit purchaser;

2. A lender-unit purchaser;

3. The developer and a bulk-unit purchaser;

4. The developer and a lender-unit purchaser; or

5. A bulk-unit purchaser and a lender-unit purchaser.

(2) Notwithstanding subsection (1), consent of the developer, a bulk-unit purchaser, or a lender-unit purchaser is required for an amendment that would otherwise require the approval of such voting interests based upon the requirements of the declaration, articles of incorporation, or bylaws or s. 718.110 or s. 718.113.

718.808 Warranties and disclosures.—

(1) As the seller, a bulk-unit purchaser or lender-unit purchaser is deemed to have granted an implied warranty of fitness and merchantability to a purchaser of each unit sold for a period of 3 years, which begins on the date of the completion of repairs or improvements that the bulk-unit purchaser or lender-unit purchaser makes to the unit, common elements, or limited common elements. The bulk-unit purchaser or lender-unit purchaser is not deemed to have granted a warranty on improvements, repairs, or alterations to the condominium which he or she did not undertake.

(2) The statute of limitations in s. 718.203 is tolled while the bulk-unit purchaser begins the process of appointing or electing a majority of the board of administration.

(3) As the seller, the bulk-unit purchaser shall include the following disclosure to purchasers in conspicuous type on the first page of the sales contract:

SELLER IS A BULK-UNIT PURCHASER UNDER THE CONDOMINIUM ACT.

SELLER IS NOT THE DEVELOPER OF THE CONDOMINIUM FOR ANY PURPOSE UNDER THE CONDOMINIUM ACT.

(4) A mortgagee who acquires units may elect to become a lender-unit purchaser by providing written notice of the election to the association addressed to the registered agent at the address specified in the records of the Department of State. The notice shall be delivered within the time period ending upon the earliest of:

(a) The date on which the mortgagee exercises any developer rights other than the developer rights described in s. 718.803(1)(a);

(b) Before the sale of a unit by the mortgagee; or

(c) One hundred eighty days after the recording of the certificate of title or of the deed in lieu of foreclosure if the mortgagee acquired the units by foreclosure or by deed in lieu of foreclosure.

(5) As the seller, the lender-unit purchaser shall include the following disclosure to purchasers in conspicuous type on the first page of the sales contract:

SELLER IS A LENDER-UNIT PURCHASER UNDER THE CONDOMINIUM ACT. SELLER IS NOT THE DEVELOPER OF THE CONDOMINIUM FOR ANY PURPOSE UNDER THE CONDOMINIUM ACT. SELLER TOOK TITLE TO THE UNIT(S) BEING SOLD TO PURCHASER BY FORECLOSURE OR DEED IN LIEU OF FORECLOSURE.

(6)(a) At or before the signing of a contract to sell a unit, the bulk-unit purchaser and the lender-unit purchaser must

provide a condition report that complies with s. 718.616(2) and (3) and this section to the prospective purchaser and must obtain verification of delivery of such condition report. A condition report is not required in connection with a sale to a bulk-unit purchaser or in connection with a deed in lieu of foreclosure to a lender-unit purchaser. A mortgagee is not required to deliver to a bulk-unit purchaser a condition report even if the mortgagee acquires and transfers developer rights to such bulk-unit purchaser.

(b) The condition report must include a reasonably detailed description of the repairs or replacements necessary to cure defective construction identified in the condition report.

(c) If, during the course of preparing the condition report, the architect or engineer becomes aware of a component that violates an applicable building code or federal or state law or that deviates from the building plans approved by the permitting authority, the architect or engineer shall disclose such information in the condition report. The architect or engineer shall make written inquiry to the applicable local government authority of any building code violations and shall include in the condition report any of the authority's responses or its failure to respond.

(d) The condition report shall be prepared before the bulk-unit purchaser or the lender-unit purchaser enters into his or her first sales contract, but the condition report may not be prepared more than 6 months before the first sales contract is agreed upon. If the bulk-unit purchaser or lender-unit purchaser remains engaged in selling units, the condition report shall be updated no later than 1 year after the closing of the first

sales contract and each year thereafter.

(e) If a bulk-unit purchaser or lender-unit purchaser fails to provide the condition report in accordance with this section, the bulk-unit purchaser or lender-unit purchaser is deemed to grant implied warranties of fitness and merchantability which are not limited to the construction, improvements, or repairs that he or she undertakes to the units, common elements, or limited common elements.

718.809 Joint and several liability.—For purposes of this chapter, if there are multiple bulk-unit purchasers within the same association, the units owned by the multiple bulk-unit purchasers and the rights of the bulk-unit purchasers shall be aggregated as if there were only one bulk-unit purchaser. Each bulk-unit purchaser is jointly and severally liable with his or her predecessor bulk-unit purchasers for compliance with this chapter.

718.810 Construction disputes.—A board of administration composed of a majority of directors elected or appointed by a bulk-unit purchaser may not resolve a construction dispute that is subject to chapter 558 unless such resolution is approved by a majority of the voting interests of the unit owners other than the developer and a bulk-unit purchaser.

718.811 Noncompliance.—A bulk-unit purchaser or a lender-unit purchaser who fails to substantially comply with the requirements of this chapter pertaining to the obligations and rights of bulk-unit purchasers and lender-unit purchasers forfeits all protections or exemptions provided under the Condominium Act.

718.812 Documents to be delivered upon turnover.—If a bulk-

unit purchaser elects a majority of the board of administration and the unit owners other than the bulk-unit purchaser elect a majority, the bulk-unit purchaser must deliver all of the items specified in s. 718.301(4) to the association. However, the bulk-unit purchaser is not required to deliver items that were never in the possession of the bulk-unit purchaser. In conjunction with the acquisition of units, the bulk-unit purchaser shall undertake a good faith effort to obtain the items specified in s. 718.301(4) which must be delivered to the association. If the bulk-unit purchaser cannot obtain such items, the bulk-unit purchaser must deliver a certificate in writing to the association which names or describes items that were not obtainable by the bulk-unit purchaser and which describes the good faith efforts that were undertaken to obtain the items. Delivery of the certificate relieves the bulk-unit purchaser of his or her responsibility under s. 718.301 to deliver the documents and materials referenced in the certificate. The responsibility of the bulk-unit purchaser to conduct the audit required by s. 718.301(4)(c) begins on the date the bulk-unit purchaser elects or appoints a majority of the members of the board of administration and ends on the date the bulk-unit purchaser no longer controls the board.

718.813 Timeshare Condominiums.—With respect to the acquisition of title to units or timeshare interests in a condominium, which units or timeshare interests are or ultimately will be included in a timeshare plan governed by chapter 721:

(1) Any person otherwise qualified to be a bulk-unit purchaser pursuant to s. 718.802 is not a bulk-unit purchaser

unless that person makes an election to become a bulk-unit purchaser by providing notice to the association addressed to the registered agent at the address specified in the records of the Department of State. The notice shall be delivered within the time period ending upon the earliest of:

(a) The date on which the person exercises any developer rights other than the developer rights described in s. 718.803(1)(a);

(b) The sale of any unit or timeshare interest by the person; or

(c) One hundred eighty days after the recording of the deed or other instrument of conveyance by which the person acquired the units or timeshare interests.

(2) If a person has made an election to be a bulk-unit purchaser pursuant to subsection (1), the bulk-unit purchaser, when selling units or timeshare interests, shall include the following disclosure to purchasers in conspicuous type on the first page of the contract for sale of units or timeshare interests:

SELLER IS A BULK-UNIT PURCHASER UNDER THE CONDOMINIUM ACT. SELLER IS NOT THE DEVELOPER OF THE CONDOMINIUM FOR ANY PURPOSE UNDER THE CONDOMINIUM.

Section 15. Paragraph (a) of subsection (2) of section 719.104, Florida Statutes, is 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 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 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.

Section 16. Paragraphs (c) and (d) of subsection (1) of

section 719.106, Florida Statutes, are amended to read:

719.106 Bylaws; cooperative ownership.—

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

(c) *Board of administration meetings.*—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; however, a unit owner may not post the recordings on any website or other media that can readily be viewed by persons who are not members of the association. 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. 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. 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. 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. If authorized by the bylaws, 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.

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; however, a unit owner may not post the recordings on any website or other media that can readily be viewed by persons who are not members of the association.

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.

Section 17. Subsections (3) and (4) of section 719.108, Florida Statutes, are amended to read:

719.108 Rents and assessments; liability; lien and

priority; interest; collection; cooperative ownership.—

(3) Rents and assessments, and installments on them, not paid when due bear interest at the rate provided in the cooperative documents from the date due until paid. This rate may not exceed the rate allowed by law and, if a rate is not provided in the cooperative documents, accrues at 18 percent per annum. If the cooperative documents or bylaws so provide, the association may charge an administrative late fee in addition to such interest, not to exceed the greater of $25 or 5 percent of each installment of the assessment for each delinquent installment that the payment is late. The association may also recover from the unit owner any reasonable charges imposed upon the association under a written contract with its management or bookkeeping company or collection agent which are incurred in connection with collecting a delinquent assessment. Such charges must be in a liquidated and noncontingent amount and must be based on the actual time expended performing necessary, nonduplicative services. Fees for collection are not recoverable for the period after referral of the matter to an association's legal counsel. Any payment received by an association must be applied first to any interest accrued by the association, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, then to any reasonable costs for collection services contracted for by the association, and then to the delinquent assessment. The foregoing applies 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. A late fee is not

subject to chapter 687 or s. 719.303(4).

(4) The association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, any reasonable costs for collection services contracted for by the association, and any ~~authorized~~ administrative late fees. If authorized by the cooperative documents, the lien also secures reasonable attorney fees incurred by the association incident to the collection of the rents and assessments or enforcement of such lien. The lien is effective from and after recording a claim of lien in the public records in the county in which the cooperative parcel is located which states the description of the cooperative parcel, the name of the unit owner, the amount due, and the due dates. Except as otherwise provided in this chapter, a lien may not be filed by the association against a cooperative parcel until 30 days after the date on which a notice of intent to file a lien has been delivered to the owner.

(a) The notice must be sent to the unit owner at the address of the unit by first-class United States mail, and the notice must be in substantially the following form:

NOTICE OF INTENT

TO RECORD A CLAIM OF LIEN

RE: Unit ...(unit number)... of ...(name of cooperative)...

The following amounts are currently due on your account to ...(name of association)..., and must be paid within 30 days after your receipt of this letter. This letter shall serve as the association’s notice of intent to record a Claim of Lien against your property no sooner than 30 days after your receipt of this letter, unless you pay in full the amounts set forth below:

Maintenance due ...(dates)... $.....

Late fee, if applicable $.....

Interest through ...(dates)...* $.....

Certified mail charges $.....

Other costs $.....

TOTAL OUTSTANDING $.....

*Interest accrues at the rate of .... percent per annum.

1. If the most recent address of the unit owner on the records of the association is the address of the unit, the notice must be sent by certified mail, return receipt requested, to the unit owner at the address of the unit.

2. If the most recent address of the unit owner on the records of the association is in the United States, but is not the address of the unit, the notice must be sent by certified mail, return receipt requested, to the unit owner at his or her most recent address.

3. If the most recent address of the unit owner on the records of the association is not in the United States, the notice must be sent by first-class United States mail to the unit owner at his or her most recent address.

(b) A notice that is sent pursuant to this subsection is deemed delivered upon mailing. A claim of lien must be executed and acknowledged by an officer or authorized agent of the association. The lien is not effective 1 year after the claim of lien was recorded unless, within that time, an action to enforce the lien is commenced. The 1-year period is automatically extended for any length of time during which the association is prevented from filing a foreclosure action by an automatic stay resulting from a bankruptcy petition filed by the parcel owner

or any other person claiming an interest in the parcel. The claim of lien secures all unpaid rents and assessments that are due and that may accrue after the claim of lien is recorded and through the entry of a final judgment, as well as interest and all reasonable costs and attorney fees incurred by the association incident to the collection process. Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

(c) By recording a notice in substantially the following form, a unit owner or the unit owner's agent or attorney may require the association to enforce a recorded claim of lien against his or her cooperative parcel:

NOTICE OF CONTEST OF LIEN

TO: ...(Name and address of association)...:

You are notified that the undersigned contests the claim of lien filed by you on ...., ...(year)..., and recorded in Official Records Book .... at Page ...., of the public records of .... County, Florida, and that the time within which you may file suit to enforce your lien is limited to 90 days from the date of service of this notice. Executed this .... day of ...., ...(year)....

Signed: ...(Owner or Attorney)...

After notice of contest of lien has been recorded, the clerk of the circuit court shall mail a copy of the recorded notice to the association by certified mail, return receipt requested, at the address shown in the claim of lien or most recent amendment to it and shall certify to the service on the face of the notice. Service is complete upon mailing. After service, the association has 90 days in which to file an action to enforce

the lien. If the action is not filed within the 90-day period, the lien is void. However, the 90-day period shall be extended for any length of time during which the association is prevented from filing its action because of an automatic stay resulting from the filing of a bankruptcy petition by the unit owner or by any other person claiming an interest in the parcel.

(d) A release of lien must be in substantially the following form:

RELEASE OF LIEN

The undersigned lienor, in consideration of the final payment in the amount of $...., hereby waives and releases its lien and right to claim a lien for unpaid assessments through ...., ...(year)..., recorded in the Official Records Book .... at Page ...., of the public records of .... County, Florida, for the following described real property:

THAT COOPERATIVE PARCEL WHICH INCLUDES UNIT NO. .... OF ...(NAME OF COOPERATIVE)..., A COOPERATIVE AS SET FORTH IN THE COOPERATIVE DOCUMENTS AND THE EXHIBITS ANNEXED THERETO AND FORMING A PART THEREOF, RECORDED IN OFFICIAL RECORDS BOOK ...., PAGE ...., OF THE PUBLIC RECORDS OF .... COUNTY, FLORIDA.

...(Signature of Authorized Agent)... ...(Signature of Witness)...

...(Print Name)... ...(Print Name)...

...(Signature of Witness)...

...(Print Name)...

Sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of person making statement)....

...(Signature of Notary Public)...

...(Print, type, or stamp commissioned name of Notary Public)...

Personally Known .... OR Produced .... as identification.

Section 18. Section 719.129, Florida Statutes, is created to read:

719.129 Electronic voting.—The association may conduct elections by electronic voting if a member consents, in writing, to voting electronically and the following requirements are met:

(1) The association provides each member with:

(a) A method to authenticate the member's identity to the electronic voting system.

(b) A method to secure the member's vote from, among other things, malicious software and the ability of others to remotely monitor or control the electronic voting platform.

(c) A method to communicate with the electronic voting system.

(d) A method to review an electronic ballot before its transmission to the electronic voting system.

(e) A method to transmit an electronic ballot to the electronic voting system which ensures the secrecy and integrity of each ballot.

(f) A method to allow members to verify the authenticity of receipts sent from the electronic voting system.

(g) A method to confirm, at least 14 days before the voting deadline, that the member's electronic voting platform can successfully communicate with the electronic voting system.

(h) In the event of a disruption of the electronic voting system, the ability to vote by mail or to deliver a ballot in person.

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

(a) Accessible to members with disabilities.

(b) Secure from, among other things, malicious software and the ability of others to remotely monitor or control the system.

(c) Able to authenticate the member's identity.

(d) Able to communicate with each member's electronic voting platform.

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

(f) Able to transmit a receipt from the electronic voting system to each member who casts an electronic ballot.

(g) Able to permanently separate any authentication or identifying information from the electronic ballot, rendering it impossible to tie a ballot to a specific member.

(h) Able to allow the member to confirm that his or her ballot has been received and counted.

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

(3) A member voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum.

(4) The bylaws of an association must provide for and allow voting pursuant to this section before this section shall apply. This section may apply to some or all matters for which a vote of the membership is required.

Section 19. 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 of administration or its authorized designee on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before an impartial committee as provided in paragraph (b). However, the fine may not exceed $100 per violation, or $1,000 in the aggregate.

(a) 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 cooperative documents or reasonable rules of the association. This paragraph does not apply to limited common elements intended to be used only by that unit, common elements needed to access the unit, utility services provided to the unit, parking spaces, or elevators.

(b) A fine or suspension levied by the board of administration or its authorized designee may not be imposed unless the board first provides at least 14 days' written ~~except after giving reasonable~~ notice and an opportunity for a hearing to the unit owner and, if applicable, its occupant, ~~the unit's~~ licensee, or invitee. The hearing must be held before an impartial ~~a~~ committee of other unit owners who are neither board members, persons residing in a board member's household, nor the authorized designee or members of the authorized designee's household. The role of the impartial committee is limited to determining whether to confirm or reject the fine or suspension levied by the board or its authorized designee. If the impartial

committee does not agree with the fine or suspension, it may not be imposed.

Section 20. Subsection (8) of section 720.301, Florida Statutes, is amended to read:

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

(8) "Governing documents" means:

(a) The recorded declaration of covenants for a community~~,~~ and all duly adopted and recorded amendments, supplements, and recorded exhibits thereto; ~~and~~

(b) The articles of incorporation and bylaws of the homeowners' association~~,~~ and any duly adopted amendments thereto; and

(c) Rules and regulations adopted under the authority of the recorded declaration, articles of incorporation, or bylaws and duly adopted amendments thereto.

Section 21. Section 720.3015, Florida Statutes, is created to read:

720.3015 Short title.—This chapter may be cited as the "Homeowners' Association Act."

Section 22. 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.—

(1) Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter, the governing documents of the community, and the rules of the association. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any

member against:

(a) The association;

(b) A member;

(c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and

(d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney ~~attorney's~~ fees and costs. A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney ~~attorney's~~ fees, may recover additional amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any other available right or remedy.

(2) The association may levy reasonable fines. A fine may not exceed ~~of up to~~ $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 or its authorized designee 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.

(a) An association may suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities 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. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit ~~impair the right of~~ an owner or tenant of a parcel from having ~~to have~~ vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(b) A fine or suspension may not be imposed by the board of administration or its authorized designee without at least 14 days' notice to the person sought to be fined or suspended and an opportunity for a hearing before an impartial ~~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, or the board's designee or the designee's family. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. The role of the impartial committee is limited to determining whether to confirm or reject the fine or suspension levied by the board or

its authorized designee. If the board of administration or its authorized designee ~~association~~ imposes a fine or suspension, the association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any tenant, licensee, or invitee of the parcel owner.

(3) If a member is more than 90 days delinquent in paying any fee, fine, or other ~~a~~ monetary obligation due to the association, the association may suspend the rights of the member, or the member's tenant, guest, or invitee, to use common areas and facilities until the fee, fine, or other monetary obligation is paid in full. This subsection does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may ~~does~~ not prohibit ~~impair the right of~~ an owner or tenant of a parcel from having ~~to have~~ vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park. The notice and hearing requirements under subsection (2) do not apply to a suspension imposed under this subsection.

(4) An association may suspend the voting rights of a parcel or member for the nonpayment of any fee, fine, or other monetary obligation due to the association which ~~that~~ is more than 90 days delinquent. A voting interest or consent right allocated to a parcel or member which has been suspended by the association shall be subtracted from ~~may not be counted towards~~ the total number of voting interests in the association, which shall be reduced by the number of suspended voting interests when calculating the total percentage or number of all voting interests available to take or approve any action, and the

suspended voting interests may not be considered for any purpose, including, but not limited to, the percentage or number of voting interests necessary to constitute a quorum, the percentage or number of voting interests required to conduct an election, or the percentage or number of voting interests required to approve an action under this chapter or pursuant to the governing documents. The notice and hearing requirements under subsection (2) do not apply to a suspension imposed under this subsection. The suspension ends upon full payment of all obligations currently due or overdue to the association.

(5) All suspensions imposed pursuant to subsection (3) or subsection (4) must be approved at a properly noticed board meeting. Upon approval, the association must notify the parcel owner and, if applicable, the parcel's occupant, licensee, or invitee by mail or hand delivery.

(6) The suspensions permitted by paragraph (2)(a) and subsections (3) and (4) apply to a member and, when appropriate, the member's tenants, guests, or invitees, even if the delinquency or failure that resulted in the suspension arose from less than all of the multiple parcels owned by the member.

Section 23. Paragraph (b) of subsection (1) and subsections (9) and (10) of section 720.306, Florida Statutes, are amended to read:

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

(1) QUORUM; AMENDMENTS.—

(b) Unless otherwise provided in the governing documents or required by law, and other than those matters set forth in paragraph (c), any governing document of an association may be

amended by the affirmative vote of two-thirds of the voting interests of the association. Within 30 days after recording an amendment to the governing documents, the association shall provide copies of the amendment to the members. However, if a copy of the proposed amendment is provided to the members before they vote on the amendment ~~and the proposed amendment is not changed before the vote~~, the association, in lieu of providing a copy of the amendment, may provide notice to the members that the amendment was adopted, identifying the official book and page number or instrument number of the recorded amendment and that a copy of the amendment is available at no charge to the member upon written request to the association. The copies and notice described in this paragraph may be provided electronically to those owners who previously consented to receive notice electronically. The failure to timely provide notice of the recording of the amendment does not affect the validity or enforceability of the amendment.

(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. 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.

(b) A person who is delinquent in the payment of any fee, fine, or other monetary obligation to the association on the day that he or she could last nominate himself or herself or be nominated for the board may not seek election to the board, and his or her name may not be listed on the ballot. A person serving as a board member who becomes more than 90 days delinquent in the payment of any fee, fine, or other monetary obligation to the association shall be deemed to have abandoned his or her seat on the board, creating a vacancy on the board to be filled according to law. For purposes of this paragraph, the term "any fee, fine, or other monetary obligation" means any delinquency to the association with respect to any parcel ~~for more than 90 days is not eligible for board membership~~. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, may not seek election to the board and is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date on which such person seeks election to the board. The validity of any action by the board is not affected if it is later determined that a person was ineligible to seek election to the board or that a member of the board is ineligible for board membership.

(c) Any election dispute between a member and an

association must be submitted to mandatory binding arbitration with the division. Such proceedings must be conducted in the manner provided by s. 718.1255 and the procedural rules adopted by the division. Unless otherwise provided in the bylaws, any vacancy occurring on the board before the expiration of a term may be filled by an 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 the governing documents. Unless otherwise provided in the bylaws, a board member appointed or elected under this section is appointed for the unexpired term of the seat being filled. Filling vacancies created by recall is governed by s. 720.303(10) and rules adopted by the division.

(10) RECORDING.—Any parcel owner may tape record or videotape meetings of the board of directors and meetings of the members; however, a parcel owner may not post the recordings on any website or other media that can readily be viewed by persons who are not members of the association. The board of directors of the association may adopt reasonable rules governing the taping of meetings of the board and the membership.

Section 24. Paragraph (a) of subsection (1) and subsection (3) of section 720.3085, Florida Statutes, are amended to read:

720.3085 Payment for assessments; lien claims.—

(1) When authorized by the governing documents, the association has a lien on each parcel to secure the payment of assessments and other amounts provided for by this section. Except as otherwise set forth in this section, the lien is

effective from and shall relate back to the date on which the original declaration of the community was recorded. However, as to first mortgages of record, the lien is effective from and after recording of a claim of lien in the public records of the county in which the parcel is located. This subsection does not bestow upon any lien, mortgage, or certified judgment of record on July 1, 2008, including the lien for unpaid assessments created in this section, a priority that, by law, the lien, mortgage, or judgment did not have before July 1, 2008.

(a) To be valid, a claim of lien must state the description of the parcel, the name of the record owner, the name and address of the association, the assessment amount due, and the due date. The claim of lien secures all unpaid assessments that are due and that may accrue subsequent to the recording of the claim of lien and before entry of a certificate of title, as well as interest, late charges, and reasonable collection costs and attorney fees incurred by the association incident to the collection process. The person making payment is entitled to a satisfaction of the lien upon payment in full.

(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.

(a) If the declaration or bylaws so provide, the association may also charge an administrative late fee not to exceed the greater of $25 or 5 percent of the amount of each installment that is paid past the due date. The association may

also recover from the parcel owner any reasonable charges imposed upon the association under a written contract with its management or bookkeeping company or collection agent which are incurred in connection with collecting a delinquent assessment. Such charges must be in a liquidated and noncontingent amount and must be based on the actual time expended performing necessary, nonduplicative services. Fees for collection are not recoverable for the period after referral of the matter to an association's legal counsel.

(b) Any payment received by an association and accepted shall be applied first to any interest accrued, then to any administrative late fee, then to any costs and reasonable attorney fees incurred in collection, then to any reasonable costs for collection services contracted for by the association, 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.

Section 25. Section 720.317, Florida Statutes, is created to read:

720.317 Electronic voting.—The association may conduct elections by electronic voting if a member consents, in writing, to voting electronically and the following requirements are met:

(1) The association provides each member with:

(a) A method to authenticate the member's identity to the electronic voting system.

(b) A method to secure the member's vote from, among other things, malicious software and the ability of others to remotely monitor or control the electronic voting platform.

(c) A method to communicate with the electronic voting system.

(d) A method to review an electronic ballot before its transmission to the electronic voting system.

(e) A method to transmit an electronic ballot to the electronic voting system which ensures the secrecy and integrity of each ballot.

(f) A method to allow members to verify the authenticity of receipts sent from the electronic voting system.

(g) A method to confirm, at least 14 days before the voting deadline, that the member's electronic voting platform can successfully communicate with the electronic voting system.

(h) In the event of a disruption of the electronic voting system, the ability to vote by mail or to deliver a ballot in person.

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

(a) Accessible to members with disabilities.

(b) Secure from, among other things, malicious software and the ability of others to remotely monitor or control the system.

(c) Able to authenticate the member's identity.

(d) Able to communicate with each member's electronic voting platform.

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

(f) Able to transmit a receipt from the electronic voting system to each member who casts an electronic ballot.

(g) Able to permanently separate any authentication or identifying information from the electronic ballot, rendering it

impossible to tie a ballot to a specific member.

(h) Able to allow the member to confirm that his or her ballot has been received and counted.

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

(3) A member voting electronically pursuant to this section shall be counted as being in attendance at the meeting for purposes of determining a quorum.

(4) The bylaws of an association must provide for and allow voting pursuant to this section before this section shall apply. This section may apply to some or all matters for which a vote of the membership is required.

Section 26. This act shall take effect July 1, 2015.

The Florida Senate

Committee Agenda Request

To: Senator Miguel Diaz de la Portilla
Committee on Judciary

Subject: Committee Agenda Request

Date: March 19, 2015

I respectfully request that **Senate Bill #748**, relating to Residential Properties, be placed on the:

☒ committee agenda at your earliest possible convenience.

☐ next committee agenda.

Jeremy Ring

Senator Jeremy Ring
Florida Senate, District 29

File signed original with committee office

S-020 (03/2004)