The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Jones, Chair
Senator Sachs, Vice Chair

MEETING DATE: Wednesday, March 16, 2011
TIME: 1:30 —4:00 p.m.
PLACE: *Toni Jennings Committee Room,* 110 Senate Office Building

MEMBERS: Senator Jones, Chair; Senator Sachs, Vice Chair; Senators Altman, Braynon, Dean, Diaz de la Portilla, Hill, Norman, Rich, Siplin, Thrasher, and Wise

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	**SB 530** Fasano (Identical H 1035, Compare H 1195, S 1516)	Condominium/Cooperative/Homeowners' Associations; Revises provisions relating to the official records of condominium associations. Requires the vote or written consent of a majority of the voting interests before a condominium association may enter into certain agreements to acquire leaseholds, memberships, or other possessory or use interests. Provides procedures and requirements for partial termination of a condominium property. Revises provisions relating to the offering of units by a bulk assignee or bulk buyer, etc. RI 03/16/2011 CA JU BC	
2	**CS/SB 396** Community Affairs / Bennett (Compare CS/H 709, H 849, CS/S 960)	Building Construction and Inspection; Exempts certain rule proceedings relating to the Florida Building Code from certain provisions. Redefines "sustainable building rating" to include the International Green Construction Code. Requires that state agencies, local governments, and the court system adopt a sustainable building rating system for new and renovated buildings. Revises the continuing education requirements for licensed home inspectors. Revises "propane" for purposes of the Florida Propane Gas Education, Safety, and Research Act, etc. CA 02/21/2011 Temporarily Postponed CA 03/07/2011 Fav/CS RI 03/16/2011 BC	

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 812** Diaz de la Portilla (Similar H 77)	Internet Poker; Creates the "Internet Poker Consumer Protection and Revenue Generation Act." Provides for intrastate Internet poker to be provided to the public by cardroom operators through a state Internet poker network operated by licensed Internet poker hub operators. Provides for selection of Internet poker hub operators through competitive procurement process, etc. RI 03/16/2011 CJ BC	
4	**SB 1430** Altman (Similar H 891)	Regulation of Smoking; Authorizes a district school board to adopt rules prohibiting any person from smoking tobacco on or in any district-owned or district-leased facility or property during a specified time of the day. RI 03/16/2011 ED JU	
5	**SB 1594** Sachs (Similar H 1145)	Pari-mutuel Permitholders; Provides that a greyhound permitholder shall not be required to conduct a minimum number of live performances. Revises requirements for an application for a license to conduct performances. Provides an extended period to amend certain applications. Removes a requirement for holders of certain converted permits to conduct a full schedule of live racing to qualify for certain tax credits, etc. RI 03/16/2011 BC RC	
6	Presentation by the Innovation Group on Market Assessment of Florida Pari-mutuel Gaming Venues		

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 Regulated Industries Committee

BILL:	SB 530
INTRODUCER:	Senator Fasano
SUBJECT:	Condominium, Cooperative, and Homeowners Associations
DATE:	March 11, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			CA	
3.			JU	
4.			BC	
5.				
6.				

I. Summary:

The bill revises laws related to condominium, homeowners', and cooperative associations. Regarding condominium associations, the bill:

- Includes unit owner facsimile numbers as a record to be maintained by the association;
- Permits condominium unit owners to consent to the disclosure of protected information, e.g. name and telephone numbers for a membership directory;
- Permits unit owners to have access to written employment agreements or budgetary or financial records that indicate the compensation paid to an association employee;
- Permit condominium association to hold closed meetings to discuss personnel matters;
- Provides that the newly elected or appointed board members may, in lieu of the written certification, submit a certificate of having satisfactorily completed an educational curriculum within 1 year before the election;
- Requires a vote of, or written consent by, a majority of the total voting interests of an association in order to enter into agreements and to acquire leaseholds, memberships and other possessory or use interests in lands or facilities;
- Permit associations to charge for any reasonable expenses for collection services incurred relating to a unit owner's delinquent account;
- Provide that a claim of lien may secure reasonable expenses for collection services relating to the delinquent account;
- Permits condominium associations to charge for any reasonable expenses for collection services;
- Permits the association to demand payment from a unit owner's tenant for all unpaid monetary obligations of a unit owner owned to the association;

- Provides procedures and requirements for partial termination of a condominium property;
- Provides for the suspension of use rights and election rights of unit owners who are more than 90 days delinquent in the payment of a monetary obligation; and
- Revises provisions related to bulk assignees and bulk buyers.

Regarding cooperative associations, the bill:

- Permits the association to demand payment from a unit owner's tenant for all unpaid monetary obligations of a unit owner owned to the association;
- Provides for the suspension of use rights and election rights of unit owners who are more than 90 days delinquent in the payment of a monetary obligation;
- Permits unit owners to have access to written employment agreements or budgetary or financial records that indicate the compensation paid to an association employee.

Regarding homeowners' association, the bill:

- Provides for the suspension of use rights and election rights of unit owners who are more than 90 days delinquent in the payment of a monetary obligation;
- Provide that a claim of lien may secure reasonable expenses for collection services relating to the delinquent account;
- Permits the association to demand payment from a unit owner's tenant for all unpaid monetary obligations of a unit owner owned to the association;
- Authorizes and provides procedures for homeowners associations to contract for communications, information, or Internet services on a bulk rate basis.

The bill provides an effective date of July 1, 2011.

This bill substantially amends the following sections of the Florida Statutes: 718.111, 718.112, 718.114, 718.116, 718.117, 718.303, 718.703. 718.704, 718.705, 718.706, 718.707, 719.108, 719.303, 720.303, 720.305, 720.3085, and 720.309.

II. Present Situation:

Condominiums

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 in which the condominium will be located.[2] A declaration is like a constitution in that it:

[1] Section 718.103(11), F.S.
[2] Section 718.104(2), F.S.

> 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. 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.[5] Condominiums are administered by a board of directors referred to as a "board of administration."[6]

Division of Florida Condominiums, Timeshares, and Mobile Homes

Condominiums are regulated by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) of the Department of Business and Professional Regulation (department), in accordance with ch. 718, F.S.

The division is afforded the complete jurisdiction to investigate complaints and enforce compliance with ch. 718, F.S., with respect to associations that are still under developer control.[7] It also has the authority to investigate complaints against developers involving improper turnover or failure to turnover, pursuant to s. 718.301, F.S. After control of the condominium is transferred from the developer to the unit owners, the division's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12), F.S.

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

Condominium – Official Records

The official records of the condominium are governed by s. 718.112, F.S. What constitutes the official records is provided in s. 718.112(12)(a), F.S. The official records of a condominium association must be maintained within the state for at least seven years.[8] The records must be made available to the unit owner within 45 miles of the condominium property or within the county in which the condominium property is located. The records must be made available within five working days after a written request is received by the governing board of the association or its designee. The records may be made available by having a copy of the official records of the association available for inspection or copying on the condominium property or association property. Alternatively, the association may offer the option of making the records of

[3] *Neuman v. Grandview at Emerald Hills*, 861 So. 2d 494, 496-97 (Fla. 4th DCA 2003).
[4] Section 718.104(5), F.S.
[5] Section 718.110(1)(a), F.S.
[6] Section 718.103(4), F.S.
[7] Section 718.501(1), F.S.
[8] Section 718.111(12)(b), F.S.

the association available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

The association must maintain accounting records and separate accounting records for each condominium that the association operates.[9] Section 718.111(12)(c), F.S., provides that all accounting records must be maintained for a period of not less than seven years. It prohibits any person from knowingly or intentionally defacing or destroying accounting records required to be maintained by ch. 718, F.S. It also prohibits a person from knowingly or intentionally defacing or destroying accounting or official records required to be created or maintained for a required period as provided in ch. 718, F.S., or knowingly or intentionally failing to create or maintain accounting records as required with the intent of causing harm to the association or one or more of its members. Persons who violate this provision are subject to a civil penalty as provided in s. 718.501(1)(d)6., F.S. The prohibition s. 718.111(12)(c), F.S., is substantially similar to the prohibition in s. 718.111(12)(a)11., F.S.

Section 718.111(12)(c), F.S., prohibits unit owner access to certain official records or information in the possession of the association, including:

- Records protected by attorney-client privilege;
- Information in connection with the approval of the lease, sale, or other transfer of a unit;
- Personnel records, including but not limited to disciplinary, health, insurance, and personnel records of the association's employees;
- Social security numbers, driver's license numbers, credit card numbers, email addresses, telephone numbers, emergency contact information, and any addresses of a unit owner that are not provided to fulfill the association's notice requirements, and any person identifying information of a unit owner;
- Electronic security measures used to safeguard data, including passwords; and
- Software and operating systems used by the association to allow manipulation of data.

Section 718.111(12)(c), F.S., permits access to the following personal identifying information of a unit: the person's name, lot or unit designation, mailing address, and property address.

Post-Election Certification of Condominium Board Members

The requirements for the association's bylaws are provided in s. 718.112, F.S. Section 718.112(2)(d)3.b., F.S., provides a post-election certification requirement for newly elected board members. Within 90 days of being elected or appointed, a new board member must certify that he or she:

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

[9] Section 718.111(12)(a)11., F.S.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum administered by a division-approved condominium education provider.

A board member is automatically suspended from service on the board if he or she fails to timely file the written certification or educational certificate. The board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for five years after a director's election or appointment. The validity of any appropriate action is not affected by the association's failure to have the certification on file.

Condominium – Assessments and Foreclosures

Current law defines an "assessment" as the "share of the funds which are required for the payment of common expenses, which from time to time is assessed against the unit owner."[10]

"Special assessment" is defined to mean "any assessment levied against a unit owner other than the assessment required by a budget adopted annually."[11]

A unit owner is jointly and severally liable with the previous owner for all unpaid assessments that came due up to the time of transfer of title. 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 1 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. 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.[14] The successor or assignee, in respect to the first mortgagee, includes only a subsequent holder of the first mortgage.[15]

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.[16] If no rate is specified in the declaration, the interest accrues at the rate of 18 percent per year. The

[10] Section 718.103(1), F.S.
[11] Section 718.103(24), F.S.
[12] Section 718.116(1)(a), F.S.
[13] Section 718.116(1)(b), F.S.
[14] Section 718.116(1)(e), F.S.
[15] Section 718.116(1)(g), F.S.
[16] Section 687.02(2), F.S., prohibits as usurious interest rates that are higher than the equivalent of 18 percent per annum simple interest.

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 costs and attorney's fees incurred in collection, and then to the delinquent assessment.

Condominiums – Assessment Payments by Tenants (Section 12)

Section 718.116(11), F.S., authorizes the association to demand payment of any future monetary obligation from the tenant of a unit owner if the unit owner is delinquent in payment. The association must mail written notice of such action to the unit owner. The tenant is obligated to make such payments. These provisions are comparable to the provisions in ss. 719.108(10) and 720.3085(8), F.S., for tenants in cooperative associations and homeowners' associations, respectively.

The tenant is not required to pay any unpaid past monetary obligations of the unit owner. The tenant is required to pay monetary obligations to the association until the tenant is released by the association or by the terms of the lease, and is liable for increases in the monetary obligations only if given a notice of the increase not less than 10 days before the date the rent is due.

If the tenant has prepaid rent to the unit owner before the receipt of the association's demand for payment, and the tenant provides written evidence of the prepaid rent to the association within 14 days of receipt of the written demand, then the tenant must make all accruing rent payments thereafter to the association. The tenant will receive credit for the prepaid rent for the applicable period, and those payments will be credited against the monetary obligations of the unit owner to the association. A tenant who responds in good faith to a written demand from an association shall be immune from any claim from the unit owner. It is unclear to what extent "claims" are precluded by the immunity afforded in this provision. For example, if the tenant pays the obligation and subtracts that amount from the rent owed to the unit owner, the unit owner may be precluded from recovering in a "breach of lease" claim.

The landlord and unit owner must provide the tenant a credit against rent payments to the unit owner in the amount of monetary obligations paid to the association. The tenant's liability to the association may not exceed the amount due from the tenant to his or her landlord. If a tenant fails to pay, the association may act as a landlord to evict the tenant under the procedures in ch. 83, F.S. However, the association is not otherwise considered a landlord under ch. 83, F.S., and does not have the duty to maintain the premises as required by s. 83.56, F.S. The tenant's payments do not give the tenant voting rights or the right to examine the books and records of the association. If a court appoints a receiver, the effects of s. 718.116(11), F.S., may be superseded.

A comparable is provided in s. 719.108(10), F.S., relating to tenants in cooperative associations, and s. 720.3085(8), F.S.

Termination of a Condominium

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.[17] 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.[18]

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.

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.

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 plan must specify the conditions of possession.[19] 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.[20]

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

[17] Section 718.117(2)(a), F.S.
[18] Section 718.117(2)(b), F.S.
[19] Section 718.117(11)(a), F.S.
[20] Section 718.117(11)(b), F.S.

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, as in current law.

Section 718.117(14), F.S., provides that the unit owners' rights and title as tenants in common in undivided interests in the condominium property vest in the termination trustee when the plan is recorded on in a later date specified in the plan. The termination trustee may deal with the condominium property or any interest therein if the plan confers on the trustee the authority to protect, conserve, manage, sell, or dispose of the condominium property. The trustee may contract for the sale of real property, but the contract is not binding on the unit owners until the plan is approved.

Section 718.117(17), F.S., provides that the condominium property, association property, common surplus, and other assets of the association must be held by the termination trustee. The trustee would hold the property as trustee for the unit owner and lienholders in their order or priority.

Section 718.117(19), provides that the trustee is not barred from filing of a declaration of condominium, or an amended and restated declaration of condominium, for any portion or the property.

Condominium – Sanctioning Unit Owners

Section 718.303(3), F.S., provides for the assessment of fines and provides penalties for failure to pay a monetary obligation to the association.. It authorizes condominium associations to suspend a unit owner's use rights if the unit owner is delinquent for more than 90 days in the payment of a monetary obligation to the association. The suspension may be, for a reasonable period of time, for the right of a unit owner or a unit's occupant, licensee, or invitee, to use common elements, common facilities, or any other association property. The association cannot suspend the right to use limited common elements intended to be used only by that unit, common elements that must be used to access the unit, utility services provided to the unit, parking spaces, or elevators. The declaration of condominium or the bylaws of the association must authorize the suspension. A fine may not exceed $100 per violation, but may be levied on each day of a violation. A fine does not become a lien on the property. A fine against a unit owner may not in the aggregate exceed $1,000. Before a suspension or fine is imposed, notice and an opportunity for a hearing must be provided.

Suspensions may not be imposed by an association unless it first gives at least 14-days notice and an opportunity for a hearing to the unit owner or occupant, if applicable. Associations may provide in their bylaws or declaration of condominium that a unit owner's voting rights may be suspended due to nonpayment of assessments, fines, or other charges payable to the association which are delinquent in excess of 90 days. The suspension shall end when the payment due or overdue to the association is paid in full.

Distressed Condominium Relief Act

The "Distressed Condominium Relief Act" 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.

Section 718.703(1), F.S., defines the term "bulk assignee" to mean a person who acquires more than seven condominium parcels as provided in s. 718.707, F.S., and receives an assignment of some or substantially all of the rights of the developer as an exhibit in the deed or as a separate instrument recorded in the public records in the county where the condominium is located.

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 right to:

- Conduct sales, leasing, and marketing activities within the condominium;
- Be exempt from making working capital contributions that arise out of or in connection with the bulk buyer's acquisition of a bulk number of units; and
- Be exempt from any rights of first refusal which may be held by the association and would otherwise be applicable to subsequent transfers of title from the bulk buyer to any third-party purchaser concerning one or more units.

Section 718.704, F.S., provides for the assignment and assumption of developer rights, to provide that a bulk assignee assumes all the duties and responsibilities of the developer. The bulk assignee is not liable for:

- The warranties of a developer under s. 718.203(1) or 718.618, F.S.; however, the bulk assignee would assume the warranties for design, construction, development, or repair work performed by or on behalf of the bulk assignee;
- The obligation to fund converter reserves for a unit not acquired by the bulk assignee;
- The obligation to provide converter warranties on any portion of the condominium property except as provided in a contract for sale between the assignee and a new purchaser;
- Provide the condominium association with a cumulative audit of the association's finances from the date of formation, except for the period that the bulk assignee elects a majority of the board; and
- The developer's failure to fund previous assessments or resolve budget deficits, but the bulk assignee must provide an audit for the period in which the assignee elects a majority of the board members, except when the bulk assignee receives the assignment of rights of the developer to guarantee assessment levels and fund budget deficits.

Section 718.705, F.S., provides for the transfer of control of the condominium board of administration to the unit owners other than the developer, if a bulk owner is entitled to elect a majority of the board members. The condominium parcel acquired by the bulk assignee is not

deemed to be conveyed to a buyer, or to be owned by anyone other than the developer, until the parcel is conveyed to a buyer who is not the bulk assignee.

Section 718.706, F.S., provides for the sale or lease of units by a bulk assignee or a bulk buyer. It provides that, prior to the sale or lease of units for a term of more than five years, a bulk assignee or a bulk buyer must file the specified documents with the division and provide the documents to a prospective purchaser or tenant.

Section 718.707, F.S., provides 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 were acquired prior to July 1, 2012. The date of acquisition is based on the date that the deed or other instrument of conveyance is recorded.

Cooperative Associations

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

> 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, an 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]

Cooperatives - Sanctioning Unit Owners

Section 719.303(3), F.S., permits cooperative associations to levy reasonable fines against unit owners for failure to comply with the cooperative documents or rules of the association. Fines may not exceed $100 per violation and may not become a lien against the unit. The fine may be levied on the basis of each day of a continuing violation. A fine may not exceed $1,000 in the aggregate.

Homeowners' Associations – Background

Florida law provides statutory recognition to corporations that operate residential communities in this state, provides procedures for operating homeowners' associations, and protects 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

[21] *See* ss. 719.106(1)(g) and 719.107, F.S.
[22] *See* s. 720.302(1), F.S.

owners or their agents, or a combination thereof, 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. 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 – Inspection and Copying of Records (Section 22)

Section 720.303(5), F.S., provides for the inspection and copying of homeowners' association records. Generally, the official records of the association must be open to the association's membership for inspection and available for photocopying within 10 days of a written request for access. Section 720.303(5)(a), F.S., creates a rebuttable presumption that the association has willfully failed to comply with a member's written request to inspect its records if the association does not provide the member access to the records within ten days of the request. The member's request must be submitted by certified mail, return receipt requested.

Section 720.303(5)(c), F.S., authorizes the association to charge the member for the actual cost of copying records, to provide that the actual cost of copying records includes reasonable costs involving personnel fees and charges at an hourly rate for employee time to cover the administrative costs to the association. The copies may be made by the management company.

Section 720.303(5)(c)1., F.S., lists the official documents of the homeowners' association that are not accessible to members. These include:

- Records protected by attorney-client privilege;
- Information in connection with the approval of the lease, sale, or other transfer of a unit;
- Personnel records, payroll records of the association's employees. but not limited to disciplinary, payroll, health, and insurance records;
- Medical records of parcel owners or community residents;
- Social security numbers, driver's license numbers, credit card numbers, electronic mailing addresses, telephone numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address, and property address;

[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.

- Any electronic security measure that is used by the association to safeguard data, including passwords; and
- The software and operating system used by the association which allows the manipulation of data, even if the owner owns a copy of the same software used by the association. The data is part of the official records of the association.

Regarding records that are protected by the attorney-client privilege and that was prepared exclusively for civil or criminal litigation, s. 720.303(5)(c)1., F.S., provides that the protection lasts until the conclusion of the litigation or administrative proceedings.

This information is consistent with s. 718.111(12)(c), F.S., which exempts the same information from the open records requirements condominium associations.

Homeowners' Associations – Sanctioning Parcel Owners

Section 720.305(2), F.S., authorizes homeowners' associations to suspend a unit owner's use rights until the unit owner's monetary obligation to the association is paid if the unit owner is delinquent for more than 90 days. The suspension of the parcel owner's right to use association property does not apply to common areas that provide access or utility services to the parcel. Any fine or suspension must be imposed at a properly noticed board meeting. The owner, and, if applicable, the owner's occupant, licensee, or invitee must be notified of the fine or suspension by mail or hand delivery.

The association may levy a fine of up to $100 per violation. The fine may be levied for each day of the violation and may not exceed $1,000 in the aggregate. A fine of less than $1,000 may not become a lien against a parcel. If the association imposes a fine or suspension, the association must provide written notice by mail or hand delivery to the parcel owner or, in some instances, any tenant, licensee, or invitee of the parcel owner.

III. Effect of Proposed Changes:

Condominiums – Official Records (Section 1)

The bill amends s. 718.111(12)(a)7., F.S., by adding unit owner facsimile numbers as a record to be maintained by the association. It replaces the term "electronic mail addresses" with the term "email address." The bill clarifies that the email and facsimile addresses of unit owners may not be accessible to unit owners if the unit owner has consented to receive notice via electronic transmission in accordance with subparagraph (12)(c)5 of s. 718.111, F.S. This provision is unclear. The cross reference in does not relate to consent to receive notice via electronic transmission.

The bill amends s. 718.111(12)(a)11., F.S, to clarify that the prohibited defacement or destruction of records relates to the accounting records that are required to be maintained for 7 years. It deletes redundant language relating to the records that are required to be created or maintained by ch. 718, F.S., during the period such records are required to be maintained.

The bill deletes the prohibition in s. 718.111(12)(c), F.S., relating to the defacement or destruction of accounting or official records, including the provision for a civil penalty as provided in s. 718.501(1)(d)6., F.S. The deleted provision is substantially similar to an existing prohibition in s. 718.111(12)(a)11., F.S., which is not deleted by this bill.

The bill amends s. 718.111(12)(c)1., F.S., which relate to access to records protected by the lawyer-client privilege, to apply the access restriction to records prepared in anticipation of litigation or proceedings. It deletes the current reference to the litigation being imminent civil or criminal litigation or an imminent adversarial proceeding.

The bill amends s. 718.111(12)(c)3., which relates to personnel records that are not accessible to unit owners, to permit unit owners to have access to written employment agreements or budgetary or financial records that indicate the compensation paid to an association employee.

The bill amends s. 718.111(12)(c)5., which relates to information about unit owners that is not accessible to other unit owners, to include facsimile numbers in the list of information that is not accessible to unit owners. It also provides that any address, e-mail address, or facsimile number provided to the association to fulfill its notice requirements is not accessible.

Section 718.111(12)(c)5., F.S., is amended to prohibit access to information about unit owners that is provided to fulfill the association's notice requirements, including any address, e-mail address, or facsimile number. The bill also amends s. 718.111(12)(c)5., F.S., to permit unit owners to consent to the disclosure of protected information. It provides that the association is not liable for the disclosure of protected information if it is included in other official records of the association which are not protected. This provision is consistent with the provision in s. 718.111(12)(a)7., F.S., that provides that the association is not liable for the erroneous disclosure of e-mail addresses and facsimile numbers.

Condominiums – Bylaws (Section 2)

The bill creates s. 718.112(2)(c)3.b., F.S., to permit condominium association to hold closed meetings to discuss personnel matters.

The bill amends s. 718.112(2)(d)4.a., F.S., to revise the post-election certification requirements for newly elected or appointed board member. The bill provides that the newly elected or appointed board member may, in lieu of the written certification, submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium provider within 1 year before the election. It also provides that a certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

Condominiums – Association Powers (Section 3)

The bill amends s. 718.114, F.S., to require a vote of, or written consent by, a majority of the total voting interests of an association in order to enter into agreements and to acquire leaseholds, memberships and other possessory or use interests in lands or facilities rather than allowing the declaration to authorize the approval.

Condominiums – Assessments (Section 4)

The bill amends s. 718.116(3), F.S., to permit condominium associations to charge for any reasonable expenses for collection services incurred relating to a unit owner's delinquent account. It clarifies that any payment received on a delinquent account must be applied in the following order: first to any interest, then to any administrative late fee, then to any expenses for collection services, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment.

The bill amends s. 718.111.116(5), F.S., to provide that a claim of lien secures any reasonable expenses for collection services relating to the delinquent account which the association incurred before it filed the claim.

The bill amends s. 718.116(11), F.S., to provide that a tenant may be required by the association to pay all unpaid rent due to the association. The tenant must continue to make payments to the association until all of the unit owner's monetary obligations to the association have been paid in full. Current law only authorizes the association to demand payment from the tenant for any future monetary obligations of the unit owner. The bill requires that the tenant's payment must be applied to the unit owner's most delinquent monetary obligation.

Comparable provisions for the collecting a unit owner's unpaid monetary obligations from their tenant are provided in the bill for cooperative in s. 719.108(10), F.S., and for homeowners' association in s. 720.3085(8), F.S.

Condominium - Termination of Condominium (Section 5)

The bill amends s. 718.117(3), F.S., to provide that a condominium may be terminated for all or a portion of the condominium property. Current law does not reference the termination of a portion of the condominium property.

The bill amends s. 718.117(4), F.S., to provide that a plan for partial termination is not an amendment subject to s. 718.110(4), which requires that all unit owners must approve any amendment that changes the configuration or size of any unit in any material fashion, materially alters or modifies the appurtenances to the unit, or change the proportion or percentage by which the unit owner shares the common expenses. The bill would permit the partial termination of a condominium with a less than unanimous approval of the owners.

The bill also amends s. 718.117(4), F.S., to provide that a partial termination is permissible if the percentage of ownership share in the common elements remains proportional to the percentage of common element ownership before the partial termination.

The bill amends s. 718.117(11), F.S., to provide that the plan for partial termination must:

- Identify the units that survive the partial termination; and
- Provide that the units that survive the termination remain in the condominium form of ownership.

The bill clarifies that, in a partial termination, title to the surviving units and common elements remain vested in the ownership shown in the public records and do not vest in the termination trustee.

The bill amends s. 718.117(12)(a), F.S., which relates to the allocation of proceeds from the sale of condominium property after a termination, to provide that, in a partial termination, the aggregate values of the units and common elements that are being terminated must be separately determined. It also requires that the plan of termination must specify the allocation of the proceeds of sale for the units and common elements.

The bill amends s. 718.117(12)(d), F.S., to provide that liens on terminated units transfer to the sale of the portion being terminated attributable to each unit.

Regarding the association, the bill amends s. 718.117(18), F.S., to provide that the association may continue as the condominium association for the property that remains after the partial termination.

The bill amends s. 718.117(19), F.S., to provide that a partial termination does not bar the termination trustee from filing a declaration of condominium for any portion of the property that it terminated under the plan for partial termination. The termination plan may also provide for the simultaneous filing of an amendment to the declaration of condominium or an amended and restated declaration of condominium for any remaining portion of the condominium property.

Condominiums – Obligations of Owners and Occupants (Section 6)

The bill amends subsection (3) of s. 718.303, F.S., by deleting the provision authorizing the suspension of rights when a unit owner is more than 90 days delinquent in the payment of a monetary obligation. The bill adds the deleted provision from subsection (3) of s. 718.303, F.S., to a new subsection (4).

The bill also amends subsections (3) and (4) of s. 718.303, F.S., to provide that a 14-day notice and a hearing are not required when the association suspends use rights when an owner is more than 90 days delinquent in the payment of any monetary obligation. A hearing is still required before a fine may be imposed and a board meeting is required before suspension of use rights.

The bill amends subsection (5) of s. 718.303, F.S., which relates to suspending the voting rights of a member due to nonpayment of a monetary obligation, to provide that the notice and hearing requirement for fines in subsection (3) do not apply to suspensions under this subsection.[28]

The bill creates subsection (6) of s. 718.303, F.S., to provide that all suspensions of use rights under subsection (4) and voting rights under subsection (5) must be approved at a properly noticed board meeting. Once approved, the unit owner and, if applicable, the unit's occupant, licensee, or invitee, must be given notice by mail or hand delivery.

[28] Section 718.303(3), F.S., requires reasonable notice and opportunity for a hearing before a committee of unit owners before a cooperative association my levy a fine. The fine cannot be levied if the committee does not agree with the fine.

The bill deletes the notice and hearing provisions in the current subsection (4) of s. 718.303, F.S, which relate to fines and suspension of use rights. The deleted provisions are redundant of the notice and hearing provisions in subsections (3), (4), (5), and (6) of s. 718.303, F.S.

The suspension provisions in s. 718.303, F.S., are substantially similar to the suspension provisions in the bill for cooperatives in s. 719.303, F.S., and for homeowners' associations in s. 720.305, F.S.

Distressed Condominium Relief Act - Definitions (Section 7)

The bill amends s. 718.703, F.S., to redefine the terms "bulk assignee" and "bulk buyer." The bill further distinguishes the differences between the two classifications.

The bill amends the definition of "bulk assignee" in s. 718.703(1), F.S., to provide that a bulk assignee acquires seven condominium units in a single condominium. Current law does not specify whether the seven condominium units are in a single condominium. It further revises the definition for a bulk buyer to include a final judgment or certificate of title issued at a foreclosure sale within the list of means by which a bulk buyer receives the assignment of any of the developer rights.

The bill also amends s. 718.703, F.S., to clarify the status of a mortgagee or its assignee as a bulk assignee or developer. A mortgagee or its assignee does not become a developer if it acquires condominium units and receives an assignment of some or all of a developer rights. However, the mortgagee or its assignee would be deemed a developer if exercises any of the developer rights other than those described in subsection (2) of s. 718.703, F.S., bulk buyers.

Distressed Condominium Relief Act – Developer Rights (Section 8)

The bill amends s. 718.704, F.S., to revise the provisions relating to the assignment of developer rights by a "bulk assignee" and "bulk buyer." It provides that the bulk assignee assumes the obligations of a developer when it acquires title to the units. This clarifies that the assumption of developer obligations is prospective.

The bill amends subsections (1) and (2) of s. 718.704(1), F.S., to provide that the bulk assignee is liable for the developer's warrantees expressly provided in the prospectus, offering circular, or contract for purchase and sale.

The bill amends s. 718.704(5), F.S., to provide that the assignment of developer rights may be made by a mortgagee or assignee who has acquired title to the units and received an assignment of rights. It also clarifies that the previous bulk assignee may assign developer rights if the developer rights were held by the predecessor in title to the bulk assignee.

The bill also clarifies that the instrument that assigns the developer the assignment of rights must be recorded in the public records. It further provides that any subsequent purported bulk assignee may still qualify as a bulk buyer.

Distressed Condominium Relief Act – Transfer of Control (Section 9)

The bill amends s. 718.705, F.S., to clarify the provisions relating to turnover of control of the condominium from a "bulk assignee" to the unit owners. It clarifies that a condominium parcel acquired by the bulk assignee is not deemed to be conveyed to a purchaser, or owned by an owner other than the developer, until the condominium parcel is conveyed to an owner who is not a bulk assignee.

The bill also provides that the bulk assignee is not required to deliver items and documents that he or she does not possess if some of the items were or should have been in existence before the bulk assignee acquired the units.

Distressed Condominium Relief Act – Disclosures (Section 10)

The bill amends s. 718.706, F.S., to revise the provisions relating to bulk assignee and bulk buyers offering units for sale or lease. The bill amends ss. 718.706(1) and (2), F.S., to clarify that the documents must be filed, provided or disclosed before offering more than seven units in a single condominium for sale or lease for a term exceeding five years.

The bill also amends s. 718.706(1), F.S., to revises the required disclosure that bulk assignees and bulk buyers must include in purchase contracts. In current law the disclosure give notice when the financial information report required under s. 718.111(13), is not available. The bill revises the disclosure to clarify that it relates to all or a portion of the report. It also revises the disclosure to clarify that the financial information report relates to the period before the seller's acquisition of the unit instead of the time period immediately proceeding the fiscal year of the association.

The bill provides that the disclosure requirements in s. 718.706(2), F.S., applies to tenants under a lease for a term exceeding 5 years.

The bill amends s. 718.706(5), F.S., to exempt bulk assignees and bulk buyers from the filing and disclosure requirements in subsection (1) and (2) of s. 718.706, F.S., if all of the units they own are offered and conveyed to a single purchaser in a single sale. The bill deletes the current provisions in this subsection that requires the bulk buyer to comply with the requirements in the declaration for the transfer of a unit. It also deletes the provision that the bulk buyer is not entitled to any exemptions afforded a developer or successor developer under ch. 718, F.S., regarding the transfer of a unit.

Distressed Condominium Relief Act – Time Limits for Classification (Section 11)

The bill amends s. 718.707, F.S., to provide that a person acquiring condominium parcels may not be classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, 2012. This provision appears to create a two-year window for classification as a bulk assignee or bulk buyer.

Cooperatives – Rents and Assessments (Section 12)

The bill amends s. 719.108(10), F.S., to provide that a tenant may be required by the association to pay all unpaid rent due to the association. The tenant must continue to make payments to the association until all of the unit owner's monetary obligations to the association have been paid in full. Current law only authorizes the association to demand payment from the tenant for any future monetary obligations of the unit owner. The bill requires that the tenant's payment must be applied to the unit owner's most delinquent monetary obligation.

Comparable provisions for collecting a unit owner' unpaid monetary obligations from their tenant are provided in the bill for condominium associations in s. 718.116(11), F.S., and for homeowners' association in s. 720.3085(8), F.S.

Cooperatives – Obligations of Owners (Section 13)

The bill amends s. 719.303(1), F.S., which sets forth the provisions for fines by cooperative associations, to delete the exemption for unoccupied units.

The bill creates s. 719.303(4), F.S., to authorize cooperative associations to suspend a unit owner's use rights if the unit owner is delinquent for more than 90 days in the payment of a monetary obligation to the association. The suspension may be until the monetary obligation is paid. The suspension may be directed to the right of a unit owner or a unit's occupant, licensee, or invitee, to use common elements, common facilities, or any other association property. The association cannot suspend the right to use limited common elements intended to be used only by that unit, common elements that must be used to access the unit, utility services provided to the unit, parking spaces, or elevators. For the suspension of use rights, the notice and hearing requirements in s. 719.303(3), F.S., do not apply.[29]

The bill creates s. 719.303(5), F.S., to authorize cooperative associations to suspend the voting rights of members who are delinquent for more than 90 days in the payment of a monetary obligation to the association. The suspension would end when all due or unpaid monetary obligations are paid. For the suspension of voting rights, the notice and hearing requirements in s. 719.303(3), F.S., also do not apply.

The bill creates s. 719.303(6), F.S., to provide that all suspensions of use rights under subsection (4) and voting rights under subsection (5) must be approved at a properly noticed board meeting. Once approved, the unit owner and, if applicable, the unit's occupant, licensee, or invitee, must be given notice by mail or hand delivery.

The suspension provisions in s. 719.303, F.S., are substantially similar to the suspension provisions in the bill for condominiums in s. 718.303, F.S., and for homeowners' associations in s. 720.305, F.S.

[29] Section 719.303(3), F.S., requires reasonable notice and opportunity for a hearing before a committee of unit owners before a cooperative association may levy a fine. The fine cannot be levied if the committee does not agree with the fine.

Homeowners' Associations - Official Records (Section 14)

The bill revises the provisions related to access to the official records of a homeowners' association. It amends s. 720.303(5)(c)1., F.S., which relate to access to records protected by the lawyer-client privilege, to apply the access restriction to records prepared in anticipation of litigation or proceedings. It deletes the current reference to the litigation being imminent civil or criminal litigation or an imminent adversarial proceeding.

The bill amends s. 720.303(5)(c)3., F.S., which relates to personnel records that are not accessible to unit owners, to permit unit owners to have access to written employment agreements or budgetary or financial records that indicate the compensation paid to an association employee.

The bill amends s. 720.303(5)(c)5., F.S., by adding unit owner facsimile numbers as a record to be maintained by the association. It replaces the term "electronic mail addresses" with the term "email address."

Homeowners' Associations – Obligations of Members (Section 15)

The bill revises the suspension or use and voting rights provisions is s. 720.305, F.S.

The bill creates s. 720.305(2), F.S., by deleting the provision authorizing the suspension of rights when a unit owner is more than 90 days delinquent in the payment of a monetary obligation. The bill moves the deleted provision to s. 718.305(3), F.S. Regarding the suspension of use rights when a member is more than 90 days delinquent in the payment of a monetary obligation, the s. 720.305(3), F.S., provides that the notice and hearing requirements of subsection (2) of s. 720.305, F.S., do not apply.[30]

The bill creates s. 720.305(2)(a), F.S., to authorize the homeowners' association to suspend, for a reasonable period of time, the rights 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. The bill requires that the association's governing documents must provide for this authority before it can exercise its suspension authority.

The bill amends s. 720.305(2)(a), F.S., to delete the provision that the suspension of use rights do not apply to the portion of the common areas that must be used to access the parcel or its utility service. The bill moves this provision to the new subsection (3) of s. 720.305, F.S.

The bill amends s. 718.305(4), F.S., which relates to suspending the voting rights of a member due to nonpayment of a monetary obligation, to provide that the notice and hearing requirement for fines in subsection (3) do not apply to suspensions under this subsection.

[30] Section 719.303(2), F.S., requires reasonable notice and opportunity for a hearing before a committee of unit owners before a cooperative association my levy a fine. The fine cannot be levied if the committee does not agree with the fine.

The bill creates s. 718.303(5), F.S., to provide that all suspensions of use rights under subsection (3) and voting rights under subsection (4) must be approved at a properly noticed board meeting. Once approved, the unit owner and, if applicable, the unit's occupant, licensee, or invitee, must be given notice by mail or hand delivery.

The suspension provisions in s. 720.305, F.S., are substantially similar to the suspension provisions in the bill for condominiums in s. 718.303, F.S., and for cooperative associations in s. 719.303, F.S.,

Homeowners' Associations – Assessments (Section 16)

The bill amends s. 720.3085(1)(a), F.S., to provide that a claim of lien secures any reasonable expenses for collection services relating to the delinquent account which the association incurred before it filed the claim.

The bill amends s. 720.3085(8), F.S., to provide that a tenant may be required by the association to pay all unpaid rent due to the association. The tenant must continue to make payments to the association until all of the unit owner's monetary obligations to the association have been paid in full. Current law only authorizes the association to demand payment from the tenant for any future monetary obligations of the unit owner. The bill requires that the tenant's payment must be applied to the unit owner's most delinquent monetary obligation.

Comparable provisions for the collecting a homeowner's unpaid monetary obligations from their tenant are provided in the bill for condominium association in s. 718.111.116(5), F.S., and for cooperatives in s. 719.108(10), F.S.

Homeowners' Associations – Bulk Service Contracts (Section 17)

The bill amends s. 720.309, F.S. to authorize homeowners associations to contract for communications services, as defined in s. 202.11, F.S., information services, or Internet services on a bulk rate basis. The association's governing documents must authorize such contracts before the authority can be exercised. However, if the governing documents do not authorize such contract, the board may enter into the contract, and the cost of the service will be an operating expense to be allocated on a per-unit basis rather than a percentage basis. The costs will be assessed on a per-unit basis even if the declaration provides for other than an equal sharing of operating expenses.

The bill also provides that any contract entered into before July 1, 2011, in which the cost of the service is not equally divided among all homeowners, may be changed to allocate the cost equally among all parcels. The vote to change the allocation must be by the vote of a majority of the voting interests present at a regular or special meeting of the association.

The bill creates s. 720.309(2)(a), F.S., to permit the homeowners to terminate a bulk rate contract entered into by the board of directors. The vote to terminate the contract must be by the majority of the voting interests present at the next regular or special meeting of the association, whichever occurs first. The contract would be deemed ratified if not terminated at that meeting.

The bill creates s. 720.309(2)(b), F.S., to permit the following specified homeowners to elect not to receive bulk services, or be required to pay for the costs allocated to their property:

- A hearing-impaired or legally blind parcel owner who does not occupy the parcel with a non-hearing-impaired or sighted person; or
- Any parcel owner receiving Social Security supplemental income.

The expense of the contract must be shared among all the participating parcel owners, and the payment of the expense may be enforced using the provision in s. 720.3085, F.S., which relate to the enforcement of assessment payments.

The cost will be allocated to the homeowner whether or not the homeowner buys the contracted communication service or has contracted with another communication service provider. Payments can be enforced by the association by securing a lien on the property under s. 720.3085, F.S. The homeowner's property may be foreclosed upon by the association for nonpayment of the assessment for the communication service. Communication services under s. 202.11(2), F.S., include:

> means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added.

It does not include, among other items, Internet access service, electronic mail service, electronic bulletin board service, or similar online computer services.

The bill creates s. 720.309(2)(c), F.S., to provide that any parcel owner or tenant must be afforded access to any available franchised or licensed cable television service paid directly to the service provider by the resident. The resident or the cable or video service provider cannot be required to pay anything of value in order to obtain or provide such service, except those charges normally paid for like services by other residents of single-family homes not located in the community but which are within the same franchised or licensed area, and except for installation charges. Such charges may be agreed to between the resident and the provider.

Effective Date (Section 18)

The bill provides an effective date of July 1, 2011.

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:

Tenants of condominium and cooperative unit owners and homeowners' association parcel owners may be required to make payments to the association if the owners owe any monetary payments to the association. The tenants would be entitled to deduct the amount of any payments they make to the association from their rent payment.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

The bill amends s. 718.111(12)(a)7., F.S., to provide that the email and facsimile addresses of unit owners may not be accessible to unit owners if the unit owner has consented to receive notice via electronic transmission in accordance with subparagraph (12)(c)5 of s. 718.111, F.S. This provision is unclear. The cross reference to subparagraph (12)(c)5 of s. 718.111, F.S., does not relate to consent to receive notice via electronic transmission.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Paragraphs (a) and (c) of subsection (12) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

(a) From the inception of the association, the association shall maintain each of the following items, if applicable, which constitute ~~shall constitute~~ the official records of the association:

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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 ~~of~~ each amendment to each declaration.

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

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

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

6. A book or books that ~~which~~ contain the minutes of all meetings of the association, ~~of~~ the board of administration, and the ~~of~~ 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 ~~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 facsimile ~~telephone~~ numbers may not be accessible to unit owners ~~must be removed from association records~~ if consent to receive notice by electronic transmission is not provided in accordance with subparagraph (c)5 ~~revoked~~. However, the association is not liable for an erroneous disclosure of the electronic mail address or facsimile ~~the~~ 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 ~~which~~ the association operates. All accounting records must ~~shall~~ be maintained for at least 7 years. Any person who knowingly or intentionally defaces or destroys such ~~accounting~~ records ~~required to be created and maintained by this chapter during the period for which such records are required to be maintained~~, 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 ~~upon~~ 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 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 ~~provided~~ in s. 718.301(4)(p).

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association’s willful failure to comply.

Minimum damages are ~~shall be~~ $50 per calendar day for up to 10 days, beginning ~~the calculation to begin~~ on the 11th working day after receipt of the written request. The failure to permit inspection ~~of the association records as provided herein~~ entitles any person prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records. ~~Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d).~~ The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described ~~provided for~~ in s. 718.504 and year-end financial information required under ~~in~~ this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. Notwithstanding ~~the provisions of~~ this paragraph, the following records are not accessible to unit owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502; and any record protected by the work-product privilege, including a ~~any~~ record prepared by an

association attorney or prepared at the attorney's express direction, ~~;~~ which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such ~~imminent civil or criminal~~ litigation or ~~imminent adversarial administrative~~ proceedings until the conclusion of the litigation or ~~adversarial administrative~~ proceedings.

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

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

4. Medical records of unit owners.

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

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

6. ~~Any~~ Electronic security measures ~~measure~~ that are ~~is~~ used by the association to safeguard data, including passwords.

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

Section 2. Paragraphs (b), (c), and (d) 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:

(b) *Quorum; voting requirements; proxies.*—

1. Unless a lower number is provided in the bylaws, the percentage of voting interests required to constitute a quorum at a meeting of the members is ~~shall be~~ a majority of the voting interests. Unless otherwise provided in this chapter or in the declaration, articles of incorporation, or bylaws, and except as provided in subparagraph (d)4. ~~(d)3.~~, decisions shall be made by ~~owners of~~ a majority of the voting interests represented at a meeting at which a quorum is present.


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2. Except as specifically otherwise provided herein, ~~after January 1, 1992,~~ unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. A ~~No~~ voting interest or consent right allocated to a unit owned by the association may not ~~shall~~ be exercised or considered for any purpose, whether for a quorum, an election, or otherwise. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (f)2.; for votes taken to waive the financial reporting requirements of s. 718.111(13); for votes taken to amend the declaration pursuant to s. 718.110; for votes taken to amend the articles of incorporation or bylaws pursuant to this section; and for any other matter for which this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), a ~~after January 1, 1992, no~~ proxy, limited or general, may not ~~shall~~ be used in the election of board members. General proxies may be used for other matters for which limited proxies are not required, and may ~~also~~ be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding ~~the provisions of~~ this subparagraph, unit owners may vote in person at unit owner meetings. This subparagraph does not ~~Nothing contained herein shall~~ limit the use of general proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare condominium association.

3. Any proxy given is ~~shall be~~ effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. A ~~In no event shall any~~ proxy is not


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~~be~~ valid ~~for a period~~ longer than 90 days after the date of the first meeting for which it was given. Every proxy is revocable at any time at the pleasure of the unit owner executing it.

4. A member of the board of administration or a committee may submit in writing his or her agreement or disagreement with any action taken at a meeting that the member did not attend. This agreement or disagreement may not be used as a vote for or against the action taken or to create ~~and may not be used for the purposes of creating~~ a quorum.

5. If ~~When~~ any of the board or committee members meet by telephone conference, those board or committee members ~~attending by telephone conference~~ may be counted toward obtaining a quorum and may vote by telephone. A telephone speaker must be used so that the conversation of those ~~board or committee~~ members ~~attending by telephone~~ may be heard by the board or committee members attending in person as well as by any unit owners present at a meeting.

(c) *Board of administration meetings.*—Meetings of the board of administration at which a quorum of the members is present are ~~shall be~~ open to all unit owners. A ~~Any~~ unit owner may tape record or videotape the meetings ~~of the board of administration~~. The right to attend such meetings includes the right to speak at such meetings with reference to all designated agenda items. The division shall adopt reasonable rules governing the tape recording and videotaping of the meeting. The association may adopt written reasonable rules governing the frequency, duration, and manner of unit owner statements.

1. Adequate notice of all board meetings, which must ~~notice shall~~ specifically identify all ~~incorporate an identification of~~

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agenda items, must ~~shall~~ be posted conspicuously on the condominium property at least 48 continuous hours before ~~preceding~~ the meeting except in an emergency. If 20 percent of the voting interests petition the board to address an item of business, the board ~~shall~~ at its next regular board meeting or at a special meeting of the board, but not later than 60 days after the receipt of the petition, shall place the item on the agenda. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the board members ~~of the board~~. Such emergency action must ~~shall~~ be noticed and ratified at the next regular board 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 must ~~shall~~ be mailed, delivered, or electronically transmitted to the unit owners and posted conspicuously on the condominium property at least ~~not less than~~ 14 days before ~~prior to~~ the meeting. Evidence of compliance with this 14-day notice requirement must ~~shall~~ be made by an affidavit executed by the person providing the notice and filed with ~~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 condominium ~~property~~ or association property where ~~upon which~~ all notices of board meetings are to ~~shall~~ be posted. If there is no condominium property or association property where ~~upon which~~ notices can be posted, notices ~~of board meetings~~ shall be mailed, delivered, or electronically transmitted at least 14 days before the meeting to the owner of each unit. In lieu of or in addition to the physical posting of the notice ~~of any meeting of the board of~~

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~~administration~~ on the condominium property, the association may, by reasonable rule, adopt a procedure for conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice ~~posted~~ physically posted on ~~the~~ condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If ~~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 or special assessments against unit owners are to be considered for any reason must ~~shall~~ 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 ~~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.

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


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a. Meetings between the board or a committee and the association's attorney, with respect to proposed or pending litigation, if ~~when~~ 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 ~~However,~~ if the number of vacancies equals or exceeds the number of candidates~~, an election is not required~~. 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 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 ~~of the board~~ expire at the annual meeting, and such ~~board~~ members may stand for reelection unless prohibited ~~otherwise permitted~~ by the bylaws. If the bylaws permit staggered terms of no more than 2 years and


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upon approval of a majority of the total voting interests, the association board members may serve 2-year staggered terms. If the number of board members whose terms expire at the annual meeting equals or ~~have expired~~ 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 ~~eligible members showing interest in or demonstrating an intention to run for the vacant positions, each board member whose term has expired is eligible for reappointment to the board of administration and need not stand for reelection~~. In a condominium association of more than 10 units or in a 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. Any unit owner desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to serve on the board of directors at the time of the deadline for submitting a notice of intent to run, and continuously thereafter, in order to have his or her name listed as a proper candidate on the ballot or to serve on the board ~~3.a~~. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any fee, fine, or special or regular assessment as provided in paragraph (n), 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 who has been convicted of any offense in another jurisdiction which ~~that~~ 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 ~~on which~~ 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 ~~of the board~~ is ineligible for board membership due to having been convicted of a felony.

3.~~2.~~ The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice~~, which~~ must include an agenda, must ~~shall~~ be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days before ~~preceding~~ 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 ~~upon which~~ all notices of unit owner meetings shall be posted. This requirement does not apply ~~However,~~ if there is no condominium property or association property for posting ~~upon which~~ notices ~~can be posted, this requirement does not apply~~. 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,


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if broadcast notice is used ~~in lieu of a notice posted physically on the condominium property~~, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. 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 ~~shall~~ provide notice~~,~~ ~~for meetings and all other purposes,~~ to the ~~that one~~ address that ~~which~~ the developer ~~initially~~ identifies for that purpose and thereafter as one or more of the owners of the unit ~~shall~~ 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 ~~shall~~ 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.~~3.~~ The members of the board 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.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, ~~whether~~ 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. Any 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. ~~2.~~, 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


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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 ~~of members of the board~~. A unit owner may not permit any other person to vote his or her ballot, and any ballots improperly cast are invalid. A~~,~~ ~~provided any~~ 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. ~~This sub-subparagraph does not apply to timeshare condominium associations.~~ 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, 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 ~~satisfactory completion of~~ 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 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. Failure to have such written certification or educational certificate on file does not affect the validity of any board action. 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.

5.~~4.~~ 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 ~~shall~~ 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 ~~statute~~ that provides for such action.

6.~~5.~~ Unit owners may waive notice of specific meetings if


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allowed by the applicable bylaws or declaration or any law ~~statute~~. 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.~~6.~~ Unit owners ~~shall~~ 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.~~7.~~ A ~~Any~~ unit owner may tape record or videotape a meeting of the unit owners subject to reasonable rules adopted by the division.

9.~~8.~~ 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 ~~the requirements of~~ sub-subparagraph 4.a. ~~3.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


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by the division.

Notwithstanding subparagraph (b)2. and sub-subparagraph 4.a. ~~(d)3.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 ~~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 3. Section 718.114, Florida Statutes, is amended to read:

718.114 Association powers.—An association may ~~has the power to~~ enter into agreements~~,~~ to acquire leaseholds, memberships, and other possessory or use interests in lands or facilities such as country clubs, golf courses, marinas, and other recreational facilities~~. It has this power~~ whether or not the lands or facilities are contiguous to the lands of the condominium, if such lands and facilities ~~they~~ are intended to provide enjoyment, recreation, or other use or benefit to the unit owners. All of these leaseholds, memberships, and other possessory or use interests existing or created at the time of recording the declaration must be stated and fully described in the declaration. Subsequent to the recording of the declaration, agreements acquiring these leaseholds, memberships, or other possessory or use interests which are not entered into within 12 months following the recording of the declaration are ~~shall be considered~~ a material alteration or substantial addition to the real property that is association property, and the association

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may not acquire or enter into such agreements ~~acquiring these leaseholds, memberships, or other possessory or use interests~~ except upon a vote of, or written consent by, a majority of the total voting interests or as authorized by the declaration as provided in s. 718.113. The declaration may provide that the rental, membership fees, operations, replacements, and other expenses are common expenses and may impose covenants and restrictions concerning their use and may contain other provisions not inconsistent with this chapter. A condominium association may conduct bingo games as provided in s. 849.0931.

Section 4. Subsection (3), paragraph (b) of subsection (5), and subsection (11) of section 718.116, Florida Statutes, are amended to read:

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

(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 ~~This~~ 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. ~~Also,~~ 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 installment of the assessment for~~ each delinquent installment for which the payment is late. The association may also charge for reasonable expenses incurred by the association for collection services that are reasonably related to the collection of the delinquent account rendered by a community association manager or community association management firm, as

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specified in a written agreement with such community association manager or firm, and payable to the community association manager or firm as a liquidated sum. 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 expenses for collection services, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment. The foregoing is applicable notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to chapter 687 or s. 718.303(4) ~~718.303(3)~~.

(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 ~~longer than~~ 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 well as interest and all reasonable costs and attorney's fees incurred by the association incident to the collection process. The claim of lien also secures reasonable

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expenses for collection services incurred before filing a claim as provided in subsection (3). Upon payment in full, the person making the payment is entitled to a satisfaction of the lien.

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; and, 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 ~~that~~ 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.

(11) If the unit is occupied by a tenant and the unit owner is delinquent in paying any monetary obligation due to the association, the association may make a written demand that the tenant pay rent to the association ~~the future monetary obligations related to the condominium unit to the association~~, and continue to ~~the tenant must~~ make such payments until all monetary obligations of the unit owner related to the unit have been paid in full to the association ~~payment~~. ~~The demand is continuing in nature and, upon demand,~~ The tenant must pay rent ~~the monetary obligations~~ to the association until the association releases the tenant or the tenant discontinues

tenancy in the unit. The association must mail written notice to the unit owner of the association's demand that the tenant make payments to the association. The association shall, upon request, provide the tenant with written receipts for payments made. A tenant ~~who acts in good faith in response to a written demand from an association~~ is immune from any claim by ~~from~~ the unit owner related to the rent once the association has made written demand. Any payment received from a tenant must be applied to the unit owner's oldest delinquent monetary obligation.

(a) If the tenant paid ~~prepaid~~ rent to the unit owner for a given rental period before receiving the demand from the association and provides written evidence of prepaying ~~paying~~ the rent to the association within 14 days after receiving the demand, the tenant shall receive credit for the prepaid rent for the applicable period but ~~and~~ must make any subsequent rental payments to the association to be credited against the monetary obligations of the unit owner ~~to the association~~.

(b) The tenant is not liable for increases in the amount of the monetary obligations due unless the tenant was notified in writing of the increase at least 10 days before the date the rent is due. The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. The tenant's landlord shall provide the tenant a credit against rents due to the unit owner in the amount of moneys paid to the association ~~under this section~~.

(c) The association may issue notices under s. 83.56 and ~~may~~ sue for eviction under ss. 83.59-83.625 as if the association were a landlord under part II of chapter 83 if the


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tenant fails to pay a required payment to the association. However, the association is not otherwise considered a landlord under chapter 83 and specifically has no obligations ~~duties~~ under s. 83.51.

(d) The tenant does not, by virtue of payment of rent ~~monetary obligations~~ to the association, have any of the rights of a unit owner to vote in any election or to examine the books and records of the association.

(e) A court may supersede the effect of this subsection by appointing a receiver.

Section 5. Subsections (3), (4), and (11), paragraphs (a) and (d) of subsection (12), subsection (14), paragraph (a) of subsection (17), and subsections (18) and (19) 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 ~~of the property~~ 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 ~~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~~. This subsection does not apply to condominiums in which 75 percent or more of the units are timeshare units.

(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

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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.

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

(a) The plan of termination may provide that each unit owner retains the exclusive right of possession to the portion of the real estate which ~~that~~ formerly constituted the unit if~~,~~ ~~in which case~~ the plan specifies ~~must specify~~ 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.


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(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 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, 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.

(d) Liens that encumber a unit shall 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.

(14) TITLE VESTED IN TERMINATION TRUSTEE.—If termination is pursuant to a plan of termination under subsection (2) or subsection (3), ~~the unit owners' rights and~~ title to ~~as tenants in common in undivided interests in~~ the condominium property


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being terminated vests ~~vest~~ in the termination trustee when the plan is recorded or at a later date specified in the plan. The unit owners thereafter become the beneficiaries of the proceeds realized from the plan of termination as set forth in the plan. The termination trustee may deal with the condominium property being terminated or any interest therein if the plan confers on the trustee the authority to protect, conserve, manage, sell, or dispose of the condominium property. The trustee, on behalf of the unit owners, may contract for the sale of real property being terminated, but the contract is not binding on the unit owners until the plan is approved pursuant to subsection (2) or subsection (3).

(17) DISTRIBUTION.—

(a) Following termination of the condominium, the condominium property, association property, common surplus, and other assets of the association shall be held by the termination trustee pursuant to the plan of termination, as trustee for unit owners and holders of liens on the units, in their order of priority unless otherwise set forth in the plan of termination.

(18) ASSOCIATION STATUS.—The termination of a condominium does not change the corporate status of the association that operated the condominium property. The association continues to exist to conclude its affairs, prosecute and defend actions by or against it, collect and discharge obligations, dispose of and convey its property, and collect and divide its assets, but not to act except as necessary to conclude its affairs. In a partial termination, the association may continue as the condominium association for the property that remains subject to the declaration of condominium.

(19) CREATION OF ANOTHER CONDOMINIUM.—The termination or partial termination of a condominium does not bar the filing of a new declaration of condominium ~~or an amended and restated declaration of condominium~~ by the termination trustee, or the trustee's successor in interest, for the terminated property or ~~affecting~~ any portion thereof ~~of the same property~~. The partial termination of a condominium may provide for the simultaneous filing of an amendment to the declaration of condominium or an amended and restated declaration of condominium by the condominium association for any portion of the property not terminated from the condominium form of ownership.

Section 6. Subsections (3), (4), and (5) of section 718.303, Florida Statutes, are amended, and subsection (6) is added to that section, to read:

718.303 Obligations of owners and occupants; remedies.—

(3) ~~If a unit owner is delinquent for more than 90 days in paying a monetary obligation due to the association, the association may suspend the right of a unit owner or a unit's occupant, licensee, or invitee to use common elements, common facilities, or any other association property until the monetary obligation is paid. This subsection does not apply to limited common elements intended to be used only by that unit, common elements that must be used to access the unit, utility services provided to the unit, parking spaces, or elevators.~~ The association may ~~also~~ 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 ~~does~~ not become a lien against a unit. ~~A fine may not exceed $100 per~~


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~~violation. However,~~ A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing. However, the fine may not exceed $100 per violation, or $1,000 in the aggregate ~~exceed $1,000~~.

(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.

(b) A fine or suspension may not be imposed ~~levied and a suspension may not be imposed~~ unless the 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 a committee of other unit owners who are neither board members nor persons residing in a board member's household. If the committee does not agree ~~with the fine or suspension~~, the fine or suspension may not be ~~levied or~~ imposed.

(4) If a unit owner is more than 90 days delinquent in paying a 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 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.

~~(4) The notice and hearing requirements of subsection (3) do not apply to the imposition of suspensions or fines against a unit owner or a unit's occupant, licensee, or invitee because of failing to pay any amounts due the association. If such a fine or suspension is imposed, the association must levy the fine or impose a reasonable suspension at a properly noticed board meeting, and after the imposition of such fine or suspension, the association must notify the unit owner and, if applicable, the unit's occupant, licensee, or invitee by mail or hand delivery.~~

(5) An association may ~~also~~ suspend the voting rights of a member due to nonpayment of any monetary obligation due to the association which is more than 90 days delinquent. If a member's voting rights are suspended, that member's suspension may not count for or against a proposed question. 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.

(6) All suspensions imposed pursuant to subsection (4) or subsection (5) must be approved at a properly noticed board meeting. Upon approval, the association must notify the unit owner and, if applicable, the unit's occupant, licensee, or invitee by mail or hand delivery.

Section 7. Section 718.703, Florida Statutes, is amended to read:

718.703 Definitions.—As used in this part, the term:

(1) "Bulk assignee" means a person who is not a bulk buyer


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and who:

(a) Acquires more than seven condominium parcels in a single condominium as set forth in s. 718.707; and

(b) Receives an assignment of any of the developer rights, other than or in addition to those rights described in subsection (2), ~~some or all of the rights of the developer~~ as set forth in the declaration of condominium or this chapter: ~~by~~

1. By a written instrument recorded as part of or as an exhibit to the deed; ~~or as~~

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.

A mortgagee or its assignee may not be deemed a bulk assignee or a developer by reason of the acquisition of condominium units and receipt of an assignment of some or all of a developer rights unless the mortgagee or its assignee exercises any of the developer rights other than those described in subsection (2).

(2) "Bulk buyer" means a person who acquires more than seven condominium parcels in a single condominium as set forth in s. 718.707, but who does not receive an assignment of any developer rights, or receives only some or all of the following rights: ~~other than~~

(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 ~~a~~

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~~bulk number of~~ units; and

(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.

Section 8. Section 718.704, Florida Statutes, is amended to read:

718.704 Assignment and assumption of developer rights by bulk assignee; bulk buyer.—

(1) A bulk assignee is deemed to have assumed ~~assumes~~ and is liable for all duties and responsibilities of the developer under the declaration and this chapter upon its acquisition of title to units and continuously thereafter, except that it is not liable for:

(a) Warranties of the developer under s. 718.203(1) or s. 718.618, except as expressly provided by the bulk assignee in a prospectus or offering circular, or the contract for purchase and sale executed with a purchaser, or for design, construction, development, or repair work performed by or on behalf of the ~~such~~ bulk assignee.~~;~~

(b) The obligation to:

1. Fund converter reserves under s. 718.618 for a unit that was not acquired by the bulk assignee; or

2. Provide implied ~~converter~~ warranties on any portion of the condominium property except as expressly provided by the bulk assignee in a prospectus or offering circular, or the contract for purchase and sale executed with a purchaser, or for ~~and pertaining to any~~ design, construction, development, or

repair work performed by or on behalf of the bulk assignee.~~;~~

(c) The requirement to provide the association with a cumulative audit of the association's finances from the date of formation of the condominium association as required by s. 718.301(4)(c). However, the bulk assignee must provide an audit for the period during which the bulk assignee elects or appoints a majority of the members of the board of administration.~~;~~

(d) Any liability arising out of or in connection with actions taken by the board of administration or the developer-appointed directors before the bulk assignee elects or appoints a majority of the members of the board of administration.~~; and~~

(e) Any liability for or arising out of the developer's failure to fund previous assessments or to resolve budgetary deficits in relation to a developer's right to guarantee assessments, except as otherwise provided in subsection (2).

The bulk assignee is ~~also~~ responsible only for delivering documents and materials in accordance with s. 718.705(3). A bulk assignee may expressly assume some or all of the developer obligations ~~of the developer~~ described in paragraphs (a)-(e).

(2) A bulk assignee assigned the developer right ~~receiving the assignment of the rights of the developer~~ to guarantee the level of assessments and fund budgetary deficits pursuant to s. 718.116 assumes and is liable for all obligations of the developer with respect to such guarantee upon its acquisition of title to the units and continuously thereafter, including any applicable funding of reserves to the extent required by law, for as long as the guarantee remains in effect. A bulk assignee not receiving such assignment, or a bulk buyer, does not assume

and is not liable for the obligations of the developer with respect to such guarantee, but is responsible for payment of assessments due on or after acquisition of the units in the same manner as all other owners of condominium parcels or as otherwise provided in s. 718.116.

(3) A bulk buyer is liable for the duties and responsibilities of a ~~the~~ developer under the declaration and this chapter only to the extent that such ~~provided in this part, together with any other~~ duties or responsibilities are ~~of the developer~~ expressly assumed in writing by the bulk buyer.

(4) An acquirer of condominium parcels is not a bulk assignee or a bulk buyer if the transfer to such acquirer was made:

(a) Before the effective date of this part;

(b) With the intent to hinder, delay, or defraud any purchaser, unit owner, or the association;~~,~~ or ~~if the acquirer is~~

(c) By a person who would be considered an insider under s. 726.102(7).

(5) An assignment of developer rights to a bulk assignee may be made by a ~~the~~ developer, a previous bulk assignee, a mortgagee or assignee who has acquired title to the units and received an assignment of rights, or a court acting on behalf of the developer or the previous bulk assignee if such developer rights are held by the predecessor in title to the bulk assignee. At any particular time, there may not be ~~no~~ more than one bulk assignee within a condominium; however, ~~but~~ there may be more than one bulk buyer. If more than one acquirer of condominium parcels in the same condominium receives an


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assignment of developer rights in addition to those rights described in s. 718.703(2) ~~from the same person~~, the bulk assignee is the acquirer whose instrument of assignment is recorded first in the public records of the county in which the condominium is located, and any subsequent purported bulk assignee may still qualify as a bulk buyer.

Section 9. Subsections (1) and (3) of section 718.705, Florida Statutes, are amended to read:

718.705 Board of administration; transfer of control.—

(1) If at the time the bulk assignee acquires title to the units and receives an assignment of developer rights, the developer has not relinquished control of the board of administration, for purposes of determining the timing for transfer of control of the board of administration of the association ~~to unit owners other than the developer under s. 718.301(1)(a) and (b), if a bulk assignee is entitled to elect a majority of the members of the board~~, a condominium parcel acquired by the bulk assignee is not deemed to be conveyed to a purchaser, or owned by an owner other than the developer, until the condominium parcel is conveyed to an owner who is not a bulk assignee.

(3) If a bulk assignee relinquishes control of the board of administration as set forth in s. 718.301, the bulk assignee must deliver all of those items required by s. 718.301(4). However, the bulk assignee is not required to deliver items and documents not in the possession of the bulk assignee if some items were or should have been in existence before the bulk assignee's acquisition of the units ~~during the period during which the bulk assignee was entitled to elect at least a~~


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~~majority of the members of the board of administration~~. In conjunction with the acquisition of units ~~condominium parcels~~, a bulk assignee shall undertake a good faith effort to obtain the documents and materials that must be provided to the association pursuant to s. 718.301(4). If the bulk assignee is not able to obtain ~~all of~~ such documents and materials, the bulk assignee must certify in writing to the association the names or descriptions of the documents and materials that were not obtainable by the bulk assignee. Delivery of the certificate relieves the bulk assignee of responsibility for delivering the documents and materials referenced in the certificate as otherwise required under ss. 718.112 and 718.301 and this part. The responsibility of the bulk assignee for the audit required by s. 718.301(4) commences as of the date on which the bulk assignee elected or appointed a majority of the members of the board of administration.

Section 10. Section 718.706, Florida Statutes, is amended to read:

718.706 Specific provisions pertaining to offering of units by a bulk assignee or bulk buyer.—

(1) Before offering more than seven ~~any~~ units in a single condominium for sale or for lease for a term exceeding 5 years, a bulk assignee or a bulk buyer must file the following documents with the division and provide such documents to a prospective purchaser or tenant:

(a) An updated prospectus or offering circular, or a supplement to the prospectus or offering circular, filed by the original developer prepared in accordance with s. 718.504, which must include the form of contract for sale and for lease in

compliance with s. 718.503(2);

(b) An updated Frequently Asked Questions and Answers sheet;

(c) The executed escrow agreement if required under s. 718.202; and

(d) The financial information required by s. 718.111(13). However, if a financial information report did ~~does~~ not exist ~~for the fiscal year~~ before the acquisition of title by the bulk assignee or bulk buyer, and if ~~or~~ accounting records that ~~cannot be obtained in good faith by the bulk assignee or the bulk buyer which would~~ permit preparation of the required financial information report for that period cannot be obtained despite good faith efforts by the bulk assignee or the bulk buyer, the bulk assignee or bulk buyer is excused from the requirement of this paragraph. However, the bulk assignee or bulk buyer must include in the purchase contract the following statement in conspicuous type:

ALL OR A PORTION OF THE FINANCIAL INFORMATION REPORT REQUIRED UNDER S. 718.111(13) FOR THE TIME PERIOD BEFORE THE SELLER'S ACQUISITION OF THE UNIT ~~IMMEDIATELY PRECEDING FISCAL YEAR OF THE ASSOCIATION~~ IS NOT AVAILABLE OR CANNOT BE OBTAINED DESPITE THE GOOD FAITH EFFORTS OF ~~CREATED BY~~ THE SELLER ~~DUE TO THE INSUFFICIENT ACCOUNTING RECORDS OF THE ASSOCIATION~~.

(2) Before offering more than seven ~~any~~ units in a single condominium for sale or for lease for a term exceeding 5 years, a bulk assignee or a bulk buyer must file with the division and provide to a prospective purchaser or tenant under a lease for a

term exceeding 5 years a disclosure statement that includes, but is not limited to:

(a) A description of any ~~rights~~ of the developer rights that ~~developer which~~ have been assigned to the bulk assignee or bulk buyer;

(b) The following statement in conspicuous type:

THE SELLER IS NOT OBLIGATED FOR ANY WARRANTIES OF THE DEVELOPER UNDER S. 718.203(1) OR S. 718.618, AS APPLICABLE, EXCEPT FOR DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF OF THE SELLER; and

(c) If the condominium is a conversion subject to part VI, the following statement in conspicuous type:

THE SELLER HAS NO OBLIGATION TO FUND CONVERTER RESERVES OR TO PROVIDE CONVERTER WARRANTIES UNDER S. 718.618 ON ANY PORTION OF THE CONDOMINIUM PROPERTY EXCEPT AS ~~MAY BE~~ EXPRESSLY REQUIRED OF THE SELLER IN THE CONTRACT FOR PURCHASE AND SALE EXECUTED BY THE SELLER AND THE PREVIOUS DEVELOPER AND PERTAINING TO ANY DESIGN, CONSTRUCTION, DEVELOPMENT, OR REPAIR WORK PERFORMED BY OR ON BEHALF OF THE SELLER.

(3) A bulk assignee, while ~~it is~~ in control of the board of administration of the association, may not authorize, on behalf of the association:

(a) The waiver of reserves or the reduction of funding of the reserves pursuant to s. 718.112(2)(f)2., unless approved by a majority of the voting interests not controlled by the

developer, bulk assignee, and bulk buyer; or

(b) The use of reserve expenditures for other purposes pursuant to s. 718.112(2)(f)3., unless approved by a majority of the voting interests not controlled by the developer, bulk assignee, and bulk buyer.

(4) A bulk assignee or a bulk buyer must comply with ~~all the requirements of~~ s. 718.302 regarding any contracts entered into by the association during the period the bulk assignee or bulk buyer maintains control of the board of administration. Unit owners shall be provided ~~afforded~~ all of the rights and ~~the~~ protections contained in s. 718.302 regarding agreements entered into by the association which are under the control of ~~before unit owners other than~~ the developer, bulk assignee, or bulk buyer ~~elected a majority of the board of administration~~.

(5) Notwithstanding any other provision of this part, a bulk assignee or a bulk buyer is not required to comply with the filing or disclosure requirements of subsections (1) and (2) if all of the units owned by the bulk assignee or bulk buyer are offered and conveyed to a single purchaser in a single transaction. ~~A bulk buyer must comply with the requirements contained in the declaration regarding any transfer of a unit, including sales, leases, and subleases. A bulk buyer is not entitled to any exemptions afforded a developer or successor developer under this chapter regarding the transfer of a unit, including sales, leases, or subleases.~~

Section 11. Section 718.707, Florida Statutes, is amended to read:

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

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classified as a bulk assignee or bulk buyer unless the condominium parcels were acquired on or after July 1, 2010, but before July 1, 2012. The date of such acquisition shall be determined by the date of recording ~~of~~ 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 ~~issuance of~~ a certificate of title in a foreclosure proceeding with respect to such condominium parcels.

Section 12. Subsections (3), (4), and (10) of section 719.108, Florida Statutes, is 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, ~~interest~~ 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, ~~in an amount~~ 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 charge for reasonable expenses incurred by the association for collection services that are reasonably related to the collection of the delinquent account rendered by a community association manager or community association management firm, as specified in a written agreement with such community association manager or firm, and payable to the community association manager or firm as a liquidated sum.

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 expenses for collection services, then to any costs and reasonable attorney's fees incurred in collection, and then to the delinquent assessment. The foregoing applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to chapter 687 or s. 719.303(3).

(4) The association has a lien on each cooperative parcel for any unpaid rents and assessments, plus interest, and any authorized administrative late fees. The claim of lien also secures reasonable expenses for collection services incurred before filing a claim as provided in subsection (3), ~~and any reasonable costs for collection services for which the association has contracted against the unit owner of the cooperative parcel~~. If authorized by the cooperative documents, the lien also secures reasonable attorney's 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. The lien expires if a claim of lien is not filed within 1 year after the date the assessment was due, and the lien does not continue for longer than 1 year after the claim of lien has been recorded unless, within that time, an action to enforce the lien is commenced. Except as otherwise provided in this chapter, a lien

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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:

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 registered or 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 registered or 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.

(10) If the unit is occupied by a tenant and the unit owner is delinquent in paying any monetary obligation due to the association, the association may make a written demand that the tenant pay rent to the association ~~the future monetary obligations related to the cooperative share to the association~~ and continue to ~~the tenant must~~ make such payments until all monetary obligations of the unit owner related to the unit have been paid in full to the association ~~payment~~. ~~The demand is continuing in nature, and upon demand,~~ The tenant must pay the


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rent ~~the monetary obligations~~ to the association until the association releases the tenant or the tenant discontinues tenancy in the unit. The association must mail written notice to the unit owner of the association's demand that the tenant make payments to the association. The association shall, upon request, provide the tenant with written receipts for payments made. A tenant ~~who acts in good faith in response to a written demand from an association~~ is immune from any claim by ~~from~~ the unit owner related to the rent once the association has made written demand. Any payment received from a tenant by the association must be applied to the unit owner's oldest delinquent monetary obligation.

(a) If the tenant paid ~~prepaid~~ rent to the unit owner for a given rental period before receiving the demand from the association and provides written evidence of prepaying ~~paying~~ the rent to the association within 14 days after receiving the demand, the tenant shall receive credit for the prepaid rent for the applicable period but ~~and~~ must make any subsequent rental payments to the association to be credited against the monetary obligations of the unit owner ~~to the association~~.

(b) The tenant is not liable for increases in the amount of the regular monetary obligations due unless the tenant was notified in writing of the increase at least 10 days before the date on which the rent is due. The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. The tenant's landlord shall provide the tenant a credit against rents due to the unit owner in the amount of moneys paid to the association ~~under this section~~.

(c) The association may issue notices under s. 83.56 and


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may sue for eviction under ss. 83.59-83.625 as if the association were a landlord under part II of chapter 83 if the tenant fails to pay a required payment. However, the association is not otherwise considered a landlord under chapter 83 and specifically has no obligations ~~duties~~ under s. 83.51.

(d) The tenant does not, by virtue of payment of monetary obligations, have any of the rights of a unit owner to vote in any election or to examine the books and records of the association.

(e) A court may supersede the effect of this subsection by appointing a receiver.

Section 13. Subsection (3) of section 719.303, Florida Statutes, is amended, and subsections (4), (5), and (6) are added to that section, to read:

719.303 Obligations of owners.—

(3) ~~If the cooperative documents so provide,~~ The association may levy reasonable fines ~~against a unit owner~~ for failure of the unit owner or the unit's occupant, ~~his or her~~ licensee, or invitee ~~or the unit's occupant~~ to comply with any provision of the cooperative documents or reasonable rules of the association. A fine may not ~~No fine shall~~ become a lien against a unit. ~~No fine shall exceed $100 per violation. However,~~ A fine may be levied on the basis of each day of a continuing violation, with a single notice and opportunity for hearing. However, the fine may not exceed $100 per violation, or $1,000 ~~provided that no such fine shall~~ in the aggregate ~~exceed $1,000~~.

(a) An association may suspend, for a reasonable period of time, the right of a unit owner, or a unit owner's tenant,


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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.

(b) A ~~No~~ fine or suspension may not be imposed ~~levied~~ except after giving reasonable notice and opportunity for a hearing to the unit owner and, if applicable, the unit's ~~his or her~~ licensee or invitee. The hearing must ~~shall~~ be held before a committee of other unit owners. If the committee does not agree with the fine or suspension, it may ~~shall~~ not be imposed ~~levied~~. ~~This subsection does not apply to unoccupied units.~~

(4) If a unit owner is more than 90 days delinquent in paying a 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 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 member due to nonpayment of any monetary obligation due to the association which is more than 90 days delinquent. 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.


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(6) All suspensions imposed pursuant to subsection (4) or subsection (5) must be approved at a properly noticed board meeting. Upon approval, the association must notify the unit owner and, if applicable, the unit's occupant, licensee, or invitee by mail or hand delivery.

Section 14. Subsection (3) of section 720.3085, Florida Statutes, is amended to read:

720.3085 Payment for assessments; lien claims.—

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

(a) If the declaration or bylaws so provide, the association may also charge an administrative late fee ~~in an amount~~ not to exceed the greater of $25 or 5 percent of the amount of each installment that is paid past the due date.

(b) The association may also charge for reasonable expenses incurred by the association for collection services that are reasonably related to the collection of the delinquent account rendered by a community association manager or community association management firm, as specified in a written agreement with such community association manager or firm, and payable to the community association manager or firm as a liquidated sum.

(c) ~~(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 expenses for collection services as provided under paragraph (b), then to any costs and

reasonable attorney's fees incurred in collection, and then to the delinquent assessment. This paragraph applies notwithstanding any restrictive endorsement, designation, or instruction placed on or accompanying a payment. A late fee is not subject to the provisions of chapter 687 and is not a fine.

Section 15. Paragraph (c) of subsection (5) 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.—

(5) INSPECTION AND COPYING OF RECORDS.—The official records shall be maintained within the state and must be open to inspection and available for photocopying by members or their authorized agents at reasonable times and places within 10 business days after receipt of a written request for access. This subsection may be complied with by having a copy of the official records available for inspection or copying in the community. If the association has a photocopy machine available where the records are maintained, it must provide parcel owners with copies on request during the inspection if the entire request is limited to no more than 25 pages.

(c) The association may adopt reasonable written rules governing the frequency, time, location, notice, records to be inspected, and manner of inspections, but may not require a parcel owner to demonstrate any proper purpose for the inspection, state any reason for the inspection, or limit a parcel owner's right to inspect records to less than one 8-hour business day per month. The association may impose fees to cover the costs of providing copies of the official records,

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including, without limitation, the costs of copying. The association may charge up to 50 cents per page for copies made on the association's photocopier. If the association does not have a photocopy machine available where the records are kept, or if the records requested to be copied exceed 25 pages in length, the association may have copies made by an outside vendor or association management company personnel and may charge the actual cost of copying, including any reasonable costs involving personnel fees and charges at an hourly rate for vendor or employee time to cover administrative costs to the vendor or association. The association shall maintain an adequate number of copies of the recorded governing documents, to ensure their availability to members and prospective members. Notwithstanding this paragraph, the following records are not accessible to members or parcel owners:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including, but not limited to, a ~~any~~ record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings or which was prepared in anticipation of such ~~imminent civil or criminal~~ litigation or ~~imminent adversarial administrative~~ proceedings until the conclusion of the litigation or ~~administrative~~ proceedings.

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

parcel.

3. Personnel records of the association's employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this paragraph, the term "personnel records" does not include written employment agreements with an association employee or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of parcel owners or community residents.

5. Social security numbers, driver's license numbers, credit card numbers, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a parcel owner other than as provided for association notice requirements, and other personal identifying information of any person, excluding the person's name, parcel designation, mailing address, and property address. However, an owner may consent in writing to the disclosure of protected information described in this subparagraph. The association is not liable for the disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Any electronic security measure that is used by the association to safeguard data, including passwords.

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

Section 16. Subsections (2) and (3) of section 720.305,

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Florida Statutes, are amended and renumbered as subsections (3) and (4), respectively, and subsection (5) is added to that section, to read:

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

(2) The association ~~If a member is delinquent for more than 90 days in paying a monetary obligation due the association, an association may suspend, until such monetary obligation is paid, the rights of a member or a member's tenants, guests, or invitees, or both, to use common areas and facilities and~~ may levy reasonable fines 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. A fine may be levied for each day of a continuing violation, with a single notice and opportunity for hearing, except that the ~~a~~ 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 ~~collect its~~ reasonable attorney's 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. ~~The provisions~~


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~~regarding the suspension-of-use rights do not apply to the portion of common areas that must be used to provide access to the parcel or utility services provided to the parcel.~~

(b) ~~(a)~~ A fine or suspension may not be imposed without at least 14 days' notice to the person sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, it may not be imposed. If the 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 a monetary obligation due to the association, the association may suspend the right of the member, or the member's tenant, guest, or invitee, to use common areas and facilities until the monetary obligation is paid in full. The subsection does not apply to that portion of common areas used to provide access to the parcel or to utility services provided to the parcel.

~~(b)~~ Suspension does ~~of common-area-use rights do~~ not impair the right of an owner or tenant of a parcel 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.


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(4)~~(3) If the governing documents so provide,~~ An association may suspend the voting rights of a member for the nonpayment of any monetary obligation that is more than ~~regular annual assessments that are delinquent in excess of~~ 90 days delinquent. 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.

Section 17. Paragraph (a) of subsection (1) and subsection (8) 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.


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(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 ~~shall secure~~ 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 costs and attorney's fees incurred by the association incident to the collection process. The claim of lien also secures reasonable expenses for collection services incurred before filing a claim as provided in subsection (3). The person making ~~the~~ payment is entitled to a satisfaction of the lien upon payment in full.

(8) If the parcel is occupied by a tenant and the parcel owner is delinquent in paying any monetary obligation due to the association, the association may demand that the tenant pay rent to the association and continue to make such payments until all the monetary obligations of the parcel owner related to the parcel have been paid in full and ~~the future monetary obligations related to the parcel. The demand is continuing in nature, and upon demand, the tenant must continue to pay the monetary obligations until~~ the association releases the tenant or until the tenant discontinues tenancy in the parcel. A tenant ~~who acts in good faith in response to a written demand from an association~~ is immune from any claim by ~~from~~ the parcel owner related to the rent once the association has made written demand. Any payment received from a tenant by the association must be applied to the parcel owner's oldest delinquent monetary obligation.


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(a) If the tenant paid ~~prepaid~~ rent to the parcel owner for a given rental period before receiving the demand from the association and provides written evidence of prepaying ~~paying~~ the rent to the association within 14 days after receiving the demand, the tenant shall receive credit for the prepaid rent for the applicable period but ~~and~~ must make any subsequent rental payments to the association to be credited against the monetary obligations of the parcel owner to the association. The association shall, upon request, provide the tenant with written receipts for payments made. The association shall mail written notice to the parcel owner of the association's demand that the tenant pay monetary obligations to the association.

(b) The tenant is not liable for increases in the amount of the monetary obligations due unless the tenant was notified in writing of the increase at least 10 days before the date on which the rent is due. The liability of the tenant may not exceed the amount due from the tenant to the tenant's landlord. The tenant shall be given a credit against rents due to the parcel owner in the amount of assessments paid to the association.

(c) The association may issue notices under s. 83.56 and may sue for eviction under ss. 83.59-83.625 as if the association were a landlord under part II of chapter 83 if the tenant fails to pay a monetary obligation. However, the association is not otherwise considered a landlord under chapter 83 and specifically has no obligations ~~duties~~ under s. 83.51.

(d) The tenant does not, by virtue of payment of monetary obligations, have any of the rights of a parcel owner to vote in any election or to examine the books and records of the

association.

(e) A court may supersede the effect of this subsection by appointing a receiver.

Section 18. Section 720.309, Florida Statutes, is amended to read:

720.309 Agreements entered into by the association.—

(1) Any grant or reservation made by any document, and any contract that has ~~with~~ a term greater than ~~in excess of~~ 10 years, that is made by an association before control of the association is turned over to the members other than the developer, and that provides ~~which provide~~ for the operation, maintenance, or management of the association or common areas, must be fair and reasonable.

(2) If the governing documents provide for the cost of communication services as defined in s. 202.11, information services or Internet services obtained pursuant to a bulk contract shall be deemed an operating expense of the association. If the governing documents do not provide for such services, the board may contract for the services, and the cost shall be deemed an operating expense of the association but must be allocated on a per-parcel basis rather than a percentage basis, notwithstanding that the governing documents provide for other than an equal sharing of operating expenses. Any contract entered into before July 1, 2011, in which the cost of the service is not equally divided among all parcel owners may be changed by a majority of the voting interests present at a regular or special meeting of the association in order to allocate the cost equally among all parcels.

(a) Any contract entered into may be canceled by a majority

of the voting interests present at the next regular or special meeting of the association, whichever occurs first. Any member may make a motion to cancel such contract, but if no motion is made or if such motion fails to obtain the required vote, the contract shall be deemed ratified for the term expressed therein.

(b) Any contract entered into must provide, and shall be deemed to provide if not expressly set forth therein, that a hearing-impaired or legally blind parcel owner who does not occupy the parcel along with a nonhearing-impaired or sighted person, or a parcel owner who receives supplemental security income under Title XVI of the Social Security Act or food stamps as administered by the Department of Children and Family Services pursuant to s. 414.31, may discontinue the service without incurring disconnect fees, penalties, or subsequent service charges, and may not be required to pay any operating expenses charge related to such service for those parcels. If fewer than all parcel owners share the expenses of the communication services, information services, or Internet services, the expense must be shared by all participating parcel owners. The association may use the provisions of s. 720.3085 to enforce payment by the parcel owners receiving such services.

(c) A resident of any parcel, whether a tenant or parcel owner, may not be denied access to available franchised, licensed, or certificated cable or video service providers if the resident pays the provider directly for services. A resident or a cable or video service provider may not be required to pay anything of value in order to obtain or provide such service except for the charges normally paid for like services by

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residents of single-family homes located outside the community but within the same franchised, licensed, or certificated area, and except for installation charges agreed to between the resident and the service provider.

Section 19. This act shall take effect July 1, 2011.

========== 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 condominium, cooperative, and homeowners' associations; amending s. 718.111, F.S.; revising provisions relating to the official records of condominium associations; providing for disclosure of employment agreements or compensation paid to association employees; amending s. 718.112, F.S.; revising provisions relating to bylaws; providing that board of administration meetings discussing personnel matters are not open to unit members; revising requirements for electing the board of directors; providing for continued office and for filling vacancies under certain circumstances; specifying unit owner eligibility for board membership; requiring that certain educational curriculum be completed within a specified time before the election or appointment of a board director; amending s. 718.114, F.S.; requiring the vote or written consent of a majority of the voting interests before a condominium association may

enter into certain agreements to acquire leaseholds, memberships, or other possessory or use interests; amending s. 718.116, F.S.; revising provisions relating to condominium assessments; authorizing the association to charge for collection services for delinquent accounts; authorizing a claim of lien to secure reasonable expenses for collection services for a delinquent account; requiring any rent payments received by an association from a tenant to be applied to the oldest delinquent monetary obligation of a unit owner; amending s. 718.117, F.S.; providing procedures and requirements for partial termination of a condominium property; requiring that a lien against a condominium unit being terminated be transferred to the proceeds of sale for that property; amending s. 718.303, F.S.; revising provisions relating to imposing remedies against a delinquent unit owner or occupant; providing for the suspension of certain rights of use or voting rights; requiring that the suspension of certain rights of use or voting rights be approved at a noticed board meeting; amending s. 718.703. F.S.; redefining the term “bulk assignee” for purposes of the Distressed Condominium Relief Act; amending s. 718.704, F.S.; revising provisions relating to the assignment of developer rights by a bulk assignee; amending s. 718.705, F.S.; revising provisions relating to the transfer of control of a condominium board of administration to unit owners; amending s. 718.706, F.S.; revising provisions


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relating to the offering of units by a bulk assignee or bulk buyer; amending s. 718.707, F.S.; revising the time limitation for classification as a bulk assignee or bulk buyer; amending s. 719.108, F.S.; authorizing an association to charge for collection services for delinquent accounts; authorizing a claim of lien to secure reasonable expenses for collection services for a delinquent account; requiring any rent payments received by a cooperative association from a tenant to be applied to the oldest delinquent monetary obligation of a unit owner; amending s. 719.303, F.S.; revising provisions relating to imposing remedies against a delinquent unit owner or occupant; providing for the suspension of certain rights of use or voting rights; requiring that the suspension of certain rights of use or voting rights be approved at a noticed board meeting; amending s. 720.303, F.S.; revising provisions relating to records that are not accessible to members of a homeowners' association; providing for disclosure of employment agreements and compensation paid to association employees; amending s. 720.305, F.S.; revising provisions relating to imposing remedies against a delinquent member of a homeowners' association; requiring that the suspension of certain rights of use or voting rights be approved at a noticed board meeting; amending s. 720.3085, F.S.; authorizing an association to charge for collection services for delinquent accounts; authorizing a claim of lien to secure expenses for

collection services for a delinquent account; requiring any rent payments received by an association from a tenant to be applied to the oldest delinquent monetary obligation of a parcel owner; amending s. 720.309, F.S.; providing for the allocation of communication services by a homeowners' association; providing for the cancellation of communication contracts; providing that hearing-impaired or legally blind owners and owners receiving certain supplemental security income or food stamps may discontinue the service without incurring costs; providing that residents may not be denied access to available franchised, licensed, or certificated cable or video service providers; providing an effective date.

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 Regulated Industries Committee

BILL:	CS/SB 396
INTRODUCER:	Community Affairs Committee and Senator Bennett
SUBJECT:	Building Construction and Inspection
DATE:	March 11, 2011 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Fav/CS**
2.	Oxamendi	Imhof	RI	**Pre-meeting**
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS.....		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This committee substitute (CS) provides that the Florida Building Code (code) is no longer required to be submitted to the Legislature for ratification before becoming effective. It also provides for a Florida supplement to the International Code Council's set of building codes containing Florida-specific codes.

The CS redefines the term "sustainable building rating" to include the International Green Construction Code (IGCC), makes conforming changes, and amends the membership composition requirements for the Florida Building Commission (commission). The CS also expands the categories of persons who may be certified as qualified for licensure by endorsement as a home inspector and requires at least 2 hours of hurricane mitigation training to be included as part of a home inspector's continuing education requirements.

The CS repeals the exemption that permits Division I contractors to perform both the inspection and repairs on a home. It permits persons who are not licensed as a landscape architect to submit landscape design plans to government agencies for approval. This CS replaces one of the public lodging industry seats on the Department of Health's advisory review board with a county or local building official and clarifies that the Habitat for Humanity exemption also applies to the

rehabilitation of certain family residences. The CS creates a license classification for "glass and glazing contractor."

It provides for state agency compliance with the 2011 version of the National Fire Protection Association standard (NFPA 58) for LP gas tank separation. The CS also requires compliance with the Florida Building Code when a roof is "replaced or recovered" and replaces specific references to energy efficiency requirements with a reference to the Florida Energy Efficiency Code for Building Construction.

The CS requires products advertised as hurricane windstorm or impact protection from wind-borne debris to be approved as such under Florida's product approval program and prohibits the commission from adopting rules that limit any of the statutory exceptions or exemptions to coastal construction control and erosion projection requirements.

This CS substantially amends the following sections of the Florida Statutes: 120.80, 161.053, 255.252, 255.253, 255.257, 255.2575, 468.8316, 468.8319, 468.8323, 468.8324, 481.329, 489.103, 489.105, 489.107, 489.141, 514.028, 527.06, 527.21, 553.73, 553.74, 553.842, 553.909, and 627.711.

II. Present Situation:

The Florida Building Code

The purpose and intent of the Florida Building Codes Act located in part IV of ch. 553, F.S., is "to provide a mechanism for the uniform adoption, updating, amendment, interpretation, and enforcement of a single unified state building code," known as the "Florida Building Code" (code).[1]

Section 553.72, F.S., defines the code as a "single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities in this state" which establishes minimum standards that shall be enforced by authorized state and local government enforcement agencies.

Florida Building Commission

The Florida Building Commission (commission) is established in ch. 553, F.S., within the Department of Community Affairs (DCA) and consists of 25 members that are appointed by the Governor and confirmed by the Senate.[2] The Commission is responsible for adopting and enforcing the code as a single, unified state building code used to provide effective and reasonable protection for the public safety, health and welfare. [3] The commission is required to update the code triennially based upon the "code development cycle of the national model building codes, . . ."[4] Pursuant to s. 553.73, F.S., the commission is authorized to adopt internal

[1] Section 553.72(1), F.S.
[2] *See* s. 553.74(1)(a)-(w), F.S.
[3] Sections 553.73 and 553.74, F.S.
[4] Florida Building Commission, *Report to the 2009 Legislature,* at 2 (January 2009) (on file with the Florida Senate Committee on Regulated Industries).

administrative rules, impose fees for binding code interpretations and use the rule adoption procedures listed under ch. 120, F.S., to approve amendments to the building code.[5]

Section 553.79(9), F.S., allows state agencies whose enabling legislation authorizes the enforcement of the code, to enter into agreements with other governmental units in order to delegate their code enforcement powers, and to utilize public funds for permit and inspection fees so long as the fees are not greater than the fees charged to others.

Home Inspector License

In 2007, the Legislature created the home inspection services licensing program under part XV, ch. 468, F.S.,[6] to provide, in part, for the licensure and regulation of private home inspectors by the Department of Business and Professional Regulation (department). The program provides licensing and continuing education requirements, including certificates of authorizations for corporations offering home inspection services to the public.

Section 468.8311(4), F.S., defines the term "home inspection services" to mean:

> a limited visual examination of one or more of the following readily accessible installed systems and components of a home: the structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure, for the purposes of providing a written professional opinion of the condition of the home.[7]

Any person who wishes to be licensed as a home inspector must apply to the department for certification after he or she satisfies the statutory examination requirements provided in s. 468.8313, F.S.

Prior to practicing as a home inspector in Florida, s. 468.8313, F.S., requires an applicant to:

- Pass the required examination,
- Be of good moral character, and
- Complete a course study of at least 120 hours that covers all of the following components of the home:
    - Structure, electrical system, HVAC system, roof covering, plumbing system, interior components, exterior components, and site conditions that affect the structure. [8]

An applicant for licensure must also submit to a criminal background check and maintain a commercial general liability insurance policy in an amount of not less than $300,000.[9] Section 468.8314, F.S., provides that the department shall certify any applicant for licensure who satisfies the examination requirements of s. 468.8313, F.S., and who passes the licensing exam,

[5] *See* ss. 553.76, 553.775, and 553.73(7), F.S., respectively.
[6] Chapter 2007-235, s. 2, L.O.F.
[7] Section 468.8311(4), F.S.
[8] *See* s. 468.8313(2), F.S.
[9] Sections 468.8313(6) and 468.8322, F.S.

unless he or she has engaged in disciplinary actions as prescribed in s. 468.832, F.S.[10] This section also allows the department to certify an applicant by endorsement if he or she:

- Is of good moral character;
- Holds a valid home inspector license in another state or territory of the United States, whose educational requirements are substantially equivalent to those required herein; and
- Has passed a substantially similar national, regional, state, or territorial licensing examination.[11]

Florida home inspector licensees are required to complete at least 14 hours of continuing education every two years prior to his or her application for license renewal.[12]

Energy Efficiency

The Florida Energy Conservation and Sustainable Buildings Act, located in ch. 255, F.S., declares that there is an important state interest in promoting the construction of energy-efficient and sustainable buildings.[13] To further this interest, s. 255.252, F.S., provides that it shall be the policy of the state that buildings constructed and financed by the state and the renovation of existing state facilities be designed and constructed to comply with:

- The United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system,
- The Green Building Initiative's Green Globes rating system,
- The Florida Green Building Coalition standards, or
- A nationally recognized, high-performance green building rating system as approved by the Department of Management Services.[14]

These rating systems have been defined in s. 255.253(7), F.S., to mean "sustainable building rating."

For buildings occupied by state agencies, section 255.257, F.S., requires all state agencies to adopt the United States Green Building Council (USGBC) Leadership in Energy and Environmental Design (LEED) rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the Department of Management Services for all new buildings and renovations to existing buildings.

Section 255.2575, F.S., further provides that:

> all county, municipal, school district, water management district, state university, community college, and Florida state court buildings shall be constructed to meet

[10] Section 468.8314(2), F.S.
[11] Section 468.8314(3), F.S.
[12] Section 468.8316(1), F.S.
[13] Section 255.2575(1), F.S.
[14] Section 255.252(3)-(4), F.S.

the United States Green Building Council (USCBC) Leadership in Energy and Environmental Design (LEED) rating system, the Green Building Initiative's Green Globes rating system, the Florida Green Building Coalition standards, or a nationally recognized, high-performance green building rating system as approved by the Department of Management Services.

International Green Construction Code (IGCC)

The International Green Construction Code (IGCC) establishes baseline green and sustainability "regulations for new and existing traditional and high-performance buildings related to energy conservation, water efficiency, building owner responsibilities, site impacts, building waste, and materials and other considerations."[15] The IGCC is sponsored and endorsed by the International Code Council (ICC), the American Institute of Architects, ASTM International, the American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), the U.S. Green Building Council (USGBC), and the Illuminating Engineering Society (IES).[16]

The ICC recently revealed the latest version of the IGCC, Public Version 2.0, in December of 2010. [17] The ICC provides that the new code complements existing rating systems and guidelines by providing minimum baseline requirements along with a "jurisdictional electives" section of the code that allows jurisdictions to customize the codes beyond its baseline provisions.[18] The IGCC acts as a model code that becomes law after it is adopted by the state or local government entity that governs construction standards. To date, Rhode Island is the only state to adopt the ICGG as part of their Rhode Island Green Buildings Act in 2010.[19] The new Act "applies to any public project that is owned, leased or controlled by the State of Rhode Island."[20]

Product Evaluation and Approval

Section 553.842, F.S., provides the commission with the authority to adopt rules to develop a product evaluation and approval system that applies statewide to operate in coordination with the code. Rules relating to product approval are contained in ch. 9N-3.006, F.A.C.[21]

The commission is authorized to enter into contracts to provide for administration of the product evaluation and approval system. The system must rely on national and international consensus standards whenever such standards are adopted into the code, to demonstrate compliance with

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[15] The International Code Council (ICC), The International Green Construction Code (ICGG) Brochure, *IGCC: A New Approach for Safe & Sustainable Construction*, available online at http://www.iccsafe.org/cs/IGCC/Documents/Media/IGCC_Flyer.pdf (last visited on Feb. 15, 2011).
[16] *Id.*
[17] News Release, The International Code Council (ICC), *Code Council Releases New IGCC Public Version 2.0* (Dec. 8, 2010) (on file with the Senate Committee on Community Affairs). Note that the initial public version of the code was released on March 15, 2010, after an eight month drafting period.
[18] The International Code Council (ICC) website, *see supra* fn. 14. *See also* News Release, The International Code Council (ICC), *New Construction Code Unveiled* (March. 15, 2010) (on file with the Senate Committee on Community Affairs).
[19] News Release, The International Code Council (ICC), *Rhode Island Recognized by International Code Council as First State to Adopt Green Construction Code* (Oct. 19, 2010) (on file with the Senate Committee on Community Affairs).
[20] *Id.*
[21] Florida Administrative Weekly & Florida Administrative Code, Rule List *available online at* https://www.flrules.org/gateway/result.asp (last visited on Feb. 21, 2011).

code standards. Other standards which meet or exceed state requirements must also be considered.[22]

Subsection (5) of section 553.842, F.S., provides the methods that must be used by the commission for statewide approval of products, methods, or systems of construction.[23] These methods must be used by the commission to approve "panel walls, exterior doors, roofing, skylights, windows, shutters, and structural components."[24]

The commission is required to maintain a list of the state-approved products, product evaluation entities, testing laboratories, quality assurance agencies, certification agencies, and validation entities.[25] The commission is also authorized to adopt a rule that identifies standards that are equivalent to or more stringent than those specifically adopted by the code, thereby allowing the use in this state of the products that comply with the equivalent standard.[26]

Section 553.8425, F.S, provides the methodology to be used for local product approval for products or systems of construction in order to demonstrate compliance with the structural windload requirements prescribed in the code.[27]

Uniform Mitigation Verification Form

Section 627.711, F.S., requires insurers to notify residential property insurance applicants or policyholders of premium insurance discounts, rates or credits that are available for windstorm mitigation fixtures or construction techniques located on the insured property. In factoring discounts for wind insurance, insurers must use the uniform mitigation verification inspection form adopted by the Financial Services Commission.[28]

Under current law, an insurer must accept as valid, a uniform mitigation verification form that is signed by certain certified individuals outlined in s. 627.711(2), F.S.[29] One of the certified individuals outlined in s. 627.711(2), F.S., is a home inspector that is licensed under s. 468.8314, F.S., and who has completed at least 3 hours of hurricane mitigation training, including hurricane mitigation techniques and compliance with the uniform mitigation verification form, and completion of a proficiency exam. Pursuant to this section, the home inspector must complete at least 2 hours related to mitigation inspection and the uniform mitigation form, as part of their continuing education requirements provided in s. 468.8316, F.S.

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[22] Equivalence of standards for product approval are standards for products which meet or exceed the standards referenced in the Florida Building Code, and which are certified as equivalent for purposes of determining code compliance (Chapter 9N-3.015, F.A.C.).
[23] *See* s. 553.842(5)(a)-(b), F.S.
[24] *Id.*
[25] Section 553.842(13), F.S.
[26] Section 553.842(16), F.S.
[27] *See* s. 553.8425(1)(a)-(f), F.S.
[28] Section 627.711(2), F.S.
[29] *See* s. 627.711(2)(a)1.-6., F.S. (the additional certified individuals include: a building code inspector certified under s. 468.607, F.S.; a general building or residential contractor licensed under s. 489.111, F.S.; a professional engineer licensed under s. 471.015, F.S.; a professional architect licensed under s. 481.213, F.S.; or any other individual or entity recognized by the insurer as possessing the necessary qualifications to properly complete a uniform mitigation verification form).

Mechanical Equipment

The code requires roof-mounted equipment to be elevated from the roof surface. With respect to a roof-mounted air conditioner, the code requires that this equipment be elevated to a prescribed distance above the roof surface. The distance varies depending on the width of the air conditioning unit. For example, an 18 inch clearance is required for a roof-mounted air conditioning unit that is 24 to 36 inches in width.[30] According to the DCA, this requirement allows for maintenance of the roof surface beneath the equipment. Additionally, the code requires that all roof mounted mechanical equipment must be designed to withstand the forces exerted by wind. According to the DCA, this requirement originated with the model code that served as the foundation for the first edition of the code, the 2001 International Mechanical Code, and has been in effect in Florida since March 1, 2002.

During the 2010 Legislative Session, the Legislature created a new subsection (15) of s. 553.73, F.S., which provides that:

> An agency or local government may not require that existing mechanical equipment on the surface of a roof be installed in compliance with the requirements of the Florida Building Code until the equipment is required to be removed or replaced.[31]

Thermal Efficiency Standards-Appliance Requirements

Florida's Thermal Efficiency Code in s. 553.900, F.S., requires the DCA to provide a "statewide uniform standard for energy efficiency in thermal design and operation of all buildings statewide."[32] The standard is adopted into the code by the commission and is updated at least every three years to include "the most cost-effective energy-saving equipment and techniques available."[33] A schedule of increases in thermal efficiency is outlined in s. 553.9061, F.S. Subsection (2) of s. 553.9061, F.S., requires the commission to identify within the code the specified building options and elements that are available to meet energy efficiency goals.

Section 553.909, F.S., states that the Florida Energy Efficiency Code for Building Construction shall set the minimum energy requirements for commercial or residential swimming pool pumps, swimming pool water heaters, and water heaters used to heat portable water.

Section 553.909(3), F.S., currently provides minimum energy requirements for commercial and residential pool pumps and/or water motors that are manufactured on or after July 1, 2011. Subsection (4) of s. 553.909, F.S., requires residential pool pump motor controls that have a total horsepower of 1 HP or more to operate at a minimum of two speeds, with a low speed override capability being for a temporary period not to exceed one normal cycle or 24 hours, whichever is less. This subsection does not include the circulation speed for solar pool heating systems, which are permitted to run at higher speeds during periods of usable solar heat gain. Subsection (5) of s. 553.909, F.S., prohibits a portable electric spa standby power from being "greater than 5(v2/3)

[30] *See* Table 1509.7 in ch. 15, Florida Building Code (2007), including the 2009 supplements, relating to rooftop structures.
[31] Section 553.73(15), F.S. *See also* ch. 2010-176, s. 32, L.O.F..
[32] Section 553.900, F.S.
[33] Section 553.901, F.S.

watts where V [equals] the total volume, in gallons, when spas are measured in accordance with the spa industry test protocol."

Department of Health Advisory Board

Chapter 514, F.S., provides statutory criteria pertaining to public swimming and bathing facilities. This chapter allows the Department of Health to adopt and enforce rules in order "to protect the health, safety, or welfare of persons using public swimming pools and bathing places."[34]

Section 514.028, F.S., allows the Governor to appoint certain specified members to an established advisory review board which shall recommend agency action on variance request, rule and policy development, and other technical review problems. The advisory review board must meet as necessary or at least quarterly, and must be comprised of the following individuals:

- A representative from the office of licensure and certification of the department.
- A representative from the county health departments.
- Three representatives from the swimming pool construction industry.
- Two representatives from the public lodging industry.[35]

Landscape Design

The Legislature added the regulation of landscape designers to part II of ch. 481, F.S., in 1998.[36] In general, part II, of ch. 481, F.S., provides for the regulation of landscape architects by the Board of Landscape Architecture within the Department of Business and Professional Regulation (DBPR). Prior to 1998, landscape designers were not regulated in Florida, except to the extent that they were not permitted to perform tasks of a landscape architect.[37] The Legislature in adopting ch. 1998-245, L.O.F., defined the term "landscape design" and provided an exemption from landscape architect license requirements for landscape designers.

Section 481.303(7), F.S., defines the term landscape design to mean:

> consultation for and preparation of planting plans drawn for compensation, including specifications and installation details for plant materials, soil amendments, mulches, edging, gravel, and other similar materials. Such plans may include only recommendations for the conceptual placement of tangible objects for landscape design projects. Construction documents, details, and specifications for tangible objects and irrigation systems shall be designed or approved by licensed professionals as required by law.

[34] Section 514.021(1), F.S.
[35] Section 514.028(1)(a)-(d), F.S.
[36] Chapter 1998-245, s. 27, L.O.F.
[37] Fla. S. Comm. on Regulated Industries, CS/SB 1066 (1998) Staff Analysis 1 (on file with the Senate Committee on Community Affairs).

Section 481.329, F.S., provides exceptions and exemptions from landscape architect license requirements. Subsection (5) of s. 481.329, F.S., provides that "nothing in this part prohibits any person from engaging in the practice of landscape design, as defined in s. 481.303(7)."

The National Fire Protection Association (NFPA) 58, Liquefied Petroleum Gas Code

The National Fire Protection Association (NFPA) is an international nonprofit organization that was established in 1896 to reduce the risks and effects of fires by establishing building consensus codes.[38] The NFPA 58, also known as the Liquefied Petroleum Gas Code, applies to "the storage, handling, transportation, and use of LP-Gas[es]," which is defined by the code to mean "gasses at normal room temperature and atmospheric pressure [that] liquefy under moderate pressure and readily vaporize upon release of the pressure."[39]

Section 527.06(3), F.S., provides the Department of Agriculture and Consumer Services (DACS), with the authority to adopt rules that are in substantial conformity with NFPA's published safety standards. Subsection (3), specifically provides that:

> Rules in substantial conformity with the published standards of the National Fire Protection Association shall be deemed to be in substantial conformity with the generally accepted standards of safety concerning the same subject matter.

The NFPA has recently published the 2011 edition of the NFPA 58, Liquefied Petroleum Gas Code. As a result, DACS has filed a Notice of Rule Development (Rule 5F-11.002) to adopt the 2011 edition of the NFPA 58, Liquefied Petroleum Gas Code.[40]

State agencies that currently enforce the LP gas container separation distances, adopt changes in the NFPA safety codes as standards evolve and technology changes.

Coastal Construction and Excavation

Section 161.053, F.S., within the Beach and Shore Preservation Act, provides for the protection of Florida beaches and coastal barrier dunes against "imprudent construction which can jeopardize the stability of the beach-dune system, accelerate erosion, provide inadequate protection to upland structures, endanger adjacent properties, or interfere with public beach access." [41]

Section 161.053(1), F.S., directs the Department of Environmental Protection (DEP) to establish coastal construction control lines on a county basis along the state beaches in order to enforce the provisions of this Beach and Shore Preservation Act. Pursuant to this statutory authority, DEP's Coastal Construction Control Line Permitting Program establishes special siting and design

[38] National Fire Protection Association Website, *Overview*, available online at http://www.nfpa.org/categoryList.asp?categoryID=495&URL=About%20NFPA/Overview (last visited on March 4, 2011).
[39] National Fire Protection Association Website, *Document Scope of NFPA 58* available online at http://www.nfpa.org/aboutthecodes/AboutTheCodes.asp?DocNum=58 (last visited on March 4, 2011).
[40] Florida Department of Agriculture & Consumer Services, *Senate Bill 960 Fiscal Analysis* (Feb. 14, 2011) (on file with the Senate Committee on Community Affairs).
[41] Sections 161.011 and 161.053(1)(a), F.S.

criteria for construction and related activities occurring seaward of the coastal construction control lines adopted by the department.[42] The Department of Environmental Protection's permit criterion is guided by the coastal construction control and erosion projection requirements in s. 161.053, F.S.

Florida Statutes also provides exemptions from these requirements, one of which is provided in paragraph (11)(a) of s. 161.053, F.S. This paragraph states that:

> The coastal construction requirements defined in subsection (1) and the requirements of the erosion projections in subsection (5) do not apply to any modification, maintenance, or repair of any existing structure within the limits of the existing foundation which does not require, involve, or include any additions to, or repair or modification of, the existing foundation of that structure.

The commission is proposing to amend Rule 3109.1.1 of the Florida Building Code to limit the extent of the statutory exemption currently provided in paragraph (11)(a) of s. 161.053, F.S. Proposed through Modification # SP 4203, the commission's amendment would state (indicated by underlined text):

> Exception: The standards for buildings seaward of a CCL area do not apply to any modification, maintenance or repair of any existing structure within the limits of the existing foundation which does not require, involve, or include any additions to, or repair or modification of, the existing foundation of that structure, <u>except for substantial improvement of or additions to existing habitable structures</u>.[43]

Statement of Estimated Regulatory Costs

Section 120.541, F.S., requires an agency to prepare a statement of estimated regulatory costs (SERC) prior to the adopting, amendment, or repeal of any agency rule that has an adverse economic impact on small businesses or that is likely to directly or indirectly increase regulatory costs in excess of $200,000 in the aggregate.

Paragraph (2)(a) of s. 120.541, F.S., also requires an economic analysis of whether the proposed rule directly or indirectly is likely to have an adverse impact in excess of $1 million in the aggregate on economic growth, private-sector job creation or employment, private-sector investment, business competitiveness (including productivity, innovation, or ability of persons doing business in Florida to compete with out-of-state businesses or domestic markets). This paragraph also requires an economic analysis on whether the proposed rule directly or indirectly increases regulatory costs, including any transactional costs in excess of $1 million in the aggregate.

Subsection (3), of s. 120.541, F.S., provides that if the adverse impact or regulatory costs of an agency rule exceed any of the criteria established in paragraph (2)(a), then the rule must be

[42] Florida Department of Environmental Protection website, *The Coastal Construction Control Line Permitting (CCCL)*, available online at http://www.dep.state.fl.us/beaches/programs/ccclprog.htm#view_rules (last visited on March 8, 2011).
[43] Letter from David M. Levin, Attorney, Icard, Merrill, P.A., to Senator Michael Bennett, President Pro Tempore, the Florida Senate (Dec. 16, 2010) (on file with the Senate Committee on Community Affairs).

submitted to the President of the Senate and the Speaker of the House of Representatives 30 days before the next regular legislative session, and may not take effect until ratified by the Legislature.

III. Effect of Proposed Changes:

Section 1 creates s. 120.80(16)(d), F.S., to exempt the code from the estimated regulatory costs provisions in s. 120.541(3), F.S., and from the requirement that the code be submitted to the Legislature for ratification before it becomes effective.

Section 2 amends paragraph (11)(a) of s. 161.053, F.S., to prohibit the commission from adopting rules that limit any of the statutory exceptions or exemptions to coastal construction control and erosion projection requirements for the modification or repair of existing structures within the limits of an existing foundation.

Sections 3-6 amends **s**s. 255.252(3), 255.253(7), 255.257(4), 255.2575(2), F.S., to delete references to the specified energy efficiency and sustainable materials rating standards, and to redefine the term "sustainable building rating" to include the International Green Construction Code (IGCC). Specifically, these sections substitute references to the individual green code ratings with the term "sustainable building rating."

Sections 7 and 23 amend ss. 468.8316 and 627.711, F.S., respectively, to require at least 2 hours of hurricane mitigation training to be included as part of a home inspector's required 14 hours of continuing education. The hurricane mitigation training must be approved by the Construction Industry Licensing Board.

Section 8 amends s. 468.8319, F.S., to remove an exemption that allows Division I contractors to do both the inspection and repairs to a home.

Section 9 clarifies s. 468.8323, F.S., to state that if it is "not" self evident, the home inspector shall report a reason why the system or component is significantly deficient or near end of its service life.

Section 10 creates s. 468.8324(3), F.S., to allow individuals with the following certifications and/or licenses to be licensed as a Florida home inspector, if the individual submits an application to the department postmarked on or before July 1, 2012. A person may qualify for a license if he or she:

- Possesses a one and two family dwelling inspector certification issued by the International Code Council or the Southern Building Code Congress International;
- Has been certified as a one and two family dwelling inspector by the Florida Building Code Administrators and Inspectors Board under part XII, of this chapter; or
- Possesses a Division I contractor license under part I, of ch. 489, F.S.

Section 11 amends subsection (5) of s. 481.329, F.S., to provide that nothing in part II, of ch. 481, F.S., which provides for the regulation of the practice of landscape architecture, shall

prohibit a person engaging in the practice of landscape design from submitting such plans to government agencies for approval.

Section 12 amends s. 489.103(18), F.S., to clarify that Habitat for Humanity International, Inc., or its local affiliates are exempt from contracting licensing requirements for the rehabilitation of certain family residences.

Section 13 creates s. 489.105(3)(q), F.S., to define the term "glass and glazing contractor." Specifically, this section codifies the Construction Industry Licensing Board rule[44] for glass and glazing specialty contractors and allows licensed glass and glazing contractors to install hurricane shutters.

Sections 14 and 15 amend ss. 489.107 and 489.141, F.S., to make conforming changes to cross-references as a result of the creation of s. 489.105(3)(q), F.S., in section 13 of this CS.

Section 16 amends s. 514.028, F.S., to replace one of the two public lodging industry seats on the seven-member Department of Health advisory review board with a representative from county or local building department.

Section 17 creates s. 527.06(3)(b), F.S., to prohibit the DACS and other state agencies from requiring compliance with certain national standards for LP gas tanks unless they are in compliance with the minimum LP gas container separation distances included in the 2011 version of NFPA 58. This subsection would be deemed repealed on the last effective date of rules adopted by the commission as part of the department, the code, and the Office of State Fire Marshal as part of the Florida Fire Prevention Code of these minimum separation distances as contained in the 2011 edition of NFPA 58.

Section 18 amends s. 527.21(11), F.S., to specify that the definition for propane is defined by the NFPA 58, Liquefied Petroleum Gas Code.

Section 19 amends s. 553.73(1), F.S., to provide for a Florida supplement to the International Code Council's set of building codes, rather than being adopted by the commission as part of the code. This section also specifies the national codes to be used in forming the foundation for state building standards and codes, and allows the commission to approve technical amendments to the code once every 3 years rather than each year. The CS requires proposed amendments to base codes to provide a specific justification for why Florida is different from other areas that have adopted the base code.

This section also provides that a local government may not require mechanical equipment on the surface of a roof to meet code requirements until the "roof is replaced or recovered."

Section 20 amends s. 553.74(1)(v), F.S., to revise the membership of the 25-member commission. It expands the qualifications for the participating member who is a representative of the green building industry, to include "a professional who is accredited under the International

[44] *See* 61G4-15.018, F.A.C. The Construction Industry Contracting Board is within the Department of Business and Professional Regulation.

Green Construction Code (IGCC), or a professional who is accredited under Leadership in Energy and Environmental Design (LEED)."

Section 21 amends s. 553.842, F.S., to require products advertised as hurricane, windstorm or impact protection from wind-borne debris during a hurricane or windstorm, to actually be approved as such under Florida's product approval program in s. 553.842, F.S., or s. 553.8425, F.S.

Section 22 amends ss. 553.909(3), (4), and (5), F.S., to replace the specified energy efficiency requirements for commercial and residential pool pumps, motors, heaters and spas, with a reference to the Florida Energy Efficiency Code for Building Construction.

Section 24 provides that this act shall take effect on July 1, 2011.

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:

Division I contractors and one and two family dwelling inspectors will be permitted to be licensed as home inspectors by endorsement. The Department of Business and Professional Regulation estimates that there are currently over 40,000 Division I Contractors and over 1,000 one and two family dwelling inspectors certified and licensed in Florida.[45]

As a result of this CS, Division I contractors will no longer be permitted to perform both the inspection and repairs on a home. The CS permits persons who are not licensed as a landscape architect to submit landscape design plans to government agencies for approval.

[45] Florida Department of Business and Professional Regulation, *SB 396 Legislative Analysis*, at 2 (Jan. 28, 2011) (on file with the Senate Committee on Community Affairs).

This CS will not allow local governments to require mechanical equipment on the surface of a roof to abide by the Florida Building Code until the roof is "replaced or recovered."

This CS will also require that products advertised as hurricane, windstorm or impact protection actually be approved as such under Florida's product approval program.

C. Government Sector Impact:

State agencies will be required to adopt the International Green Construction Code (IGCC) as a sustainable building rating system for all new buildings and renovations to existing buildings. In addition, all county, municipal, school district, water management district, state university, community college, and state court buildings will be required to comply with the International Green Construction Code (IGCC) as part of the sustainable building rating system.

The Department of Business and Professional Regulation estimated that there will be between 8,000 and 10,000 new licenses as a result of this CS, generating an increase in licensing revenue. Based on the projection of 8,000 additional biennial licenses, the department estimates that this CS will generate $2,640,000 in revenue for FY 2011-12 and $1,640,000 in revenue for FY 2013-14.[46] The department also states that this CS will cause a projected 13,513 additional calls to the call center per year, resulting in the need for an additional FTE, Regulatory Specialist II. The FTE, Regulatory Specialist II is estimated to cost the department $51,202 per year.[47]

As a result of this CS, the commission will be required to provide a Florida supplement to the International Code Council's set of building codes instead of adopting the codes as part of the code. The commission will also be prohibited from adopting rules that limit any of the statutory exceptions or exemptions to coastal construction control and erosion projection requirements for the modification or repair of existing structures within the limits of an existing foundation.

The Department of Health will need to replace one of its public lodging industry seats on its advisory review board with a county or local building official.

This CS will require all state agencies to enforce the same LP gas container separation distances included in the 2011 version of NFPA 58.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

[46] *Id.* at 3. The department states that applications cost $125, new licenses cost $200, and renewal licenses cost $200 each.
[47] *Id.*

VIII. Additional Information:

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

CS by Community Affairs on March 7, 2011:
This CS makes the following changes:

- Exempts the adoption of the code from the requirements that the code go back to the Legislature for adoption before it becomes effective.
- Redefines the term "sustainable building rating" to also include the International Green Construction Code (IGCC) and substitutes references to the individual "green" codes with the term "sustainable building rating."
- Allows Division I contractors and building officials to receive an endorsement to be a home inspector if they apply to the department before July 1, 2012.
- Requires specified hurricane mitigation training to be included as part of home inspectors' required 14 hours of continuing education.
- Removes an exemption that allowed Division I contractors to do both the inspections and the repairs.
- Prohibits anything in part II of ch. 481, F.S., from precluding a landscape designer from submitting landscape design plans to government agencies for approval.
- Clarifies that Habitat for Humanity is exempt from the contracting licensing requirements for *rehabilitation* of residences.
- Moves the provisions of a glass and glazing specialty contractor from DBPR rule to the statute and allows them the ability to install hurricane shutters to their existing license permitted activities.
- Replaces one of the public lodging seats on the Department of Health's advisory review board with a county or local building official.
- Prohibits the Department of Agriculture and Consumer services and other state agencies from requiring compliance with national LP gas tank standards unless they are in compliance with the minimum LP gas container separation distances included in the 2011 version of NFPA 58.
- Specifies that the definition for "propane" is as defined by the NFPA 58, Liquefied Petroleum Gas Code.
- Clarifies that a local government may not require that mechanical equipment on a roof meet the code requirements until the equipment or the roof is "removed, replaced or recovered."
- Requires products advertised as hurricane, windstorm or impact protection *actually be approved as such* under Florida's product approval program.
- Replaces the specific energy efficiency requirements for pool pumps, motors, heaters, and spas, with a reference to the Florida Energy Efficiency Code.
- Provides for a Florida supplement to the International Code Council's set of building codes that addresses provisions specific to Florida.
- Prohibits the commission from adopting rules that limit any of the exceptions or exemptions provided in paragraph (11)(a) of s. 161.053, F.S.
- Provides title amendments.

B. Amendments:

None.

889386

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete lines 232 - 248

and insert:

Section 10. Section 468.8324, Florida Statutes, is amended to read:

468.8324 Grandfather clause.—

(1) A person who performs home inspection services may qualify for licensure as a home inspector under this part if the person submits an application to the department postmarked on or before July 1, 2012, which shows that the applicant:

(a) Possesses certification as a one- and two-family

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dwelling inspector issued by the International Code Council or the Southern Building Code Congress International;

(b) Has been certified as a one- and two-family dwelling inspector by the Florida Building Code Administrators and Inspectors Board under part XII of this chapter; or

(c) Possesses a Division I contractor license under part I of chapter 489.

~~(1) A person who performs home inspection services as defined in this part may qualify for licensure by the department as a home inspector if the person submits an application to the department postmarked on or before March 1, 2011, which shows that the applicant:~~

~~(a) Is certified as a home inspector by a state or national association that requires, for such certification, successful completion of a proctored examination on home inspection services and completes at least 14 hours of verifiable education on such services; or~~

~~(b) Has at least 3 years of experience as a home inspector at the time of application and has completed 14 hours of verifiable education on home inspection services. To establish the 3 years of experience, an applicant must submit at least 120 home inspection reports prepared by the applicant.~~

~~(2) The department may investigate the validity of a home inspection report submitted under paragraph (1)(b) and, if the applicant submits a false report, may take disciplinary action against the applicant under s. 468.832(1)(c) or (g).~~

(2)~~(3)~~ An applicant may not qualify for licensure under this section if he or she has had a home inspector license or a license in any related field revoked at any time or suspended

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within the previous 5 years or has been assessed a fine that exceeds $500 within the previous 5 years. For purposes of this subsection, a license in a related field includes, but is not limited to, licensure in real estate, construction, mold-related services, or building code administration or inspection.

(3) ~~(4)~~ An applicant for licensure under this section must comply with the criminal history, good moral character, and insurance requirements of this part.

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

And the title is amended as follows:

After line 28

insert:

removing certain application requirements for a person who performs home inspection services and who qualifies for licensure on or before a specified date;

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LEGISLATIVE ACTION

Senate . House

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

Senate Substitute for Amendment (889386) (with title amendment)

Delete lines 232 - 248

and insert:

Section 10. Section 468.8324, Florida Statutes, is amended to read:

468.8324 Grandfather clause.—

(1) A person who performs home inspection services may qualify for licensure as a home inspector under this part if the person submits an application to the department postmarked on or before July 1, 2012, which shows that the applicant:

(a) Possesses certification as a one- and two-family dwelling inspector issued by the International Code Council or the Southern Building Code Congress International;

(b) Has been certified as a one- and two-family dwelling inspector by the Florida Building Code Administrators and Inspectors Board under part XII of this chapter; or

(c) Possesses a Division I contractor license under part I of chapter 489, a Division II certified air-conditioning contractor license under part I of chapter 489, and an electrical contractor license under part II of chapter 489.

~~(1) A person who performs home inspection services as defined in this part may qualify for licensure by the department as a home inspector if the person submits an application to the department postmarked on or before March 1, 2011, which shows that the applicant:~~

~~(a) Is certified as a home inspector by a state or national association that requires, for such certification, successful completion of a proctored examination on home inspection services and completes at least 14 hours of verifiable education on such services; or~~

~~(b) Has at least 3 years of experience as a home inspector at the time of application and has completed 14 hours of verifiable education on home inspection services. To establish the 3 years of experience, an applicant must submit at least 120 home inspection reports prepared by the applicant.~~

~~(2) The department may investigate the validity of a home inspection report submitted under paragraph (1)(b) and, if the applicant submits a false report, may take disciplinary action against the applicant under s. 468.832(1)(c) or (g).~~


676830

(2) ~~(3)~~ An applicant may not qualify for licensure under this section if he or she has had a home inspector license or a license in any related field revoked at any time or suspended within the previous 5 years or has been assessed a fine that exceeds $500 within the previous 5 years. For purposes of this subsection, a license in a related field includes, but is not limited to, licensure in real estate, construction, mold-related services, or building code administration or inspection.
(3) ~~(4)~~ An applicant for licensure under this section must comply with the criminal history, good moral character, and insurance requirements of this part.

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
After line 28
insert:
removing certain application requirements for a person who performs home inspection services and who qualifies for licensure on or before a specified date;

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Between lines 248 and 249
insert:

Section 11. Paragraph (d) of subsection (1) of section 468.841, Florida Statutes, is amended to read:

468.841 Exemptions.—

(1) The following persons are not required to comply with any provisions of this part relating to mold assessment:

(d) Persons or business organizations acting within the scope of the respective licenses required under part XV of chapter 468, chapter 471, part I of chapter 481, chapter 482,

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chapter 489, or part XV of this chapter, are acting on behalf of an insurer under part VI of chapter 626, or are persons in the manufactured housing industry who are licensed under chapter 320, except when any such persons or business organizations hold themselves out for hire to the public as a "certified mold assessor," "registered mold assessor," "licensed mold assessor," "mold assessor," "professional mold assessor," or any combination thereof stating or implying licensure under this part.

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

And the title is amended as follows:

Between lines 28 and 29

insert:

amending s. 468.841, F.S.; adding licensed home inspectors to those who are exempt from complying with provisions related to mold assessment;

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LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Between lines 711 and 712

insert:

Section 19. Section 553.502, Florida Statutes, is amended to read:

553.502 Intent.—The purpose and intent of this part ~~ss. 553.501-553.513~~ is to incorporate into the law of this state the accessibility requirements of the Americans with Disabilities Act of 1990, as amended ~~Pub. L. No. 101-336~~, 42 U.S.C. ss. 12101 et seq., and to obtain and maintain United States Department of Justice certification of the Florida Accessibility Code for

231238

Building Construction as equivalent to federal standards for accessibility of buildings, structures, and facilities. All state laws, rules, standards, and codes governing facilities covered by the Americans with Disabilities Act Standards for Accessible Design ~~guidelines~~ shall be maintained to assure certification of the state's construction standards and codes. This part ~~Nothing in ss. 553.501-553.513~~ is not intended to expand or diminish the defenses available to a place of public accommodation or a commercial facility under the Americans with Disabilities Act and the standards ~~federal Americans with Disabilities Act~~ ~~Accessibility Guidelines~~, including, but not limited to, the readily achievable standard, and the standards applicable to alterations to private buildings or facilities as defined by the standards ~~places of public accommodation~~.

Section 20. Section 553.503, Florida Statutes, is amended to read:

553.503 Adoption of federal standards ~~guidelines~~.—Subject to modifications under this part ~~the exceptions in s. 553.504~~, the federal Americans with Disabilities Act Standards for Accessible Design ~~Accessibility Guidelines~~, and related regulations provided ~~as adopted by reference~~ in 28 C.F.R., parts 35 and ~~part~~ 36, and 49 C.F.R. part 37 ~~subparts A and D, and Title II of Pub. L. No. 101-336~~, are hereby adopted and incorporated by reference as the law of this state and shall be incorporated into~~. The guidelines shall establish the minimum standards for the accessibility of buildings and facilities built or altered within this state.~~ the ~~1997~~ Florida Accessibility Code for Building Construction and ~~must be~~ adopted by the Florida Building Commission in accordance with chapter

120.

Section 21. Section 553.504, Florida Statutes, is amended to read:

553.504 Exceptions to applicability of the federal standards ~~guidelines~~.—Notwithstanding the adoption of the Americans with Disabilities Act Standards for Accessible Design pursuant to ~~Accessibility Guidelines in~~ s. 553.503, all buildings, structures, and facilities in this state must ~~shall~~ meet the following additional requirements if such requirements ~~when they~~ provide increased accessibility:

(1) All new or altered public buildings and facilities, private buildings and facilities, places of public accommodation, and commercial facilities, as those terms are defined by the standards, subject to this part ~~ss. 553.501-553.513~~ which may be frequented in, lived in, or worked in by the public must ~~shall~~ comply with this part ~~ss. 553.501-553.513~~.

(2) All new single-family houses, duplexes, triplexes, condominiums, and townhouses shall provide at least one bathroom, located with maximum possible privacy, where bathrooms are provided on habitable grade levels, with a door that has a 29-inch clear opening. However, if only a toilet room is provided at grade level, such toilet room must ~~shall~~ have a clear opening of at least ~~not less than~~ 29 inches.

~~(3) All required doors and walk-through openings in buildings excluding single-family homes, duplexes, and triplexes not covered by the Americans with Disabilities Act of 1990 or the Fair Housing Act shall have at least 29 inches of clear width except under ss. 553.501-553.513.~~

~~(4) In addition to the requirements in reference 4.8.4 of~~

~~the guidelines, all landings on ramps shall be not less than 60 inches clear, and the bottom of each ramp shall have not less than 72 inches of straight and level clearance.~~

~~(5) All curb ramps shall be designed and constructed in accordance with the following requirements:~~

~~(a) Notwithstanding the requirements of reference 4.8.5.2 of the guidelines, handrails on ramps which are not continuous shall extend not less than 18 inches beyond the sloped segment at both the top and bottom, and shall be parallel to the floor or ground surface.~~

~~(b) Notwithstanding the requirements of references 4.3.3 and 4.8.3 of the guidelines, curb ramps that are part of a required means of egress shall be not less than 44 inches wide.~~

~~(c) Notwithstanding the requirements of reference 4.7.5 of the guidelines, curb ramps located where pedestrians must use them and all curb ramps which are not protected by handrails or guardrails shall have flared sides with a slope not exceeding a ratio of 1 to 12.~~

(3) ~~(6)~~ Notwithstanding the requirements in s. 404.2.9 ~~reference 4.13.11~~ of the standards ~~guidelines~~, exterior hinged doors must ~~shall~~ be ~~so~~ designed so that such doors can be pushed or pulled open with a force not exceeding 8.5 foot pounds.

~~(7) Notwithstanding the requirements in reference 4.33.1 of the guidelines, all public food service establishments, all establishments licensed under the Beverage Law for consumption on the premises, and all facilities governed by reference 4.1 of the guidelines shall provide seating or spaces for seating in accordance with the following requirements:~~

~~(a) For the first 100 fixed seats, accessible and usable~~

~~spaces must be provided consistent with the following table:~~

~~Capacity of Seating In Assembly Areas~~	~~Number of Required Wheelchair Locations~~
~~1 to 25~~	~~1~~
~~26 to 50~~	~~2~~
~~51 to 100~~	~~4~~

~~(b) For all remaining fixed seats, there shall be not less than one such accessible and usable space for each 100 fixed seats or fraction thereof.~~

~~(8) Notwithstanding the requirements in references 4.32.1-4.32.4 of the guidelines, all fixed seating in public food service establishments, in establishments licensed under the Beverage Law for consumption on the premises, and in all other facilities governed by reference 4.1 of the guidelines shall be designed and constructed in accordance with the following requirements:~~

~~(a) All aisles adjacent to fixed seating shall provide clear space for wheelchairs.~~

~~(b) Where there are open positions along both sides of such aisles, the aisles shall be not less than 52 inches wide.~~

(4) ~~(9)~~ In motels and hotels a number of rooms equaling at least 5 percent of the guest rooms minus the number of accessible rooms required by the standards must ~~guidelines shall~~ provide the following special accessibility features:


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(a) Grab rails in bathrooms and toilet rooms that comply with s. 604.5 ~~4.16.4~~ of the standards ~~guidelines~~.

(b) All beds in designed accessible guest rooms must ~~shall~~ be an open-frame type that allows the ~~to permit~~ passage of lift devices.

(c) Water closets that comply with section 604.4 of the standards. ~~All standard water closet seats shall be at a height of 15 inches, measured vertically from the finished floor to the top of the seat, with a variation of plus or minus 1/2 inch. A portable or attached raised toilet seat shall be provided in all designated handicapped accessible rooms.~~

All buildings, structures, or facilities licensed as a hotel, motel, or condominium pursuant to chapter 509 are ~~shall be~~ subject to ~~the provisions of~~ this subsection. This subsection does not relieve ~~Nothing in this subsection shall be construed as relieving~~ the owner of the responsibility of providing accessible rooms in conformance with ss. 224 and 806 of the standards ~~9.1-9.5 of the guidelines~~.

~~(10) Notwithstanding the requirements in reference 4.29.2 of the guidelines, all detectable warning surfaces required by the guidelines shall be governed by the requirements of American National Standards Institute A117.1-1986.~~

~~(11) Notwithstanding the requirements in references 4.31.2 and 4.31.3 of the guidelines, the installation and placement of all public telephones shall be governed by the rules of the Florida Public Service Commission.~~

(5) ~~(12)~~ Notwithstanding ss. 213 and 604 of the standards ~~the requirements in references 4.1.3(11) and 4.16-4.23 of the~~

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~~guidelines~~, required bathing rooms ~~restrooms~~ and toilet rooms in new construction shall be designed and constructed in accordance with the following ~~requirements~~:

(a) The standard accessible toilet compartment must ~~restroom stall shall~~ contain an accessible lavatory within it, which must be at least ~~the size of such lavatory to be not less than~~ 19 inches wide by 17 inches deep, nominal size, and wall-mounted. The lavatory shall be mounted so as not to overlap the clear floor space areas required by s. 604 of the standards ~~4.17 figure 30(a) of the guidelines~~ for the standard accessible toilet compartment ~~stall~~ and ~~to~~ comply with s. 606 of the standards ~~4.19 of the guidelines~~. Such lavatories shall be counted as part of the required fixture count for the building.

(b) The accessible toilet compartments must ~~water closet shall~~ be located in the corner, diagonal to the door.

~~(c) The accessible stall door shall be self-closing.~~

~~(13) All customer checkout aisles not required by the guidelines to be handicapped accessible shall have at least 32 inches of clear passage.~~

~~(14) Turnstiles shall not be used in occupancies which serve fewer than 100 persons, but turnstiles may be used in occupancies which serve at least 100 persons if there is an unlocked alternate passageway on an accessible route affording not less than 32 inches of clearance, equipped with latching devices in accordance with the guidelines.~~

(6) ~~(15)~~ Barriers at common or emergency entrances and exits of business establishments conducting business with the general public that are existing, under construction, or under contract for construction which would prevent a person from using such

entrances or exits must ~~shall~~ be removed.

Section 22. Section 553.5041, Florida Statutes, is amended to read:

553.5041 Parking spaces for persons who have disabilities.—

(1) This section is not intended to expand or diminish the defenses available to a place of public accommodation under the Americans with Disabilities Act and the federal Americans with Disabilities Act Standards for Accessible Design ~~Accessibility Guidelines~~, including, but not limited to, the readily achievable standard, and the standards applicable to alterations to places of public accommodation and commercial facilities. Subject to the exceptions described in subsections (2), (4), (5), and (6), if ~~when~~ the parking and loading zone requirements of the federal standards and related regulations ~~Americans with Disabilities Act Accessibility Guidelines (ADAAG), as adopted by reference in 28 C.F.R. part 36, subparts A and D, and Title II of Pub. L. No. 101-336~~, provide increased accessibility, those requirements are adopted and incorporated by reference as the law of this state.

(2) State agencies and political subdivisions having jurisdiction over street parking or publicly owned or operated parking facilities are not required to provide a greater right-of-way width than would otherwise be planned under regulations, guidelines, or practices normally applied to new development.

(3) Designated accessible ~~If parking spaces are provided for self-parking by employees or visitors, or both, accessible spaces shall be provided in each such parking area. Such~~ spaces shall be designed and marked for the exclusive use of ~~those~~ individuals who have a severe physical disability and have

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permanent or temporary mobility problems that substantially impair their ability to ambulate and who have been issued ~~either~~ a disabled parking permit under s. 316.1958 or s. 320.0848 or a license plate under s. 320.084, s. 320.0842, s. 320.0843, or s. 320.0845.

(4) The number of accessible parking spaces must comply with the parking requirements in ~~ADAAG~~ s. 208 of the standards ~~4.1~~ and the following:

(a) There must be one accessible parking space in the immediate vicinity of a publicly owned or leased building that houses a governmental entity or a political subdivision, including, but not limited to, state office buildings and courthouses, if ~~no~~ parking for the public is not provided on the premises of the building.

(b) There must be one accessible parking space for each 150 metered on-street parking spaces provided by state agencies and political subdivisions.

(c) The number of parking spaces for persons who have disabilities must be increased on the basis of demonstrated and documented need.

(5) Accessible perpendicular and diagonal accessible parking spaces and loading zones must be designed and located to conform to ~~in conformance with the guidelines set forth in ADAAG~~ ss. 502 and 503 of the standards. ~~4.1.2 and 4.6 and Appendix s. A4.6.3 "Universal Parking Design."~~

(a) All spaces must be located on an accessible route that is at least ~~no less than~~ 44 inches wide so that users are ~~will~~ not ~~be~~ compelled to walk or wheel behind parked vehicles except behind his or her own vehicle.


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(b) ~~Each space must be located on the shortest safely accessible route from the parking space to an accessible entrance.~~ If there are multiple entrances or multiple retail stores, the parking spaces must be dispersed to provide parking at the nearest accessible entrance. If a theme park or an entertainment complex as defined in s. 509.013(9) provides parking in several lots or areas from which access to the theme park or entertainment complex is provided, a single lot or area may be designated for parking by persons who have disabilities, if the lot or area is located on the shortest ~~safely~~ accessible route to an accessible entrance to the theme park or entertainment complex or to transportation to such an accessible entrance.

(c)1. Each parking space must be at least ~~no less than~~ 12 feet wide. Parking access aisles must be at least ~~no less than~~ 5 feet wide and must be part of an accessible route to the building or facility entrance. ~~In accordance with ADAAG s. 4.6.3, access aisles must be placed adjacent to accessible parking spaces; however, two accessible parking spaces may share a common access aisle.~~ The access aisle must be striped diagonally to designate it as a no-parking zone.

2. The parking access aisles are reserved for the temporary exclusive use of persons who have disabled parking permits and who require extra space to deploy a mobility device, lift, or ramp in order to exit from or enter a vehicle. Parking is not allowed in an access aisle. Violators are subject to the same penalties ~~that are~~ imposed for illegally parking in parking spaces that are designated for persons who have disabilities. A vehicle may not be parked in an access aisle~~,~~ even if the


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vehicle owner or passenger is disabled or owns a disabled parking permit.

3. Notwithstanding any other provision of this subsection ~~to the contrary notwithstanding~~, a theme park or an entertainment complex as defined in s. 509.013~~(9)~~ in which ~~are provided~~ continuous attendant services are provided for directing individuals to marked accessible parking spaces or designated lots for parking by persons who have disabilities, may, in lieu of the required parking space design, provide parking spaces that comply with ~~ADAAG~~ ss. 208 and 502 of the standards ~~4.1 and 4.6~~.

(d) On-street parallel parking spaces ~~must be located either at the beginning or end of a block or adjacent to alley entrances. Such spaces~~ must be designed to conform to ~~in conformance with the guidelines set forth in ADAAG~~ ss. 208 and 502 of the standards, except that ~~4.6.2 through 4.6.5, exception:~~ access aisles are not required. Curbs adjacent to such spaces must be of a height that does ~~will~~ not interfere with the opening and closing of motor vehicle doors. This subsection does not relieve the owner of the responsibility to comply with the parking requirements of ~~ADAAG~~ ss. 208 and 502 of the standards ~~4.1 and 4.6~~.

~~(e) Parallel parking spaces must be even with surface slopes, may match the grade of the adjacent travel lane, and must not exceed a cross slope of 1 to 50, where feasible.~~

~~(f) Curb ramps must be located outside of the disabled parking spaces and access aisles.~~

(e)~~(g)~~1. The removal of architectural barriers from a parking facility in accordance with 28 C.F.R. s. 36.304 or with


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s. 553.508 must comply with this section unless compliance would cause the barrier removal not to be readily achievable. If compliance would cause the barrier removal not to be readily achievable, a facility may provide parking spaces at alternative locations for persons who have disabilities and provide appropriate signage directing such persons ~~who have disabilities~~ to the alternative parking if readily achievable. The facility may not reduce the required number or dimensions of those spaces or~~, nor may it~~ unreasonably increase the length of the accessible route from a parking space to the facility. The removal of an architectural barrier must not create a significant risk to the health or safety of a person who has a disability or to ~~that of~~ others.

2. A facility that is making alterations under s. 553.507(2)(b) must comply with this section to the maximum extent feasible. If compliance with parking location requirements is not feasible, the facility may provide parking spaces at alternative locations for persons who have disabilities and provide appropriate signage directing such persons ~~who have a disability~~ to alternative parking. The facility may not reduce the required number or dimensions of those spaces, or ~~nor may it~~ unnecessarily increase the length of the accessible route from a parking space to the facility. The alteration must not create a significant risk to the health or safety of a person who has a disability or to ~~that of~~ others.

(6) Each such parking space must be striped in a manner that is consistent with the standards of the controlling jurisdiction for other spaces and prominently outlined with blue paint, and must be repainted when necessary, to be clearly

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distinguishable as a parking space designated for persons who have disabilities. The space ~~and~~ must be posted with a permanent above-grade sign of a color and design approved by the Department of Transportation, which is placed on or at least 60 inches above the finished floor or ground surface measured to the bottom of the sign ~~a distance of 84 inches above the ground to the bottom of the sign~~ and which bears the international symbol of accessibility meeting the requirements of ~~ADAAG~~ s. 703.7.2.1 of the standards ~~4.30.7~~ and the caption "PARKING BY DISABLED PERMIT ONLY." Such a sign erected after October 1, 1996, must indicate the penalty for illegal use of the space. Notwithstanding any other provision of this section ~~to the contrary notwithstanding~~, in a theme park or an entertainment complex as defined in s. 509.013~~(9)~~ in which accessible parking is located in designated lots or areas, the signage indicating the lot as reserved for accessible parking may be located at the entrances to the lot in lieu of a sign at each parking place. This subsection does not relieve the owner of the responsibility of complying with the signage requirements of ~~ADAAG~~ s. 502.6 of the standards ~~4.30~~.

Section 23. Section 553.505, Florida Statutes, is amended to read:

553.505 Exceptions to applicability of the Americans with Disabilities Act.—Notwithstanding the Americans with Disabilities Act of 1990, private clubs are governed by this part ~~ss. 553.501-553.513~~. ~~Parking spaces, parking lots, and other parking facilities are governed by s. 553.5041 when that section provides increased accessibility.~~

Section 24. Section 553.506, Florida Statutes, is amended

to read:

553.506 Powers of the commission.—In addition to any other authority vested in the Florida Building Commission by law, the commission, in implementing this part ~~ss. 553.501-553.513~~, may, by rule, adopt revised and updated versions of the Americans with Disabilities Act Standards for Accessible Design ~~Accessibility Guidelines~~ in accordance with chapter 120.

Section 25. Section 553.507, Florida Statutes, is amended to read:

553.507 Applicability ~~Exemptions~~.—This part applies to ~~Sections 553.501-553.513 do not apply to any of the following~~:

(1) All areas of newly designed and newly constructed buildings and facilities as determined by the federal standards established and adopted pursuant to s. 553.503. ~~Buildings, structures, or facilities that were either under construction or under contract for construction on October 1, 1997.~~

(2) Portions of altered buildings and facilities as determined by the federal standards established and adopted pursuant to s. 553.503. ~~Buildings, structures, or facilities that were in existence on October 1, 1997, unless:~~

~~(a) The building, structure, or facility is being converted from residential to nonresidential or mixed use, as defined by local law;~~

~~(b) The proposed alteration or renovation of the building, structure, or facility will affect usability or accessibility to a degree that invokes the requirements of s. 303(a) of the Americans with Disabilities Act of 1990; or~~

~~(c) The original construction or any former alteration or renovation of the building, structure, or facility was carried~~

~~out in violation of applicable permitting law.~~

(3) A building or facility that is being converted from residential to nonresidential or mixed use as defined by the Florida Building Code. Such building or facility must, at a minimum, comply with s. 553.508 and the requirements for alternations as determined by the federal standards established and adopted pursuant to s. 553.503.

(4) Buildings and facilities where the original construction or any former alternation or renovation was carried out in violation of applicable permitting law.

Section 26. Section 553.509, Florida Statutes, is amended to read:

553.509 Vertical accessibility.—

(1) This part and the Americans with Disabilities Act Standards for Accessible Design do not ~~Nothing in ss. 553.501-553.513 or the guidelines shall be construed to~~ relieve the owner of any building, structure, or facility governed by this part ~~those sections~~ from the duty to provide vertical accessibility to all levels above and below the occupiable grade level, regardless of whether the standards ~~guidelines~~ require an elevator to be installed in such building, structure, or facility, except for:

(a) Elevator pits, elevator penthouses, mechanical rooms, piping or equipment catwalks, and automobile lubrication and maintenance pits and platforms.~~;~~

(b) Unoccupiable spaces, such as rooms, enclosed spaces, and storage spaces that are not designed for human occupancy, for public accommodations, or for work areas.~~; and~~

(c) Occupiable spaces and rooms that are not open to the


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public and that house no more than five persons, including, but not limited to, equipment control rooms and projection booths.

(d) Theaters, concert halls, and stadiums, or other large assembly areas that have stadium-style seating or tiered seating if ss. 221 and 802 of the standards are met.

(e) All play and recreation areas if the requirements of chapter 10 of the standards are met.

(f) All employee areas as exempted in s. 203.9 of the standards.

(g) Facilities, sites, and spaces exempted by s. 203 of the standards.

~~(2)(a) Any person, firm, or corporation that owns, manages, or operates a residential multifamily dwelling, including a condominium, that is at least 75 feet high and contains a public elevator, as described in s. 399.035(2) and (3) and rules adopted by the Florida Building Commission, shall have at least one public elevator that is capable of operating on an alternate power source for emergency purposes. Alternate power shall be available for the purpose of allowing all residents access for a specified number of hours each day over a 5-day period following a natural disaster, manmade disaster, emergency, or other civil disturbance that disrupts the normal supply of electricity. The alternate power source that controls elevator operations must also be capable of powering any connected fire alarm system in the building.~~

~~(b) At a minimum, the elevator must be appropriately prewired and prepared to accept an alternate power source and must have a connection on the line side of the main disconnect, pursuant to National Electric Code Handbook, Article 700. In~~

~~addition to the required power source for the elevator and connected fire alarm system in the building, the alternate power supply must be sufficient to provide emergency lighting to the interior lobbies, hallways, and other portions of the building used by the public. Residential multifamily dwellings must have an available generator and fuel source on the property or have proof of a current contract posted in the elevator machine room or other place conspicuous to the elevator inspector affirming a current guaranteed service contract for such equipment and fuel source to operate the elevator on an on-call basis within 24 hours after a request. By December 31, 2006, any person, firm or corporation that owns, manages, or operates a residential multifamily dwelling as defined in paragraph (a) must provide to the local building inspection agency verification of engineering plans for residential multifamily dwellings that provide for the capability to generate power by alternate means. Compliance with installation requirements and operational capability requirements must be verified by local building inspectors and reported to the county emergency management agency by December 31, 2007.~~

~~(c) Each newly constructed residential multifamily dwelling, including a condominium, that is at least 75 feet high and contains a public elevator, as described in s. 399.035(2) and (3) and rules adopted by the Florida Building Commission, must have at least one public elevator that is capable of operating on an alternate power source for the purpose of allowing all residents access for a specified number of hours each day over a 5-day period following a natural disaster, manmade disaster, emergency, or other civil disturbance that~~

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~~disrupts the normal supply of electricity. The alternate power source that controls elevator operations must be capable of powering any connected fire alarm system in the building. In addition to the required power source for the elevator and connected fire alarm system, the alternate power supply must be sufficient to provide emergency lighting to the interior lobbies, hallways, and other portions of the building used by the public. Engineering plans and verification of operational capability must be provided by the local building inspector to the county emergency management agency before occupancy of the newly constructed building.~~

~~(d) Each person, firm, or corporation that is required to maintain an alternate power source under this subsection shall maintain a written emergency operations plan that details the sequence of operations before, during, and after a natural or manmade disaster or other emergency situation. The plan must include, at a minimum, a lifesafety plan for evacuation, maintenance of the electrical and lighting supply, and provisions for the health, safety, and welfare of the residents. In addition, the owner, manager, or operator of the residential multifamily dwelling must keep written records of any contracts for alternative power generation equipment. Also, quarterly inspection records of lifesafety equipment and alternate power generation equipment must be posted in the elevator machine room or other place conspicuous to the elevator inspector, which confirm that such equipment is properly maintained and in good working condition, and copies of contracts for alternate power generation equipment shall be maintained on site for verification. The written emergency operations plan and~~


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~~inspection records shall also be open for periodic inspection by local and state government agencies as deemed necessary. The owner or operator must keep a generator key in a lockbox posted at or near any installed generator unit.~~

~~(c) Multistory affordable residential dwellings for persons age 62 and older that are financed or insured by the United States Department of Housing and Urban Development must make every effort to obtain grant funding from the Federal Government or the Florida Housing Finance Corporation to comply with this subsection. If an owner of such a residential dwelling cannot comply with the requirements of this subsection, the owner must develop a plan with the local emergency management agency to ensure that residents are evacuated to a place of safety in the event of a power outage resulting from a natural or manmade disaster or other emergency situation that disrupts the normal supply of electricity for an extended period of time. A place of safety may include, but is not limited to, relocation to an alternative site within the building or evacuation to a local shelter.~~

~~(f) As a part of the annual elevator inspection required under s. 399.061, certified elevator inspectors shall confirm that all installed generators required by this chapter are in working order, have current inspection records posted in the elevator machine room or other place conspicuous to the elevator inspector, and that the required generator key is present in the lockbox posted at or near the installed generator. If a building does not have an installed generator, the inspector shall confirm that the appropriate prewiring and switching capabilities are present and that a statement is posted in the~~

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~~elevator machine room or other place conspicuous to the elevator inspector affirming a current guaranteed contract exists for contingent services for alternate power is current for the operating period.~~

(2) However, buildings, structures, and facilities must, as a minimum, comply with the ~~requirements in the~~ Americans with Disabilities Act Standards for Accessible Design ~~Accessibility Guidelines~~.

Section 27. Consistent with the federal implementation of the 2010 Americans with Disabilities Act Standards for Accessible Design, buildings and facilities in this state may be designed in conformity with the 2010 standards if the design also complies with Florida-specific requirements provided in part II of chapter 553, Florida Statutes, until the Florida Accessibility Code for Building Construction is updated to implement the changes to part II of chapter 553, Florida Statutes, as provided by this Act.

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

And the title is amended as follows:

After line 52

insert:

amending s. 553.502, F.S.; revising intent with respect to the Florida Americans with Disabilities Act; amending s. 553.503, F.S.; incorporating the Americans with Disabilities Act Standards for Accessible Design into state law by reference and directing that they be adopted by rule into the Florida Accessibility Code for Building Construction;

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amending s. 553.504, F.S.; revising exceptions to incorporate the standards; amending s. 553.5041, F.S.; revising provisions relating to parking spaces for persons who have disabilities to incorporate the standards; amending ss. 553.505 and 553.506, F.S.; conforming provisions to changes made by the act; amending s. 553.507, F.S.; providing for the applicability of the act; amending s. 553.509, F.S.; revising provisions relating to vertical accessiblity to incorporate the standards; providing that buildings and facilities in this state do not have to comply with the changes provided by this act until the Florida Accessibility Code for Building Construction is updated;

359472

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment

Delete lines 1000 - 1001
and insert:
(3) Commercial or residential swimming pool ~~pumps or water~~ heaters manufactured and sold on or after July 1, 2011, for installation

821182

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

After line 938

insert:

Any person that advertises, sells, offers, provides, distributes, or markets a product as hurricane, windstorm, or impact protection from wind-borne debris without such approval is subject to an action pursuant to the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501 brought by the enforcing authority as defined in s. 501.203.

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

821182

And the title is amended as follows:

Delete line 65

and insert:

of certain windstorm products; providing that selling such products without obtaining approval is a deceptive and unfair trade practice; amending s. 553.909,

641126

LEGISLATIVE ACTION

Senate . House

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

Senate Substitute for Amendment (821182) (with title amendment)

Delete lines 934 - 938

and insert:

components as established by the commission by rule. A product may not be advertised, sold, offered, provided, distributed, or marketed as hurricane, wind storm, or impact protection from wind-borne debris during a hurricane or wind storm unless it is approved pursuant to s. 553.842 or s. 553.8425. Any person who advertises, sells, offers, provides, distributes, or markets a product as hurricane, windstorm, or impact protection from wind-

641126

borne debris without such approval is subject to the Florida Deceptive and Unfair Trade Practices Act under part II of chapter 501 brought by the enforcing authority as defined in s. 501.203.

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

And the title is amended as follows:

Delete line 65

and insert:

of certain windstorm products; providing a cause of action against any person who advertises, sells, offers, provides, distributes, or markets certain products without approval; amending s. 553.909,

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 Regulated Industries Committee

BILL:	SB 812
INTRODUCER:	Senator Diaz de la Portilla
SUBJECT:	Internet Poker
DATE:	March 15, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Young/Harrington	Imhof	RI	**Pre-meeting**
2.			CJ	
3.			BC	
4.				
5.				
6.				

I. Summary:

This bill provides for the creation of an intrastate Internet poker network. It allows for the creation of the network through the use of up to three hub operators and provides for licensed cardroom operators to provide portals for consumers to access the Internet poker websites.

The bill requires the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation to provide oversight of Internet poker activities. The bill sets out a licensing structure to license hub operators and cardroom affiliates. It also provides for the selection of hub operators through a competitive procurement process.

The bill has an effective date of July 1, 2011.

This bill creates the following sections of the Florida Statutes: 849.087.

II. Present Situation:

Gambling is generally prohibited in Florida.[1] There are multiple exceptions to the general prohibition found in ch. 849, F.S. For example, poker is authorized to be played in Florida as a penny-ante game under s. 849.085, F.S., or in a cardroom located at a licensed pari-mutuel facility as provided in s. 849.086, F.S.

A "penny-ante game" is a game or series of games of "poker, pinochle, bridge, rummy, canasta, hearts, dominoes, or mah-jongg in which the winnings of any player in a single round, hand, or

[1] *See*, s. 849.08, F.S.

game do not exceed $10 in value."[2] It must be played in a dwelling, no admission or fee may be charged, no player may be solicited by advertising, a person must be at least 18 years old to play, and any debt incurred is unenforceable.[3]

A "dwelling" is defined as a residential premise that is owned or rented by a participant in the game. It includes "the common elements or common areas of a condominium, cooperative, residential subdivision, or mobile home park of which a participant in a penny-ante game is a unit owner, or the facilities of an organization which is tax-exempt under s. 501(c)(7) of the Internal Revenue Code."[4] It also includes a college dormitory or common recreational area of the college dormitory, and a community center owned by a municipality or county.[5]

Poker may also be played in a cardroom.[6] A cardroom is a facility where authorized games are played for money or anything of value and the public is invited to participate in the games and is charged a fee by the facility operator.[7] Only licensed pari-mutuel permitholders may operate cardrooms in the state.[8] Currently, there are 23 pari-mutuel facilities operating cardrooms.

Unlawful Internet Gambling Enforcement Act of 2006

The Unlawful Internet Gambling Enforcement Act (act) does not make Internet gambling illegal. Instead the act targets financial institutions in an attempt to prevent the flow of money from an individual to an Internet gaming company because most owners and operators of such sites are located overseas, outside of the jurisdiction of the United States.

The act does not prohibit intrastate Internet gambling as long as the bet or wager is initiated or received within the state. According to the Poker Voters of America, this provision would allow Internet poker sites in Florida as long as the servers and players of Internet poker are both located within the state.[9]

Unlawful Internet gambling does not include a bet or a wager initiated and received within a single state (intrastate transactions), if such a transaction is authorized by state law and that law requires age and location verification as well as security that ensures the age and location requirements are met.[10]

Other Federal Statutory Provisions

There are other federal statutory provisions that may have an effect on the legality of Internet poker. Those provisions include: the Wire Act of 1961, the Travel Act of 1961, the Money Laundering Control Act of 1986, the Transportation of Gambling Devices Act of 1951, the

[2] Section 849.085(2)(a), F.S.
[3] Section 849.085(3), F.S.
[4] Section 849.085(2)(b), F.S.
[5] *Id*.
[6] Section 849.086, F.S.
[7] Section 849.086(2)(c), F.S.
[8] Section 849.086(2)(f), F.S.
[9] Presentation by Melanie Brenner, Executive Director of Poker Voters of America before the Florida Senate Committee on Regulated Industries, February 16, 2010 (presentation on file with the committee).
[10] 31 U.S.C. s. 5362(10)(B)

Interstate Transportation of Wagering Paraphernalia Act, the Illegal Gambling Business Act, among others.

These provisions, however, all seem to rely on the *interstate* aspect of these actions as well as relying on an underlying violation in order to bring charges under these provisions.

Internet Poker in other States

Intrastate Internet poker is not presently authorized in any state. New Jersey passed legislation this year that would have authorized casinos in Atlantic City to offer Internet gaming to residents of the state of New Jersey.[11] The Governor vetoed the legislation this month. Nevada, California, and Iowa are currently considering legislation to legalize intrastate Internet poker.

III. Effect of Proposed Changes:

The bill creates s. 849.087, F.S., and authorizes intrastate Internet poker in the state.

Section 1. Provides that the act may be cited as the "Internet Poker Consumer Protection and Revenue Generation Act."

Section 2. Creates the regulatory framework for the act.

Subsection (1) provides legislative intent for the creation of the act. The bill provides that the intent is to ensure consumer protection and generate revenue for the state through legalized intrastate Internet poker activities; the intent is to capture revenues that are otherwise flowing to offshore and unregulated Internet poker operators.

Subsection (2) provides definitions, including:

- "Authorized game" means a game or series of games of poker, which are played in a nonbanking manner on a state Internet poker network;
- "Cardroom affiliate" means a licensed cardroom operator as defined in s. 849.086 who maintains an Internet site as a portal into a state Internet poker network;
- "Internet poker hub operator" or "poker hub operator" means a computer system operator that is licensed by the state and contracts with the state to operate a state Internet poker network; and
- "Intrastate Internet poker" means authorized games of poker played over the Internet by registered players who are physically present within the borders of this state at the time of play.

Subsection (3) authorizes intrastate Internet poker. This subsection authorizes players located within the state of Florida to play intrastate Internet poker on a licensed state poker network, and licensed Internet poker hub operators to operate a state Internet poker network.

Subsection (4) provides that the Division of Pari-mutuel Wagering (division) of the Department of Business and Professional Regulation shall administer the act. The division is authorized to

[11] Senate Bill 490 by Senator Raymond J. Lesniak (D. Union, N.J.)

adopt rules for administration, licensing, operation of the technical systems for the state poker network, the security of financial information of registered players, bonuses, awards, promotions, and other incentives, as well as the distribution of poker income and the imposition and collection of all taxes and fees.

This subsection gives the division the power to: investigate and monitor the operation of a state Internet poker network and the playing of authorized games; to review the books, accounts, and records of any current or former Internet poker hub operator or cardroom affiliate; suspend or revoke any license, after a hearing, for any violation of this section; take testimony, issue subpoenas; monitor and ensure the proper collection of taxes and fees to the state; monitor, audit, and verify the cash flow and accounting of a state Internet poker network revenue for any given operating day; ensure that all gaming is conducted fairly and that all personal and financial information provided by registered players is protected by the Internet poker hub operator.

Subsection (5) requires Internet poker hub operators to be licensed prior to operating an Internet poker network within this state. Any application must be completed on forms provided by the division and the application must contain all of the information the division determines by rule, is needed to determine the person's eligibility for the license. An applicant must provide all documentation required in a timely fashion and the documentation must be appropriate, current, and accurate. The Internet poker hub operator is required to notify the division anytime there is any change in ownership of the applicant or licensee of five percent or more for division approval.

The bill provides that once a contract is awarded, the licensee must pay the division a non-refundable payment of $10 million. This payment is an advance payment to the state and is credited against the tax on monthly gross receipts derived from the play of intrastate Internet poker. The bill also requires that upon initial application for a license, and annually thereafter, the Internet poker hub operator shall pay a non refundable $500,000 license fee to fund the following 12 months of licensure, regulation, and oversight by the division. All funds shall be deposited by the division to the Pari-mutuel Wagering Trust Fund.

Subsection (6) requires the division to select no more than three Internet poker hub operators through a competitive procurement process. The applicants must demonstrate the ability to ensure that intrastate Internet poker is offered only to register players who are at least 18 years of age and are present within the borders of the state at the time of play.

Subsection (7) provides minimum qualifications for an Internet poker hub operator:

- The entity must be authorized to conduct business in the state;
- The applicant or any subcontractor has not accepted any wager of money or other consideration on any online gambling activity from any Florida resident since October 13, 2006;
- The executives and key employees must meet the requirements to obtain intrastate Internet poker occupational licenses from the division;
- The applicant or subcontractor has a contract or is licensed to operate gaming or lottery activities in one or more jurisdictions within the United States;

- The applicant or subcontractor has existing and established experience with Internet gaming, or is licensed to conduct Internet gaming activities, in one or more jurisdictions outside the United States where Internet gaming is legal and regulated;
- The applicant, subcontractor, or any entity with an ownership interest in the applicant or subcontractor have demonstrated compliance with all federal and state laws in the jurisdictions where they provide services;
- The applicant has provided all necessary documentation and information relating to all proposed subcontractors of the applicant;
- The applicant provided a description of how it will facilitate compliance with all of the standards set forth in the section, including, but not limited to:
    - Registered player processes and requirements relating to intrastate play, age verification, and exclusion of problem gamblers;
    - Network system requirements;
    - Gaming systems; and
    - Ongoing auditing by the division and accounting systems.
- The applicant has provided all other documentation or information that the division, by rule, has determined is necessary to ensure that the applicant is legally, technically, and financially qualified to enter into a contract to become the state's Internet poker hub operator.

Subsection (8) provides application requirements for an Internet poker hub operator. An applicant must provide documentation establishing that the applicant is authorized to do business in the state, financial information, and any other document necessary to prove that the applicant is financially qualified to perform its obligations as an Internet poker hub operator. The applicant must provide information about any proposed subcontractors; however, "subcontractor" is not defined in the bill.

An applicant must provide documentation establishing how the applicant will comply with the provisions in the act, including how the applicant will verify age, only allow intrastate play, and ensure that the games are legal, independent, and fair.

This subsection provides that each applicant must pay $25,000 to compensate the division for the costs involved for a comprehensive investigation of the applicant to determine if the applicant is legally, technically, and financially qualified to become an Internet poker hub operator.

Subsection (9) requires that the Internet poker hub operator be financially and otherwise responsible for the operation of the state Internet poker network. To ensure the Internet poker hub operator's financial ability to be responsible, the licensee must provide evidence of a surety bond in the amount of $1 million, payable to the state for each year that the licensee is licensed to be an Internet poker hub operator. The bond shall be issued by a surety or sureties licensed to do business in the state, and the bond shall guarantee that an Internet poker hub operator fulfills all financial requirements of the contract. The bond will be kept in full force and effect by an Internet poker hub operator for the term of the license.

Subsection (10) provides obligations of an Internet poker hub operator. The subsection requires a licensee not only to comply with this section, but also with all terms of the contract between the entity and the state. This subsection provides that the contract between the division and the

Internet poker hub operator shall govern the interpretation of the contract and create a contractual relationship between the parties. The contract is for a five year term and at the end of that term may be renewed for a period equal to the original contract if both parties agree. The contract may be amended by a mutual written agreement of the parties.

In addition, this subsection provides opportunities for the hub operator to terminate the contract. First, if this section is amended, the Internet poker hub operator is given the power to declare the contract null and void within 60 days after the effective date of the amendment and must provide at least 90 days prior written notice of the intent to declare the contract null and void, otherwise, the Internet poker hub operator agrees to be bound by the amendments to this section. It is not clear how a person can declare a contract null and void within 60 days of an event, when the person must give 90 days' notice of the intent do so. Second, in the event that a change in federal law renders the provision of intrastate Internet poker illegal, an Internet poker hub operator may abandon the contract after providing the division with 90 days prior written notice of their intent to do so.

In addition, the subsection provides that if there is a dispute over the contract, either party may take the issue to an administrative law or circuit court for an initial interpretation of the contract and the rights and responsibilities in the contract. It is unclear in what forum the dispute is to be filed. Finally, following each year of operation, the division shall evaluate the liquidity of the intrastate Internet poker network to determine if there is a need to authorize additional Internet poker hub operators, provided that the division has not already authorized the maximum three hubs.

Subsection (11) requires that a cardroom affiliate be licensed prior to operating a portal. In order to be eligible for a license, the cardroom affiliate applicant must be licensed under s. 849.086, F.S., actively operate a cardroom with a minimum of 10 licensed tables, and comply with all the requirements of s. 849.086, F.S.

Once a license is issued, renewal of the license is to be made in conjunction with the applicant's annual application for its cardroom and pari-mutuel licenses. The application for a cardroom affiliate license must contain all of the information required by rule, by the division. The applicant must provide all documentation in a timely fashion and report any change in ownership over five percent for the approval of the division.

In order for a cardroom affiliate to be eligible for license renewal, they must have an active portal and must have contributed at least five percent of the total revenue generated from the play of intrastate Internet poker as determined by the division. The subsection also prohibits the sale of a portion of the cardroom affiliate license to any other entity, or contract with any company to run its website, conduct marketing activities, or conduct any other aspects of the business associated with the play of poker.

The cardroom affiliate must pay an annual licensure fee of $1,000. The division is authorized to adopt rules regarding cardroom affiliate licenses and renewals.

Subsection (12) requires any person employed by an Internet poker hub operator or a cardroom affiliate in any capacity related to intrastate Internet poker to be licensed by the division. This

provision also prohibits an Internet poker hub operator or a cardroom affiliate from contracting with or doing business with any business unless they hold an occupational license issued by the division. The division shall by rule, institute a schedule for applications of such licenses, the application forms required, and the rules regarding licenses and renewal. The license is valid for three years once the full fee is paid to the division. The division is to determine the amount of the license fee by rule, but the employee fee is not to exceed $50 and the business fee is not to exceed $1,000. If the required fee is not paid, disciplinary action may be taken by the division against the Internet poker hub operator or the cardroom affiliate. Current cardroom licensees do not have to pay the fee.

Subsection (13) provides that the division may deny, revoke, suspend, place conditions or restrictions on, the license of any person or entity who has:

- Been refused a license in any other state by the governmental body having jurisdiction;
- Been under suspension or has any unpaid fines in any other state or jurisdiction;
- Violated this section or any of the rules of the division governing conduct of persons holding such licenses;
- Been convicted of a capital felony or any other felony, in this state or any other jurisdiction, involving:
    - Arson
    - Any offense involving a controlled substance
    - Any crime involving a lack good moral character
- Had a license revoked by this state or any other jurisdiction for any gaming related offense;
- Been convicted of a felony or misdemeanor, in this state or any other state, or under the laws of the United States, related to gambling or bookmaking.

Subsection (14) provides that all employees of the Internet poker hub operator or cardroom affiliate must submit fingerprints for a criminal history check. The person whose record is being checked is also required to pay the costs of the investigation. The fingerprints will be kept on the statewide database and shall be forwarded to the Federal Bureau of Investigation.

Subsection (15) provides requirements for registered players:

- All registered players must be located within this state at the time of play of intrastate Internet poker;
- A person who has not reached 18 years of age may not be a registered player or play intrastate Internet poker and;
- All Internet poker hub operators and cardroom affiliates shall exclude from play any person who has submitted a completed Internet Poker Self-Exclusion Form.

When an Internet poker hub operator receives a Self-Exclusion Form, the operator or cardroom affiliate shall immediately provide a copy of the form to each Internet poker hub operator, each cardroom affiliate and the division. The subsection further provides that a person may not bring an action for negligence or any other claim against a hub operator or cardroom affiliate if they have filled out a Self-Exclusion Form and they gain access and play despite the request to be

excluded. Each hub operator and cardroom affiliate must prominently display a link to the responsible gaming organization that is under contract with the division under ch. 551, F.S.

Subsection (16) requires the Internet poker hub operator to provide the division with a description of any game of poker and the betting rules it proposes to offer to registered players and all documentation relating to development and testing of the game's software. Once they have provided this information, the Internet poker hub operator is authorized to begin offering the game and if the division does not object to the game within 30 days of receipt of the information, the game will be considered authorized and the hub may continue to operate the game. All games are required to be operated strictly, within the game and betting rules. In order to ensure that all games are run fairly, the Internet poker hub operator must provide the following information through the game display:

- The name of the game;
- Any restrictions on play;
- The rule of the game;
- All instructions on play of the game;
- The unit and total of bets permitted;
- The player's current account balance, which must be shown in real time and;
- Any other information that the Internet hub operator determines is necessary for the registered player to have in real time to compete fairly in the proposed or authorized game.

The subsection further requires that the Internet poker hub operator institute controls and technology to ensure the ability to minimize fraud or cheating through collusion. The hub operator must also take steps to stop such activities and inform the division once they are made aware of the existence of the cheating or fraud. The hub operator is required to investigate any such complaints made, and submit a report to the division within 24 hours of the complaint and continue to update the division every 24 hours until the investigation is complete. A registered player is not permitted to bring an action for damages against a hub operator for attempting to prevent fraud or cheating if the hub operator can demonstrate that it acted to prevent such actions as soon as they became aware of them. And finally, if the software does not allow the completion of the game, the hand is to be voided and all funds related to the game shall be returned to the registered player's account.

Subsection (17) requires the Internet hub operator to register players and to establish accounts for those players, and a person may not play unless they have registered an account with the Internet poker hub operator. In order to establish an account a person must provide:

- First name and surname;
- Principle residence address;
- Telephone number;
- Social security number;
- Legal identification or certification to prove that the person is at least 18 years of age;
- Valid email address;

- And the source of funds to be used to establish the account after the registration process is complete.

The Internet poker hub operator is not allowed to release the personal information of a registered player to non-government third parties except for subcontractors. A governmental agency may release such information if they have received a court order to subpoena the information. The hub operator must require the player to agree to their terms of use. The hub operator is also given the ability to revoke or suspend the account of a registered player if the player has participated in illegal activity on a state Internet poker network. The Internet poker hub operator is prohibited from extending credit to any registered player, and the operator must provide the registered player with the opportunity to set their own options, such as limiting the amount of deposit entered in one day, limit on the amount of losses that can incur in a period of time, set a limit on the amount of time that may be spent playing, or other such personal controls.

Subsection (18) requires an Internet poker hub operator to keep a book of registered player accounts, regularly audit the accounts, and make all financial information available to the division upon request. These reports must include:

- Monthly auditable and aggregate financial statements;
- Calculation of all fees payable to the government;
- Identity of all players;
- The balance of the player's account at the start of the session of play;
- The wagers placed on each game, time stamped by the game server;
- The result of each game, time stamped by the game server;
- The amount won or lost by the player; and
- The balance on the player's account at the end of each game.

The players' accounts must be reconciled on a monthly basis.

Subsection (19) requires an Internet poker hub operator to put in place technical systems that materially aid the division in fulfilling its regulatory, consumer protection, and revenue-raising functions and allow the division unrestricted access to and the right to inspect the technical systems. The Internet poker hub operator is further required to ensure that the system is protected from tampering or manipulation and document all procedures for how the system and the games operate.

Subsection (20) authorizes the Internet poker hub operator to charge a fee for the playing of games or tournaments. Those fees may be handled in a few ways:

- Per hand charge;
- Flat fee;
- Hourly rate; or
- A rake subject to the posted maximum amount, but not based on the amount won by players.

The fee must be posted on the screen prior to the start of the game.

Subsection (21) requires that an entity must acquire a valid intrastate Internet poker business occupational license, issued by the division, in order to partner with an Internet poker hub operator or a cardroom affiliate. This subsection further prohibits any employee of the division from being an officer, director, owner, or employee of any person or entity issued a license by the division or from having any interest in or do business with such a person or entity. Employees of the division or relatives living in the household of the employee are prohibited from playing on the network at any time.

Subsection (22) provides that it is illegal to play Internet poker in the state of Florida, unless such play complies with the laws of this state. It further provides that any person who assists in making or allows to be made a false statement on any document required under this section is subject to an administrative fine of up to $10,000. Also, any person who manipulates, or attempts to manipulate the outcome, payoff, or operation of the play of intrastate Internet poker commits a felony of the third degree, which is punishable by:

- Imprisonment for not more than 5 years;[12]
- A fine not to exceed $5,000;[13] or
- For a habitual offender, an imprisonment term for not more than 10 years.[14]

Subsection (23) requires the Internet poker hub operator to pay, upon initial submission of an application and annually thereafter, a nonrefundable $500,000 license fee. A cardroom affiliate is required to pay, upon submission of an application and annually thereafter, a nonrefundable license fee of $1,000.

Subsection (24) requires the Internet poker hub operator to pay the division a nonrefundable $10 million and provides that this payment shall be considered an advance on the taxes to be paid to the state. The Internet hub operator shall be credited this money against gross receipts monthly until the amount is recouped by the Internet hub operator.

Subsection (25) provides that the Internet poker hub operator pay the state a tax of 10 percent of the operator's monthly gross receipts derived from play. These payments shall be made on the fifth day of each calendar month and be deposited into the Pari-mutuel Wagering Trust Fund. Any licensee who fails to make the required tax payment is subject to an administrative fine of up to $10,000 for each day that the required payment is late.

Subsection (26) provides a distribution calculation for the income derived from the play of internet poker. The 90 percent remaining after the 10 percent tax has been paid to the state, shall be divided in the following way:

- Seventy percent of the remaining money is to be distributed to the cardroom and cardroom affiliates;
  - If the money to be distributed this way is greater than $35,000 multiplied by the number of cardroom affiliates, then each facility that is eligible to be an affiliate, but

[12] Section 775.082, F.S.
[13] Section 775.083, F.S.
[14] Section 774.084, F.S.

did not participate is entitled to $20,833 and the remaining money is to be divided between those who did participate as affiliates as follows:
    - Fifty percent shall be divided and distributed based on the affiliates' total rake from the previous fiscal year divided by the total previous year's rake as determined by the division.
    - Fifty percent shall be divided and distributed based on the amount wagered for the previous month through the cardroom affiliates portal as determined by the division, divided by the total amount wagered through all the cardroom affiliate's portals.
    - If two or more cardroom affiliates join together to operate a portal, their wagers and rake shall be combined.
    - Each license holder that receives payment under this subsection is required to use at least 4 percent of its monthly gross receipts from Internet poker to supplement pari-mutuel purses or prize money during the current meet or the next ensuing meet.
- Twenty-five percent of the remaining money shall be retained by the Internet hub operator to pay all costs of operations.
- Four percent of the remaining money shall be retained by the Internet poker hub operator to fund statewide advertising, marketing, and promotion of play.
- One percent is to be used to fund services related to the prevention and treatment of problem gambling by the entity that is under contract with the division to perform such duties.

The subsection requires that these distributions be made by the twentieth day of each calendar month and the division is to ensure that all distributions are made in accordance with this section.

Subsection (27) authorizes the division to revoke, suspend, or deny a license to an Internet poker hub operator or cardroom affiliate who has violated this act or any of the rules adopted by the division. The subsection further provides that if a cardroom affiliates' pari-mutuel permit or license is suspended or revoked pursuant to ch. 550, F.S., or it's cardroom operator's license is suspended or revoked pursuant to s. 849.086, F.S., the division may also revoke or suspend the cardroom affiliate license. The division is also given the authority to impose an administrative fine not to exceed $10,000 for any person violating this section.

Subsection (28) provides that the division may suspend or revoke a cardroom affiliate license or Internet poker hub operator license for any willful violation of this act. In lieu of such action, the division also has the discretion to invoke an administrative fine not to exceed $100,000 for a willful violation.

Subsection (29) provides the division rulemaking authority for the act.

Subsection (30) declares that the Legislature has the exclusive authority over the conduct of intrastate Internet poker and that only the division and other authorized state agencies shall administer this act.

Section 3. Provides that the act shall take effect on July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill provides an annual license fee of $500,000 and an initial payment of $10 million to be credited against the 10 percent gross receipts tax for the hub operators. The cardroom affiliates are required to pay a $1,000 license fee per year. The occupational license fee is $50 for new employees of the poker hub or cardroom affiliate. Nonemployees supplying goods and services must pay a license fee of $1,000 annually.

B. Private Sector Impact:

Based on the tax revenue estimates, it is believed that intrastate Internet poker would have a positive effect on the pari-mutuel industry through increased purse amounts and additional revenues generated as a result of becoming a licensed cardroom affiliate.

C. Government Sector Impact:

The Revenue Estimating Conference met on February 4, 2011, and discussed the House companion bill, HB 77. They estimate that HB 77 would raise $10.5 million in FY 2011-2012, nothing for FY 2012-2013, $4.7 million in FY 2013-2014, and then $7.2 million in FY 2014-2015.

The Department of Business and Professional Regulation estimates that if enacted, the legislation could provide $10,585,000 in revenue to the state in FY 2011-2012. This revenue will be in the form of license fees, application fees, and net taxes paid. In FY 2012-2013 the estimated revenue is expected to drop to $560,000, which will be based on license fees. This drop is a result of the $10,000,000 in taxes that the hub operators are required to pay up front and then not required to pay taxes until the amount exceeds the $10,000,000 already paid. Then in FY 2013-2014, the revenue to the state is expected to be $6,460,000.

The net revenue to the state, after the costs of regulation, administration, and new personnel is subtracted is estimated to be $9,363,702 for FY 2011-2012, $375,600 for FY 2012-2013, and $5,803,600 for FY 2013-2014.

VI. Technical Deficiencies:

On Lines 150-153 and lines 243-246 the bill states that the Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) authorizes the state to regulate and conduct intrastate Internet poker. However, UIGEA does not preclude a state from regulating and conducting intrastate Internet Poker, it does not authorize a state to do so. In addition, the bill should be amended to reflect the correct name of the federal act, the Unlawful Internet Gambling Enforcement Act of 2006.

The bill does not require a hub operator to operate instate. Allowing a hub to be established out of state may violate the provisions in UIGEA.

The bill does not indicate whether a hub operator may decline to partner with a cardroom affiliate or whether a cardroom affiliate may partner with more than one hub operator.

VII. Related Issues:

The legalization of Internet poker in Florida may affect the state's compact with the Seminole Indian Tribe of Florida (tribe). The tribe would not be required to make the Minimum Guaranteed Payments[15] if the state affirmatively allows Internet or online gaming and the Tribe's net win for all of its gaming facilities combined drops more than 5 percent below its Net Win for the previous 12 months.[16] However, the Tribe would still be required to make payments based on the Percentage Revenue Share Amount,[17] which is a graduated scale that ranges from 12 percent of Net Win up to $2 billion and 25 percent of Net Win greater than $4.5 billion.[18]

The Minimum Guaranteed Payments would be reinstated for any subsequent Revenue Sharing Cycle if the Net Win rises above the amount of the 5 percent reduction. There would be no reduction if the decline in the Net Win were due to an Act of God, war, terrorism, fire, flood, or accidents that damage the Tribe's facilities. There would also not be a reduction if the Tribe offered Internet or online gaming as authorized by law.[19]

Revenue sharing with the Seminole Indian Compact relies on continued exclusivity of casino style and Class III gaming. Although the legalization of intrastate Internet poker may constitute an expansion of gaming, the Compact provides that payments will not be reduced or cease unless the Tribe's net win falls more than 5 percent after Internet gaming begins. Even if the Tribe's net win decreases by more than 5 percent, the Tribe will continue to revenue share with the state, except the Tribe will make payments based on the Percentage Revenue Share Amount instead of the Minimum Guaranteed Payment amounts.

Because we are still in the first year of the contract, there is insufficient data to indicate whether the state will suffer a reduction in payments if the Tribe switches and begins making payments based on the Percentage Revenue Share Amount. Some reports have indicated that the Tribe is

[15] The payments are $150 million for the first two years of the compact, $233 million for the next two years, and $234 million for the last year for a total of $1 billion. *See* Parts III.L and III.M of the compact.
[16] Part XI.B.3., *Gaming Compact Between the Seminole Tribe of Florida and the State of Florida,* July 6, 2010.
[17] *Id.*
[18] *See* Part XI.B.1.(b) of the compact for the complete percentage payment schedule.
[19] *Supra* at n. 2.

grossing $2 billion in annual revenues; if those figures are correct, the Tribe would be making approximately $240 million per year in payments based on a 12 percent revenue share payment, which is higher than the current $150 million Guaranteed Payment.

In addition, if the Tribe conducts Internet gaming, the Tribe must continue to make payments under the Guaranteed Minimum Payment structure. Because of the uncertainty of whether the Tribe will begin Internet gaming and whether the Tribe will experience any decrease in Net Win, it is not possible to predict whether the state will experience a decrease in revenue sharing payments.

VIII. Additional Information:

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

None.

B. Amendments:

None.

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LEGISLATIVE ACTION

Senate . House

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The Committee on Regulated Industries (Diaz de la Portilla) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. This act may be cited as the "Internet Poker Consumer Protection and Revenue Generation Act."

Section 2. Section 849.087, Florida Statutes, is created to read:

849.087 Intrastate Internet poker authorized.—

(1) LEGISLATIVE INTENT.—It is the intent of the Legislature to create a framework for the state to regulate intrastate Internet poker which can ensure consumer protections and

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additional revenue to the state by authorizing, implementing, and creating a licensing and regulatory structure and system of intrastate Internet poker to:

(a) Provide that intrastate Internet poker is offered for play only in a manner that is lawful under the federal Unlawful Internet Gambling Enforcement Act of 2006.

(b) Provide a new source of revenue that will generate additional positive economic benefits to the state through the authorization of lawful and regulated intrastate Internet poker in Florida instead of flowing offshore to unregulated foreign operators and markets.

(c) Create a contractual relationship with one or more Internet poker hub operators having the technical expertise to ensure that wagering authorized by this section is offered only to registered players who are at least 18 years of age and physically present within the borders of this state at the time of play.

(d) Provide for a competitive procurement process to select one or more Internet poker hub operators that are qualified to be licensed by the state and meet all statutory, regulatory, and contractual requirements of the state while protecting registered poker players.

(e) Provide for a licensed cardroom operator to become a licensed provider of intrastate Internet poker through Internet poker hub operators.

(f) Ensure that the state is able to collect all taxes and fees from the play of intrastate Internet poker.

(g) Create a system to protect each registered poker player’s private information and prevent fraud and identity

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theft and ensure that the player's financial transactions are processed in a secure and transparent fashion.

(h) Ensure that the regulatory agency has unlimited access to the premises and records of the Internet poker hub operators and cardroom affiliates to ensure strict compliance with its regulations concerning credit authorization, account access, and other security provisions.

(i) Require the Internet poker hub operators to provide accessible customer service to registered poker players.

(j) Require the Internet poker hub operator's Internet site to contain information relating to problem gambling, including a telephone number that an individual may call to seek information and assistance for a potential gambling addiction.

(2) DEFINITIONS.—Unless otherwise clearly required by the context, as used in this section:

(a) "Authorized game" means a game or series of games of poker, which may include tournaments, which are played in a nonbanking manner on a state Internet poker network.

(b) "Cardroom affiliate" means a licensed cardroom operator as defined in s. 849.086 who maintains an Internet site as a portal into a state Internet poker network.

(c) "Convicted" means having been found guilty, regardless of adjudication, as a result of a jury verdict, nonjury trial, or entry of a plea of guilty or nolo contendere.

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

(e) "Division" means the Division of Pari-mutuel Wagering of the department.

(f) "Gross receipts" means the total amount of money

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received by an Internet poker hub operator from registered players for participation in authorized games.

(g) "Internet poker hub operator" or "poker hub operator" means a computer system operator that is licensed by the state and contracts with the state to operate a state Internet poker network.

(h) "Intrastate Internet poker" means authorized games of poker played over the Internet by registered players who are physically present within the borders of this state at the time of play.

(i) "Liquidity" means the total number of registered players available in a state Internet poker network.

(j) "Nonbanking game" means an authorized game in which an Internet poker hub operator or cardroom affiliate is not a participant and has no financial stake in the outcome of the authorized game.

(k) "Player incentives" means any bonuses, rewards, prizes, or other types of promotional items provided to a registered player by an Internet poker hub operator or cardroom affiliate as an incentive to begin or continue playing on a state Internet poker network.

(l) "Rake" means a set fee or percentage of the pot assessed by an Internet poker hub operator for providing the Internet poker services to registered players for the right to participate in an authorized game conducted by the poker hub operator.

(m) "Registered player" means a person who is registered with a poker hub operator under this section to participate in an authorized game conducted on a state Internet poker network.


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(n) "State Internet poker network" means a computer system operated by one or more Internet poker hub operators which authorizes the playing of and wagering on intrastate Internet poker by registered players through the website portals of cardroom affiliates.

(o) "Tournament fee" means a set fee assessed to registered players by an Internet poker hub operator for providing the Internet poker tournament services.

(3) INTRASTATE INTERNET POKER AUTHORIZED.—

(a) Under the Unlawful Internet Gambling Enforcement Act of 2006, a state is not precluded from regulating and conducting intrastate Internet poker as long as all players and the online wagering activities are located within the state.

(b) Notwithstanding any other provision of law, a person in Florida may participate as a registered player in an authorized game or tournament provided on a state Internet poker network by a licensed cardroom affiliate or may operate a state Internet poker network as a licensed Internet poker hub operator if such game and poker operations are conducted strictly in accordance with the provisions of this section and federal law.

(4) AUTHORITY OF DIVISION.—The division shall administer this section and regulate the operation of a state Internet poker network, the Internet poker hub operators, the cardroom affiliates, and the play of intrastate Internet poker under this section and the rules adopted pursuant to this section, and is authorized to:

(a) Adopt rules related to Internet poker, including, but not limited to, rules governing the issuance of operator and individual occupational licenses to Internet poker hub

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operators, cardroom affiliates, and their employees; operation of a state Internet poker network and technical system requirements; security of the financial information of registered players and registered player accounts; bonuses, awards, promotions, and other incentives to registered players; recordkeeping and reporting requirements; the distribution of Internet poker income; and the imposition and collection of all fees and taxes imposed by this section.

(b) Conduct investigations and monitor operation of a state Internet poker network and the playing of authorized games on a network.

(c) Review the books, accounts, and records of any current or former Internet poker hub operator or cardroom affiliate.

(d) Suspend or revoke any license, after a hearing, for any violation of this section or the rules adopted pursuant to this section.

(e) Take testimony, issue summons and subpoenas for any witness, and issue subpoenas duces tecum in connection with any matter within its jurisdiction.

(f) Monitor and ensure proper collection of taxes and fees imposed by this section. The division shall monitor, audit, and verify the cash flow and accounting of a state Internet poker network revenue for any given operating day.

(g) Monitor and ensure that the playing of Internet poker is conducted fairly and that all personal and financial information provided by registered players is protected by the Internet poker hub operators.

(5) INTERNET POKER HUB OPERATOR LICENSE REQUIRED; APPLICATION.—A person may not operate as an Internet poker hub

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operator in this state unless the person holds a valid Internet poker hub operator license issued under this section.

(a) Only a person holding a valid Internet poker hub operator license issued by the division may provide intrastate Internet poker for play to registered players.

(b) An Internet poker hub operator must be an entity authorized to conduct business in this state.

(c) A person seeking a license or renewal of a license to operate as an Internet poker hub operator shall make application on forms prescribed by the division. Applications for Internet poker hub operator licenses shall contain all of the information the division, by rule, determines is required to ensure eligibility under this section.

(d) As a condition of licensure and to maintain continued authority to conduct intrastate Internet poker, an Internet poker hub operator licensee must provide the documentation required under this section on a timely basis to the division and the documentation must be appropriate, current, and accurate. A change in ownership or interest of an Internet poker hub operator licensee of 5 percent or more of the stock or other evidence of ownership or equity in an Internet poker hub operator licensee or any parent corporation or other business entity that in any way owns or controls an Internet poker hub operator licensee must be approved by the division before the change, unless the owner is an existing holder of the license who was previously approved by the division. A change in ownership or interest of less than 5 percent which results in a cumulative ownership or interest of 5 percent or more must be approved by the division before the change, unless the owner is

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an existing holder of the license who was previously approved by the division. The division may then conduct an investigation to ensure that the license is properly updated to show the change in ownership or interest. Reporting is not required under this paragraph if the person is holding 5 percent or less of the equity or securities of a corporate owner of an Internet poker hub operator licensee that has its securities registered pursuant to s. 12 of the Securities Exchange Act of 1934, 15 U.S.C. ss. 78a-78kk, and if the corporation or entity files with the United States Securities and Exchange Commission the reports required by s. 13 of that act or if the securities of the corporation or entity are regularly traded on an established securities market in the United States.

(e) Any applicant and each licensee shall pay all fees as required in subsections (24) and (25).

(6) SELECTION OF AN INTERNET POKER HUB OPERATOR BY COMPETITIVE PROCUREMENT PROCESS; EVALUATION.—

(a) The division shall, subject to a competitive procurement process, select no more than three Internet poker hub operator applicants that meet the licensure and technical requirements and expertise to provide services for lawful intrastate Internet poker games in Florida. The applicants must demonstrate the ability to ensure that intrastate Internet poker is offered only to registered players who are at least 18 years of age and who are physically present within the borders of this state at the time of play.

(b) After each year of operation of intrastate Internet poker, the division shall review and evaluate the current level of liquidity in the state Internet poker network to determine if


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there is a need to license additional Internet poker hub operators, if the maximum number of Internet poker hub operators has not already been authorized. If the division finds there is sufficient evidence to support licensing additional Internet poker hub operators, then the division may select additional Internet poker hub operators pursuant to this subsection and the qualifications specified in subsection (7). Notwithstanding the power to license additional Internet poker hub operators under this paragraph, only three Internet poker hub operators may be licensed at any one time in the state.

(7) QUALIFICATIONS FOR AN INTERNET POKER HUB OPERATOR.—For the purposes of this section, the division shall consider all of the following as minimum qualifications to determine whether an Internet poker hub operator applicant or any subcontractor included in the hub operator applicant's state application is legally, technically, and financially qualified to become the state's Internet poker hub operator:

(a) The applicant is an entity authorized to conduct business in this state.

(b) The applicant has not accepted any wager of money or other consideration on any online gambling activity, including poker, from any Florida resident since October 13, 2006. However, this paragraph does not disqualify an applicant or subcontractor who accepts online pari-mutuel wagers from any Florida resident through a legal online pari-mutuel wagering entity authorized in another state.

(c) The applicant's executives and key employees meet the requirements to obtain intrastate Internet poker occupational licenses from the division, as set forth in subsection (12).

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(d) The applicant has existing and established experience with Internet gaming, or is licensed to conduct Internet gaming activities, in one or more jurisdictions anywhere in the world where Internet gaming is legal and regulated.

(e) The applicant and all entities with an ownership interest in the applicant have demonstrated compliance with all federal and state laws in the jurisdictions in which they provide services.

(f) The applicant has provided all necessary documentation and information relating to all proposed subcontractors of the applicant.

(g) The applicant has provided a description of how it will facilitate compliance with all of the standards set forth in this section, including, but not limited to, those for:

1. Registered player processes and requirements relating to intrastate play, age verification, and exclusion of problem gamblers.

2. Network system requirements, including, but not limited to, connectivity, hardware, software, anti-fraud systems, virus prevention, data protection, access controls, firewalls, disaster recovery, and redundancy.

3. Gaming systems, including, but not limited to, hardware and software that ensures that: games are legal, games are independent and fair, game and betting rules are available to all registered players, and all data used for the conduct of each game are randomly generated and unpredictable.

4. Ongoing auditing by the division and accounting systems, including, but not limited to, those for registered player accounts, participation fees, distribution of funds to

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registered players, and distribution of revenue to the state.

(h) The applicant has provided all other documentation or information that the division, by rule, has determined is required to ensure that the applicant is legally, technically, and financially qualified to enter into a contract to become the state's Internet poker hub operator.

(8) SUBMISSION OF THE APPLICATION FOR AN INTERNET POKER HUB OPERATOR.—In addition to demonstrating that the applicant is legally, technically, and financially qualified to become an Internet poker hub operator in the state, the applicant must describe how it will fulfill the contractual role envisaged by this section. The applicant shall provide all of the following:

(a) All necessary documentation and information relating to the applicant and its direct and indirect owners, including, but not limited to:

1. Documentation that the entity is authorized to conduct business in this state and other founding documents.

2. Current and historical audited financial and accounting records.

3. Any and all documents relating to legal and regulatory proceedings in this state and other jurisdictions involving the applicant.

4. Any and all documents relating to the applicant's business history, including all state and federal tax filings.

5. Any and all documents relating to the nature and sources of the applicant's financing.

6. Any and all documentation that demonstrates that the applicant is financially qualified to perform the obligations of an Internet poker hub operator as described in this section.


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7. Any other documentation or information that the division, by rule, determines is required to ensure eligibility.

(b) All necessary documentation and information relating to any of the subcontractors of the Internet poker hub operator applicant, including, but not limited to:

1. A description of the services to be provided by each subcontractor.

2. Information for each subcontractor as set forth in this section.

3. Any other documentation or information that the division, by rule, determines is required to ensure eligibility.

(c) A description as to how the applicant will facilitate compliance with all of the standards set forth in this section, including, but not limited to, those for:

1. Registered player requirements relating to:

a. Intrastate play.

b. Age verification.

c. Exclusion of problem gamblers.

2. Network system requirements, including, but not limited to:

a. Connectivity.

b. Hardware.

c. Software.

d. Anti-fraud systems.

e. Virus prevention.

f. Data protection.

g. Access controls.

h. Firewalls.

i. Disaster recovery.

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j. Redundancy.

3. Gaming systems, including, but not limited to, hardware and software that ensures that:

a. Games are legal.

b. Games are independent and fair.

c. Game and betting rules are available to all registered players.

d. All data used for the conduct of each game are randomly generated and unpredictable.

4. Accounting systems, including, but not limited to, those for:

a. Registered player accounts.

b. Participation fees.

c. Transparency and reporting to the division.

d. Distribution of revenue to the state, funds pursuant to contract, and funds to registered players.

e. Ongoing auditing.

(d) A description of the games and services the applicant proposes to offer to registered players.

(e) A description by the applicant of how it will ensure that registered players are at least 18 years of age or older and facilitate registered player protections and resolution of player disputes.

(f) Upon submission of the initial application and proposal, the applicant shall pay all fees required in subsections (23) and (24).

(9) ANNUAL BOND REQUIRED.—The holder of a license to be an Internet poker hub operator in the state shall be financially and otherwise responsible for the operation of a state Internet

poker network and for the conduct of any employee involved in the operation of the online poker network. Before the issuance of an Internet poker hub operator license, each qualified applicant for such a license must provide evidence of a surety bond in the amount of $1 million, payable to the state, for each year that the licensee is licensed to be an Internet poker hub operator in the state. The bond shall be issued by a surety or sureties authorized to do business in the state and approved by the division and the Chief Financial Officer in his or her capacity as treasurer of the division. The bond shall guarantee that an Internet poker hub operator fulfills all financial requirements of the contract. Such bond shall be kept in full force and effect by an Internet poker hub operator during the term of the license.

(10) CONTRACTUAL RELATIONSHIP; RIGHT TO TERMINATE CONTRACT.—An Internet poker hub operator shall comply with the terms of its contract with the state and this section.

(a) The accepted proposal agreed to by the division and an Internet poker hub operator shall constitute the contract between the state and the Internet poker hub operator.

(b) The contract between the state and an Internet poker hub operator is for a 5-year period and may be renewed for a period equal to the original contract, if agreed to by both parties.

(c) The contract between the state and an Internet poker hub operator may be amended by mutual written agreement of the division and the Internet poker hub operator.

(d) If this section is amended in such a way that affects the play of intrastate Internet poker or affects the operation


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of intrasate Internet poker by the licensed Internet poker hub operators contrary to the existing contract with the state, an Internet poker hub operator may declare the contract null and void within 90 days after the effective date of the amendment and must provide at least 60 days prior written notice to the division of such intent. Failure to provide notice of such intent to declare the contract null and void within 60 days of the effective date of any amendment to this section constitutes an agreement to be bound by the amendments adopted after the terms of the contract are established.

(e) In the event of commercial infeasibility due to a change in federal law rendering the provision of intrastate poker services illegal, an Internet poker hub operator or the division may abandon the contract after providing the other party with at least 90 days' written notice of its intent to end the contract and a statement explaining its interpretation that continuing to provide services under the contract is commercially infeasible.

(f) If a dispute arises between the parties to the contract, either the division or the Internet poker hub operator may go through an administrative law or circuit court for an initial interpretation of the contract and the rights and responsibilities in the contract.

(11) CARDROOM AFFILIATE LICENSE REQUIRED; APPLICATION; FEES.—A cardroom affiliate license may only be issued or renewed to a cardroom operator who is licensed under s. 849.086, actively operates a cardroom with a minimum of 10 licensed tables, and complies with all the requirements of s. 849.086 and the rules adopted pursuant to that section.

(a) Only those persons holding a valid cardroom affiliate license issued by the division may provide intrastate Internet poker for play to registered players through its website.

(b) Prior to providing intrastate Internet poker for play to registered players, a cardroom affiliate licensee must have entered into a contractual relationship with a licensed Internet poker hub operator to offer the play of Internet poker. A copy of the contract must be on file with the division.

(c) After the initial cardroom affiliate license is granted, the annual application for the renewal of that license shall be made in conjunction with the applicant's annual application for its cardroom and pari-mutuel licenses under s. 849.086 and chapter 550, respectively.

(d) A person seeking a license or renewal of a license to operate as a cardroom affiliate shall make the application on forms prescribed by the division. An application for a cardroom affiliate license shall contain all of the information the division, by rule, determines is required to ensure eligibility.

(e) As a condition of licensure and to maintain continued authority for the conduct of intrastate Internet poker, the cardroom affiliate licensee must provide the documentation required under this section on a timely basis to the division and the documentation must be appropriate, current, and accurate.

(f) As a condition of eligibility for license renewal, a cardroom affiliate must have, as either an individual or as part of a coalition as allowed in subsection (26)(d), an active and operating portal, must have a current contract on file with the division, and must have contributed at least 1 percent of the

total revenue generated from the play of intrastate Internet poker through the Internet poker hub the cardroom affiliate has contracted with from the previous state fiscal year, as determined by the division.

(g) The annual cardroom affiliate license fee shall be $1,000 as referenced in subsection (23)(c).

(h) The division shall adopt rules regarding cardroom affiliate licenses and renewals.

(12) BUSINESS AND EMPLOYEE OCCUPATIONAL LICENSE REQUIRED; APPLICATION; FEES.—

(a) A person employed by or otherwise working for an Internet poker hub operator or a cardroom affiliate in any capacity related to and while conducting intrastate Internet poker operations must hold a valid occupational license issued by the division.

(b) An Internet poker hub operator or a cardroom affiliate may not employ or allow to be employed any person in any capacity related to the operation of intrastate Internet poker unless the person holds a valid occupational license.

(c) An Internet poker hub operator or cardroom affiliate may not contract with, or otherwise do business with, a business required to hold a valid intrastate Internet poker business occupational license, unless the business holds such a valid license.

(d) A proprietorship, partnership, corporation, subcontractor, or other entity must obtain a valid intrastate Internet poker business occupational license issued by the division to partner with, contract with, be associated with, or participate in the conduct of intrastate Internet poker

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operations with an Internet poker hub operator or a cardroom affiliate.

(e) The division shall establish, by rule, a schedule for the annual renewal of Internet poker hub operator and cardroom affiliate occupational licenses. Intrastate Internet poker occupational licenses are not transferable.

(f) A person seeking an intrastate Internet poker occupational license, or renewal of such a license, shall make the application on forms prescribed by the division and include payment of the appropriate application fee. An application for an intrastate Internet poker occupational license shall contain all of the information the division, by rule, determines is required to ensure eligibility under this section.

(g) The division shall adopt rules regarding intrastate Internet poker occupational licenses and renewals.

(h) An intrastate Internet poker occupational license is valid for the same term as a pari-mutuel occupational license issued under s. 550.105(1).

(i) Pursuant to rules adopted by the division, any person may apply for and, if qualified, be issued an intrastate Internet poker occupational license valid for a period of 3 years upon payment of the full occupational license fee for each of the 3 years for which the license is issued. The intrastate Internet poker occupational license is valid during its specified term at any Internet poker hub operator or a cardroom affiliate where intrastate Internet poker is authorized to be conducted.

(j) The intrastate Internet poker occupational license fee for initial application and annual renewal shall be determined

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by rule of the division but may not exceed $50 for an occupational license for an employee of an Internet poker hub operator or a cardroom affiliate licensee or $1,000 for a business occupational license for nonemployees of the licensee providing goods or services to an Internet poker hub operator or a cardroom affiliate occupational licensee. Failure to pay the required fee constitutes grounds for disciplinary action by the division against an Internet poker hub operator or a cardroom affiliate occupational licensee.

(k) A person holding a valid individual cardroom occupational license issued by the division under s. 849.086(6) is not required to obtain an individual employee occupational license under this subsection.

(13) BUSINESS AND EMPLOYEE OCCUPATIONAL LICENSE DENIAL, REVOCATION, SUSPENSION, LIMITATION, OR NONRENEWAL.—The division may:

(a) Deny an application for, or revoke, suspend, or place conditions or restrictions on, a license of a person or entity that has been refused a license by any other state gaming commission, governmental department, agency, or other authority exercising regulatory jurisdiction over the gaming of another state or jurisdiction.

(b) Deny an application for, or suspend or place conditions or restrictions on, a license of any person or entity that is under suspension or has unpaid fines in another state or jurisdiction.

(c) Deny, suspend, revoke, or refuse to renew any Internet poker hub operator or cardroom affiliate occupational license if the applicant for the license or the licensee has violated this


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section or the rules of the division governing the conduct of persons connected with the play of intrastate Internet poker.

(d) Deny, suspend, revoke, or refuse to renew any Internet poker hub operator or cardroom affiliate occupational license if the applicant for the license or the licensee has been convicted in this state, in any other state, or under the laws of the United States of a capital felony, a felony, or an offense in any other state that would be a felony under the laws of this state involving arson; trafficking in, conspiracy to traffic in, smuggling, importing, conspiracy to smuggle or import, or delivery, sale, or distribution of a controlled substance; racketeering; or a crime involving a lack of good moral character, or has had a gaming license revoked by this state or any other jurisdiction for any gaming-related offense.

(e) Deny, revoke, or refuse to renew any Internet poker hub operator or cardroom affiliate occupational license if the applicant for the license or the licensee has been convicted of a felony or misdemeanor in this state, in any other state, or under the laws of the United States if such felony or misdemeanor is related to gambling or bookmaking as described in s. 849.25.

(14) BUSINESS AND EMPLOYEE OCCUPATIONAL LICENSE; FINGERPRINTS; FEES; CITATIONS.—

(a) A person employed by or working with an Internet poker hub operator or a cardroom affiliate must submit fingerprints for a criminal history record check and may not have been convicted of any disqualifying criminal offense specified in subsection (7). Division employees and law enforcement officers assigned by their employing agencies to work within the premises

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as part of their official duties are excluded from the criminal history record check requirements under this subsection.

(b) Fingerprints for all intrastate Internet poker occupational license applications shall be taken in a manner approved by the division upon initial application, or as required thereafter by rule of the division, and shall be submitted electronically to the Department of Law Enforcement for state processing. The Department of Law Enforcement shall forward the fingerprints to the Federal Bureau of Investigation for national processing. The results of the criminal history record check shall be returned to the division for purposes of screening. The division requirements under this subsection shall be instituted in consultation with the Department of Law Enforcement.

(c) The cost of processing fingerprints and conducting a criminal history record check for an intrastate Internet poker occupational license shall be borne by the person being checked. The Department of Law Enforcement may invoice the division for the fingerprints submitted each month.

(d) All fingerprints submitted to the Department of Law Enforcement and required by this section shall be retained by the Department of Law Enforcement and entered into the statewide automated fingerprint identification system as authorized by s. 943.05(2)(b) and shall be available for all purposes and uses authorized for arrest fingerprint cards entered into the statewide automated fingerprint identification system under s. 943.051.

(e) The Department of Law Enforcement shall search all arrest fingerprints received under s. 943.051 against the

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fingerprints retained in the statewide automated fingerprint identification system. Any arrest record that is identified with the retained fingerprints of a person subject to the criminal history screening requirements of this section shall be reported to the division. Each licensed facility shall pay a fee to the division for the cost of retention of the fingerprints and the ongoing searches under this paragraph. The division shall forward the payment to the Department of Law Enforcement. The amount of the fee to be imposed for performing these searches and the procedures for the retention of licensee fingerprints shall be as established by rule of the Department of Law Enforcement. The division shall inform the Department of Law Enforcement of any change in the license status of licensees whose fingerprints are retained under paragraph (d).

(f) The division shall request the Department of Law Enforcement to forward the fingerprints to the Federal Bureau of Investigation for a national criminal history records check every 3 years following issuance of a license. If the fingerprints of a person who is licensed have not been retained by the Department of Law Enforcement, the person must file a complete set of fingerprints as provided for in paragraph (a). The division shall collect the fees for the cost of the national criminal history record check under this paragraph and shall forward the payment to the Department of Law Enforcement. The cost of processing fingerprints and conducting a criminal history record check under this paragraph for an intrastate Internet poker occupational license shall be borne by the person being checked. The Department of Law Enforcement may invoice the division for the fingerprints submitted each month. Under

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penalty of perjury, each person who is licensed or who is fingerprinted as required by this subsection must agree to inform the division within 48 hours if he or she is convicted of or has entered a plea of guilty or nolo contendere to any disqualifying offense, regardless of adjudication.

(g) All moneys collected under this subsection shall be deposited into the Pari-mutuel Wagering Trust Fund.

(h) The division may deny, revoke, or suspend any occupational license if the applicant or holder of the license accumulates unpaid obligations, defaults in obligations, or issues drafts or checks that are dishonored or for which payment is refused without reasonable cause.

(i) The division may fine or suspend, revoke, or place conditions upon the license of any licensee who provides false information under oath regarding an application for a license or an investigation by the division.

(j) The division may impose a civil fine of up to $10,000 for each violation of this section or the rules of the division in addition to or in lieu of any other penalty provided for in this subsection. The division may adopt a penalty schedule for violations of this section or any rule adopted pursuant to this section for which it would impose a fine in lieu of a suspension and adopt rules allowing for the issuance of citations, including procedures to address such citations, to persons who violate such rules. In addition to any other penalty provided by law, the division may exclude from all licensed pari-mutuel, cardroom, and slot machine facilities in this state, for a period not to exceed the period of suspension, revocation, or ineligibility, any person whose occupational license application

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has been declared ineligible to hold an occupational license or whose occupational license has been suspended or revoked by the division.

(15) INTRASTATE INTERNET POKER; AUTHORIZED GAMES.—

(a) In order to offer a specific game of poker for play, an Internet poker hub operator shall provide the division with:

1. A description of any game of poker and the betting rules it proposes to offer to registered players; and

2. Documentation relating to development and testing of the game's software.

(b) Upon submission of the information required in paragraph (a), an Internet poker hub operator may begin offering the game. If the division does not object to the proposed game of poker within 30 days after receipt of the submission, the game will be considered authorized and the Internet poker hub operator submitting the proposal may continue to offer the game to registered players.

(c) Games and betting events shall be operated strictly in accordance with the specified game and betting rules.

(d) An Internet poker hub operator shall ensure that the authorized games of poker are fair. For each proposed or authorized game offered for play, the gaming system shall display the following information:

1. The name of the game.

2. Any restrictions on play.

3. The rules of the game.

4. All instructions on how to play.

5. The unit and total bets permitted.

6. The registered player's current account balance, which

shall be updated in real time.

7. Any other information that an Internet poker hub operator determines is necessary for the registered player to have in real time to compete fairly in the proposed or authorized game.

(e) All proposed and authorized game results shall be conducted in such a fashion that:

1. Data used to create results shall be unpredictable such that it is infeasible to predict the next occurrence in a game, given complete knowledge of the algorithm or hardware generating the sequence, and all previously generated numbers.

2. The game or any game event outcome shall not be affected by the effective bandwidth, link utilization, bit error rate, or other characteristic of the communications channel between the gaming system and the playing device used by the player.

(f) An Internet poker hub operator shall deploy controls and technology to ensure the ability to minimize fraud or cheating through collusion, such as external exchange of information between different players, or any other means.

1. If an Internet poker hub operator becomes aware that fraud or cheating is taking place or has taken place, it shall immediately take steps to stop such activities and inform the division of all relevant facts.

2. An Internet poker hub operator shall immediately inform the division of any complaints of fraud or collusion and shall investigate whether the complaints are true and shall expeditiously act to prevent further fraud or collusion from taking place on the Internet poker hub. An Internet poker hub operator shall report the results of the investigation in


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writing to the division within 24 hours after the complaint and shall continue to report every 24 hours until its investigation is concluded. This paragraph does not prevent the division from conducting an independent investigation or initiating an administrative action to protect registered players from fraud and collusion on the Internet poker hub site and does not prohibit a registered player, the Internet poker hub operator, a cardroom affiliate, or the division from reporting suspected criminal activities to law enforcement officials.

3. A registered player may not bring an action for damages against an Internet poker hub operator for preventing fraud or cheating or attempting to prevent fraud or cheating if the Internet poker hub operator can demonstrate that it acted to prevent such actions as soon as it became aware of them.

(g) If the gaming server or software does not allow a game to be completed, the hand shall be voided and all funds relating to the incomplete hand shall be returned to the registered player's account.

(16) REGISTERED PLAYERS; ELIGIBILITY.—

(a) All registered players must be located within this state at the time of play of intrastate Internet poker.

(b) A person who has not attained 18 years of age may not be a registered player or play intrastate Internet poker.

(c) All Internet poker hub operators and cardroom affiliates shall exclude from play any person who has submitted a completed Internet Poker Self-Exclusion Form.

1. All Internet poker hub operators and cardroom affiliates shall have an Internet Poker Self-Exclusion Form available online and accessible on the Internet page that is displayed

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when:

a. A person opens the Internet page to register as a registered player; or

b. A registered player accesses the first page of the Internet page prior to playing.

2. Upon receipt of a completed Internet Poker Self-Exclusion Form, an Internet poker hub operator or cardroom affiliate shall immediately provide a copy of the completed form to each Internet poker hub operator, each cardroom affiliate, and the division. The division shall ensure that all other cardroom affiliates exclude the person from the play of intrastate Internet poker.

3. Each Internet poker hub operator and cardroom affiliate shall retain the original form to identify persons who request to be excluded from play.

4. Each Internet poker hub operator and cardroom affiliate shall prominently display a link to the website of a responsible gaming organization that is under contract with the division pursuant to s. 551.118(2) for services related to the prevention of compulsive and addictive gambling.

5. A person may not bring any action against an Internet poker hub operator or a cardroom affiliate for negligence or any other claim if a person who has filled out an Internet Poker Self-Exclusion Form gains access and plays despite the request to be excluded.

(17) REGISTERED PLAYER ACCOUNTS.—

(a) An Internet poker hub operator shall register players and establish registered player accounts prior to play and shall ensure that the player's personally identifiable information is

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accessible to the player and regulators but is otherwise secure.

(b) A person may not participate in any game on a state Internet poker network unless the person is registered as a player and holds an account.

(c) Accounts may be established in person or by mail, telephone, or any electronic means.

(d) To register and establish an account, a person must provide the following registration information:

1. First name and surname.

2. Principal residence address.

3. Telephone number.

4. Social security number.

5. Legal identification or certification to prove that the person is at least 18 years of age.

6. Valid email address.

7. The source of funds to be used to establish the account after the registration process is complete.

(e) Prior to completing the registration process, an Internet poker hub operator shall explain to the person in a conspicuous fashion the privacy policies of the Internet poker hub, and the person must assent to the following policies:

1. Personal identifying information will not be shared with any nongovernment third parties except for licensed subcontractors of an Internet poker hub operator for the sole purpose of permitting registered players to participate in games on the Internet poker hub or upon receipt of a court order to subpoena such information from the Internet poker hub.

2. All personally identifiable information about registered players will be shared with the division, the Department of Law

Enforcement, and any other governmental agency that receives a court order to subpoena such information.

(f) An Internet poker hub operator shall also require that a person agree to the terms of a use agreement applying to registered players.

(g) An Internet poker hub operator shall provide a registered player with the means to update the information provided in paragraph (d).

(h) An Internet poker hub operator may revoke the accounts of a registered player for the following reasons:

1. The registered player provided false information in the registration process;

2. The registered player has not updated registration information to keep it current; or

3. The registered player has violated an Internet poker hub operator's terms of use agreement.

(i) An Internet poker hub operator may suspend or revoke the account of a registered player if the operator suspects the registered player has participated in illegal activity on a state Internet poker network.

(j) An Internet poker hub operator shall establish and maintain an account for each registered player. An Internet poker hub operator shall:

1. Provide a means for a registered player to put funds into an account; however, a registered player may not increase the amount in an account after a game has started and before its completion.

2. Maintain records on the balance of each registered player's account.


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3. Prohibit a registered player from placing a wager unless the player's account has sufficient funds to cover the amount of the wager.

4. Not provide credit to a registered player's account or act as an agent for a credit provider to facilitate the provision of funds.

5. Provide a means for a registered player to transfer money out of the player's account.

(k) An Internet poker hub operator shall put in place other systems that provide registered players with the ability to control aspects of their play. Upon registration and at each time when a registered player logs on to a state Internet poker network, an Internet poker hub operator shall permit the registered player to adjust the player's play settings to:

1. Set a limit on the deposits that can be made per day;

2. Set a limit on the amount that can be wagered within a specified period of time;

3. Set a limit on the losses that may incur within a specified period of time;

4. Set a limit on the amount of time that can be played after logging on to the Internet poker hub; or

5. Prevent the Internet poker hub from allowing the registered player to play for an indefinite period of time.

(l) During play, in order to assist a registered player to decide whether to suspend play, the registered player's screen shall:

1. Indicate how long the player has been playing;

2. Indicate the player's winnings or losses since the time of last logging in;

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3. Give an option to the player to end the session or return to the game; and

4. Require the player to confirm that the player has read the message.

(18) REGISTERED PLAYER ACCOUNTS; RECORDS AND REPORTS.—

(a) An Internet poker hub operator shall establish a book of accounts, regularly audit, and make all financial records available to the division. An Internet poker hub operator shall demonstrate that it has a system of maintaining records and reports that are readily available to the division. The records and reports shall include the following:

1. Monthly auditable and aggregate financial statements of gaming transactions.

2. Calculation of all fees payable to government.

3. The identity of players.

4. The balance on the player's account at the start of a session of play.

5. The wagers placed on each game time stamped by the games server.

6. The result of each game time stamped by the games server.

7. The amount won or lost by the player.

8. The balance on the player's account at the end of the game.

(b) An Internet poker hub operator shall reconcile all data logs files regarding the registered players' accounts on a monthly basis.

(19) INTERNET POKER HUB OPERATOR; OBLIGATIONS; TECHNICAL SYSTEMS REQUIREMENTS.—


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(a) Before an Internet poker hub operator can begin intrastate Internet poker operations, an Internet poker hub operator shall establish a physical site in the state that will house the game and database servers and other components and equipment necessary to conduct intrastate Internet poker. In addition, managerial employees of the Internet poker hub operator who manage or oversee the daily operations of the Internet poker hub network must reside in the state.

(a) An Internet poker hub operator shall put in place technical systems that materially aid the division in fulfilling its regulatory, consumer protection, and revenue-raising functions and allow the division unrestricted access to and the right to inspect the technical systems.

(b) An Internet poker hub operator shall ensure that the network is protected from manipulation or tampering to affect the random probabilities of winning plays.

(c) An Internet poker hub operator shall define and document its methodology for the following:

1. The development, implementation, and maintenance of gaming software in a manner representative of industry best practice standards.

2. Server connectivity requirements that include:

a. Minimum game server connectivity requirements that ensure players are protected from losses due to connectivity problems.

b. The system’s ability to recover all transactions involving player funds in the event of a failure or malfunction.

c. Aborted game procedures.

3. Ability of the system to recover all information


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required for viewing a game interrupted due to loss of connectivity.

4. Consumer protection requirements.

5. Responsible advertising, marketing, and promotion that ensure that players are not misled through advertising or promotional activities, and will ensure that the terms and conditions of their promotions are followed.

6. Anti-money-laundering controls.

7. Preventive and detective controls addressing money laundering and fraud risks which shall be documented and implemented.

(d) An Internet poker hub operator shall retain all such documentation for at least 12 months.

(20) FEE FOR PARTICIPATION.—An Internet poker hub operator shall charge a fee or a tournament fee to registered players for the right to participate in authorized games or tournaments conducted on a state Internet poker network. The participation fee may be a per-hand charge, a flat fee, an hourly rate, or a rake subject to the posted maximum amount but may not be based on the amount won by players. The fee shall be designated and conspicuously posted on the registered player's screen prior to the start of each proposed or authorized game.

(21) PROHIBITED RELATIONSHIPS.—

(a) A proprietorship, partnership, corporation, subcontractor, or other entity must obtain a valid intrastate Internet poker business occupational license issued by the division to partner with, contract with, be associated with, or participate in the conduct of intrastate Internet poker operations with an Internet poker hub operator or a cardroom

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affiliate.

(b) A person employed by or performing any function on behalf of the division may not:

1. Be an officer, director, owner, or employee of any person or entity licensed by the division.

2. Have or hold any interest, direct or indirect, in or engage in any commerce or business relationship with any person licensed by the division.

(c) An employee of the division or a relative living in the same household as the employee may not play at any time on a state Internet poker network.

(d) An occupational licensee of an Internet poker hub operator or a relative living in the same household as the occupational licensee may not play at any time on a state Internet poker network. This paragraph does not apply to an occupational licensee of a cardroom affiliate.

(e) A cardroom affiliate licensee may not sell or lease all or a portion of a percentage of its cardroom licensed under s. 849.086 to any person or entity who has accepted any wager of money or other consideration on any online gambling activity, including poker, from any Florida resident since October 13, 2006. This paragraph does not apply if the person or entity who accepted the wager is licensed as an Internet poker hub operator or cardroom affiliate.

(f) A cardroom affiliate licensee may not contract with any person or entity to operate the cardroom affiliate's portal link to the state Internet poker network on its website, to conduct marketing or promotional activities, or to conduct any other aspects of business associated with the play of intrastate

Internet poker if that person or entity has accepted any wager of money or other consideration on any online gambling activity, including poker, from any Florida resident since October 13, 2006. This paragraph does not apply if the person or entity who accepted the wager is licensed as an Internet poker hub operator or cardroom affiliate.

(22) PROHIBITED ACTS; PENALTIES.—

(a) An Internet poker hub operator may conduct any proposed or authorized game under subsection (16) unless specifically prohibited by the division or by this section.

(b) A person who has not attained 18 years of age may not hold an intrastate Internet poker occupational license or engage in any game conducted therein.

(c) It is a violation of the laws of this state for any entity to offer Internet poker for free or for money or any other consideration to individuals present in this state unless that entity can demonstrate that it is in compliance with the laws and tax regulations of the United States and of this state.

(d) Any entity that has accepted any wager of money or other consideration on any online gambling activity, including poker, from any Florida resident since October 13, 2006, is not eligible to apply for licensure and participate in intrastate Internet poker in this state for a period of 3 years after the effective date of this act. However, this prohibition does not disqualify an applicant or subcontractor who accepts online pari-mutuel wagers from any Florida resident through a legal online pari-mutuel wagering entity authorized in another state.

(e) Except as otherwise provided by law and in addition to any other penalty, any person who knowingly makes or causes to

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be made, or aids, assists, or procures another to make, a false statement in any report, disclosure, application, or other document required under this section or any rule adopted under this section is subject to an administrative fine of up to $10,000.

(f) Any person who manipulates or attempts to manipulate the outcome, payoff, or operation of the play of intrastate Internet poker by tampering, collusion, or fraud, or by the use of any object, instrument, or device, by any means, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(g) All penalties imposed and collected under this subsection shall be deposited into the Pari-mutuel Wagering Trust Fund.

(23) LICENSE FEES.—

(a) Upon submission of the initial application and proposal, the applicant for an Internet poker hub operator license shall pay an initial filing fee of $25,000 to compensate the division for reasonably anticipated costs to be incurred to conduct a comprehensive investigation of the applicant to determine if the applicant is legally, technically, and financially qualified to become an Internet poker hub operator and is suitable for licensure. The division shall, by rule, require the applicant to make an additional payment if necessary to complete the investigation; however, the total amount collected under this paragraph may not exceed the actual cost incurred to conduct the investigation. The division shall, by rule, set a procedure for refunding any amount of the filing fee and additional payment collected under this paragraph which is


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not used to cover the cost of the investigation.

(b) Upon submission of the initial application for an Internet poker hub operator license, and annually thereafter, on the anniversary date of the issuance of the initial license, an internet poker hub operator licensee shall pay a nonrefundable license fee of $500,000 for the succeeding 12 months of licensure to fund the division's regulation and oversight of the operation and play of intrastate Internet poker.

(c) Upon submission of the initial application for a cardroom affiliate license, and annually thereafter, as required in subsection (11)(b), a cardroom affiliate licensee shall pay a nonrefundable license fee of $1,000 for the succeeding 12 months of licensure.

(d) All funds received under this section shall be deposited by the division with the Chief Financial Officer to the credit of the Pari-mutuel Wagering Trust Fund.

(24) ADVANCE PAYMENT BY AN INTERNET POKER HUB OPERATOR.—Upon the awarding of a contract to be an Internet poker hub operator by the division under subsection (6), an Internet poker hub operator licensee shall pay to the division a nonrefundable payment of $10 million. This payment shall be treated as an advance payment to the state by each Internet poker hub operator and shall be credited against the tax on monthly gross receipts derived from the play of intrastate Internet poker under paragraph (25)(a) until the original amount is recouped by each Internet poker hub operator.

(25) TAX RATE; OTHER PAYMENTS; PENALTIES.—

(a) Each Internet poker hub operator shall pay a tax to the state of 10 percent of the operator's monthly gross receipts


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derived from the play of intrastate Internet poker. However, an Internet poker hub operator shall pay no taxes under this paragraph until the full amount of the advance payment made by that poker hub operator under subsection (24) has been credited against the tax. Credit of the advance payment toward the tax shall be made upon receipt by the division of the monthly report required under paragraph (b).

(b) The gross receipts tax imposed by this section shall be paid to the division. Each Internet poker hub operator shall remit the gross receipts tax and licensee fees to the division to be deposited with the Chief Financial Officer, to the credit of the Pari-mutuel Wagering Trust Fund. Such payments shall be remitted to the division by electronic funds transfer on the 5th day of each calendar month for taxes and fees imposed for the preceding month's intrastate Internet poker activities. Licensees shall file a report under oath by the 5th day of each calendar month for all taxes remitted during the preceding calendar month. Such payments shall be accompanied by a report under oath showing all intrastate Internet poker activities for the preceding calendar month and such other information as may be prescribed by the division.

(c) A licensee who fails to make tax payments as required under this section is subject to an administrative penalty of up to $10,000 for each day the tax payment is not remitted. All penalties imposed and collected under this subsection shall be deposited in the Pari-mutuel Wagering Trust Fund. If a licensee fails to pay penalties imposed by order of the division under this subsection, the division may suspend, revoke, or refuse to renew the license of an Internet poker hub operator or cardroom


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affiliate.

(d) All of the moneys deposited in the Pari-mutuel Wagering Trust Fund under this section shall be utilized and distributed in the manner specified in s. 550.135(1) and (2).

(26) DISTRIBUTION OF INCOME DERIVED FROM THE PLAY OF INTERNET POKER.—

(a) After the tax on the monthly gross receipts derived from the play of intrastate Internet poker is paid to the state as specified under subsection (25), the remaining monthly gross receipts shall be distributed by the Internet poker hub operators as follows:

1. Seventy percent shall be distributed to eligible licensed cardroom affiliates.

a.(I) Fifty percent shall be divided and distributed among the cardroom affiliates based on each cardroom affiliate's total rake generated from the play of authorized games defined in s. 849.086(2)(a) for the previous state fiscal year divided by the total previous year's rake for all the cardroom affiliates, as determined by the division.

(II) Fifty percent shall be divided and distributed to the cardroom affiliates based on the amount wagered for the previous month through each cardroom affiliate's portal as determined by the division, divided by the total amount wagered for the previous month through all cardroom affiliates' portals.

b. If two or more cardroom affiliates join together to operate a portal for purposes of sub-sub-subparagraphs b.(I) and (II), their portal wagers and previous year's rake shall be combined.

c. Each permitholder that receives payments under this

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subparagraph shall use at least 4 percent of its monthly gross receipts from the play of intrastate Internet poker to supplement pari-mutuel purses or prize money, respectively, during the permitholder's current meet or no later than the next ensuing pari-mutuel meet.

2. Twenty-five percent shall be retained by the Internet poker hub operators from which they shall pay all costs for the intrastate Internet poker hub operations.

3. Four percent shall be retained by the Internet poker hub operators to fund statewide advertising, marketing, and promotion of the play of intrastate Internet poker on a state Internet poker network. The division shall perform an annual audit to verify that the Internet poker hub operators use such funds solely for the statewide advertising, marketing, and promotion of the play of intrastate Internet poker on a state Internet poker network.

4. One percent shall fund services related to the prevention and treatment of compulsive and addictive gambling provided by the entity that is under contract with the division under s. 551.118(2). The division shall be responsible for the distribution and audit of the funds under this subparagraph.

(b) The distribution of the preceding monthly gross receipts shall be by the 20th day of each calendar month.

(c) The division shall ensure that all distributions are made in accordance with this section and may adopt rules to ensure the implementation and proper distribution of funds.

(d) This subsection does not prevent individual cardrooms or a number of cardroom affiliates from joining together in a coalition for the purpose of the marketing and promotion of the

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play of intrastate Internet poker on a state Internet poker network.

(27) SUSPENSION, REVOCATION, OR DENIAL OF LICENSE.—

(a) The division may deny a license or the renewal of a license, or may suspend or revoke any license, when the applicant has: violated or failed to comply with section or any rule adopted pursuant to this section; knowingly caused, aided, abetted, or conspired with another to cause any person to violate this section or any rule adopted pursuant to this section; or obtained a license or permit by fraud, misrepresentation, or concealment; or if the holder of the license is no longer eligible under this section.

(b) If a cardroom affiliate's pari-mutuel permit or license is suspended or revoked by the division pursuant to chapter 550, or its cardroom operator's license is suspended or revoked by the division pursuant to s. 849.086, the division shall suspend or revoke the cardroom affiliate's license. If a cardroom affiliate's license is suspended or revoked under this section, the division may, but is not required to, suspend or revoke the licensee's cardroom operator's license.

(28) PENALTIES.— The division may revoke or suspend any Internet poker hub operator license or cardroom affiliate license issued under this section upon the willful violation by the licensee of this section or any rule adopted pursuant to this section.

(a) Notwithstanding any other provision of law, the division may impose an administrative fine not to exceed $10,000 for each violation against any person who has violated or failed to comply with this section or any rule adopted pursuant to this

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section.

(b) Nothwithstanding any other provision of law, the division may impose an administrative fine, not exceeding $100,000 for each count or separate offense, upon an Internet poker hub operator or a cardroom affiliate for willfully violating this section or any rule adopted pursuant to this section.

(c) All penalties imposed and collected under this section shall be deposited into the Pari-mutuel Wagering Trust Fund.

(29) RULEMAKING.—The division may adopt rules pursuant to ss. 120.536(1) and 120.54 to administer the provisions of this section.

(30) LEGISLATIVE AUTHORITY; ADMINISTRATION OF SECTION.—The Legislature finds and declares that it has exclusive authority over the conduct of intrastate Internet poker in this state. Only the Division of Pari-mutuel Wagering and other authorized state agencies shall administer this section and regulate the intrastate Internet poker industry in the state, including operation of all Internet poker hub operators and cardroom affiliates, play of authorized games, and the Internet poker computer systems authorized in this section, as provided by law and rules adopted by the division.

Section 3. This act shall take effect July 1, 2011.

================ 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:

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A bill to be entitled

An act relating to Internet poker; creating the "Internet Poker Consumer Protection and Revenue Generation Act"; providing for intrastate Internet poker to be provided to the public by cardroom operators through a state Internet poker network operated by licensed Internet poker hub operators; creating s. 849.087, F.S.; providing legislative intent; providing definitions; authorizing participation in and operation of intrastate Internet poker; providing for the Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation to administer the act and regulate the operation of a state Internet poker network, Internet poker hub operators, cardroom affiliates, and the playing of intrastate Internet poker; authorizing the division to adopt rules, conduct investigations and monitor operations, review books and accounts and records, suspend or revoke any license or permit for a violation, take testimony, issue summons and subpoenas, monitor and ensure the proper collection of taxes and fees, and monitor and ensure that the playing of Internet poker is conducted fairly and that player information is protected by Internet poker hub operators; requiring Internet poker hub operators to be licensed; providing qualifications and conditions for licensure; providing application requirements; providing for an advance payment to be credited toward taxes; providing initial and renewal


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license fees; providing for selection of Internet poker hub operators through competitive procurement process; requiring payment of certain costs and refund of amounts collected in excess of the cost; requiring a surety bond; providing for a contract between the state and the poker hub operator; requiring the division to annually determine the need for additional operators; providing for a cardroom affiliate license to be issued to a cardroom operator to provide intrastate Internet poker for play; providing for applications for the affiliate license and renewal thereof; providing conditions for licensure and renewal of licensure as an affiliate; requiring reporting to and approval by the division of a change of ownership of the affiliate licensee; prohibiting certain acts by an affiliate; providing a fee; providing for employee and business occupational licenses; requiring certain employees of and certain companies doing business with a cardroom affiliate or an Internet poker hub operator to hold an appropriate occupational license; prohibiting such operator or affiliate from employing or allowing to be employed such a person or doing business with such a company if that person or company does not hold an occupational license; directing the division to adopt rules regarding Internet poker hub operator, cardroom affiliate, and occupational licenses and renewal of such licenses; providing a fee for occupational license and renewal thereof; providing penalties for

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failure to pay the fee; exempting from licensure a person holding a valid individual cardroom occupational license; providing grounds for the division to deny an application for or revoke, suspend, or place conditions or restrictions on or refuse to renew such occupational license; requiring fingerprints; providing procedures for processing fingerprints and conducting a criminal history records check and for payment of costs; providing for citations and civil penalties; providing requirements to register and play intrastate Internet poker; providing for an Internet Poker Self-Exclusion Form; requiring the Internet poker hub operator to exclude from play any person who has completed such form; providing for maintenance of the form and distribution to cardroom affiliates and the division; requiring the Internet poker hub operator to display a link to the website offering services related to the prevention of compulsive and addictive gambling; limiting liability; providing requirements for approval of games to be offered to players; providing requirements for all offered games and game results and games not completed; providing requirements to minimize fraud and cheating; prohibiting action for damages against the Internet poker hub operator to prevent fraud or cheating under certain circumstances; providing requirements for player eligibility and registration and player accounts; authorizing the Internet poker hub operator to suspend or revoke player accounts;

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providing requirements for poker hub operations; requiring the Internet poker hub operator to establish a book of accounts, regularly audit financial records, and make the records available to the division; providing technical system requirements; requiring the Internet poker hub operator to define, document, and implement certain methodologies relating to its systems; requiring the Internet poker hub operator to maintain such documentation for a certain period of time; providing for player participation fees; prohibiting certain relationships and acts by employees of the division and occupational license holders and certain relatives; authorizing conduct of proposed and authorized games; prohibiting a person who has not attained a certain age from holding an Internet poker occupational license or engaging in any game conducted; prohibiting offering Internet poker to persons located in the state except in compliance with law; providing that an entity that has accepted any wager on any online gambling activity from a Florida resident since a certain date is not eligible to apply for licensure and participate in intrastate Internet poker in Florida for a specified period of time; prohibiting false statements; prohibiting manipulation of Internet poker play and operations; providing civil and criminal penalties; providing for disposition of fines collected; providing for license fees to be paid by the Internet poker hub operator and cardroom affiliates; providing for disposition and accounting


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of fees collected; providing for an advance payment by the Internet poker hub operator to be credited toward taxes; providing for the tax rate and procedures for payment; requiring payments to be accompanied by a report showing all intrastate Internet poker activities for the preceding calendar month and containing such other information as prescribed by the division; providing penalties for failure to pay taxes and penalties; providing for use of certain deposits; providing for distribution of moneys received from Internet poker hub operations; providing grounds for the division to deny a license or the renewal thereof or suspend or revoke a license; providing penalties; authorizing the division to adopt rules; providing for administration of the act and regulation of the intrastate Internet poker industry; providing an effective date.

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 Regulated Industries Committee

BILL:	SB 1430
INTRODUCER:	Senator Altman
SUBJECT:	Regulation of Smoking
DATE:	March 11, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Pre-meeting**
2.			ED	
3.			JU	
4.				
5.				
6.				

I. Summary:

The bill authorizes district school boards to adopt rules prohibiting any person from smoking tobacco on, or in, any other district-owned or district-leased facility or property between the hours of 6 a.m. and midnight.

This bill substantially amends section 386.212, Florida Statutes.

II. Present Situation:

The Florida Clean Indoor Air Act (act) in part II of ch. 386, F.S., regulates tobacco smoking in Florida. The legislative purpose of the act is to protect people from the health hazards of secondhand tobacco smoke and to implement the Florida health initiative in s. 20, Art. X of the State Constitution.[1]

Florida Constitution

On November 5, 2002, the voters of Florida approved Amendment 6 to the State Constitution, which prohibits tobacco smoking in enclosed indoor workplaces. Codified as s. 20, Art. X, Florida Constitution, the amendment defines an "enclosed indoor workplace," in part, as "any place where one or more persons engages in work, and which place is predominantly or totally bounded on all sides and above by physical barriers … without regard to whether work is occurring at any given time." The amendment defines "work" as "any persons providing any employment or employment-type service for or at the request of another individual or individuals

[1] Section 386.202, F.S.

or any public or private entity, whether for compensation or not, whether full or part-time, whether legally or not." The amendment provides limited exceptions for private residences "whenever they are not being used commercially to provide child care, adult care, or health care, or any combination thereof," retail tobacco shops, designated smoking guest rooms at hotels and other public lodging establishments, and stand-alone bars.

The constitutional amendment directs the Legislature to implement the "amendment in a manner consistent with its broad purpose and stated terms." The amendment requires that the implementing legislation have an effective date of no later than July 1, 2003, and requires that the implementing legislation must also provide civil penalties for violations; provide for administrative enforcement; and require and authorize agency rules for implementation and enforcement. The amendment further provides that the Legislature may enact legislation more restrictive of tobacco smoking than that provided in the Florida Constitution.

Florida's Clean Indoor Air Act

The Legislature implemented the smoking ban by enacting ch. 2003-398, L.O.F., effective July 1, 2003, which amended pt. II of ch. 386, F.S., and created s. 561.695, F.S., of the Beverage Law. The act, as amended, implements the constitutional amendment's prohibition. Specifically, s. 386.204, F.S., prohibits smoking in an enclosed indoor workplace, unless the act provides an exception. The act adopts and implements the amendment's definitions and adopts the amendment's exceptions for private residences whenever not being used for certain commercial purposes;[2] stand-alone bars;[3] designated smoking rooms in hotels and other public lodging establishments;[4] and retail tobacco shops, including businesses that manufacture, import or distribute tobacco products and tobacco loose leaf dealers.[5]

Section 386.207, F.S., provides for enforcement of the act by the Department of Health (DOH) and the Department of Business and Professional Regulation (DBPR) within each department's specific areas of regulatory authority. Sections 386.207(1) and 386.2125, F.S., grant rulemaking authority to the DOH and the DBPR and require that the departments consult with the State Fire Marshal during the rulemaking process.

Section 386.207(3), F.S., provides penalties for violations of the act by proprietors or persons in charge of an enclosed indoor workplace.[6] The penalty for a first violation is a fine of not less than $250 and not more than $750. The act provides fines for subsequent violations in the amount of not less than $500 and not more than $2,000. Penalties for individuals who violate the act are provided in s. 386.208, F.S., which provides for a fine in the amount of not more than $100 for a first violation and not more than $500 for a subsequent violation. The penalty range for an individual violation is identical to the penalties for violations of the act before the implementation of the constitutional smoking prohibition.

[2] Section 386.2045(1), F.S. *See also* definition of the term "private residence" in s. 386.203(1), F.S.
[3] Section 386.2045(4), F.S. *See also* definition of the term "stand-alone bar" in s. 386.203(11), F.S.
[4] Section 386.2045(3), F.S. *See also* definition of the term "designated guest smoking room" in s. 386.203(4), F.S.
[5] Section 386.2045(2), F.S. *See also* definition of the term "retail tobacco shop" in s. 386.203(8), F.S.
[6] The applicable penalties for violations by designated stand-alone bars are set forth in s. 561.695(8), F.S.

Smoking Prohibited Near School Property

Section 386.212(1), F.S., prohibits smoking by any person under 18 years of age in, on, or within 1,000 feet of the real property comprising a public or private elementary, middle, or secondary school between the hours of 6 a.m. and midnight. The prohibition does not apply to any person occupying a moving vehicle or within a private residence.

Section 386.212(2), F.S., authorizes law enforcement officers to issue citations in the form as prescribed by a county or municipality to any person violating the provisions of s. 386, F.S., and prescribes the information that must be included in the citation.

The issuance of a citation under s. 386.212(2), F.S., constitutes a civil infraction punishable by a maximum civil penalty not to exceed $25, or 50 hours of community service or, where available, successful completion of a school-approved anti-tobacco "alternative to suspension" program.[7]

If a person fails to comply with the directions on the citation, the person would waive his or her right to contest the citation and an order to show cause may be issued by the court.[8]

Regulation of Smoking Preempted to State

Section 386.209, F.S., provides that the act expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.

Regarding the issue of preemption, a recent Florida Attorney General Opinion concluded that the act precludes school districts from adoption tobacco-free campus policies which prohibit smoking outdoors on school grounds.[9] The Attorney General reasoned that s. 386.209, F.S., represents a clear expression of the legislative intent that the act preempts the field of smoking regulation. The Attorney General also noted that the prohibition against smoking near school property in s. 386.212, F.S., presented a clear expression of the legislative intent to preempt the regulation of smoking in any public places and, specifically, smoking on school property.

III. Effect of Proposed Changes:

The bill amends s. 386.212, F.S., to authorize district school boards to adopt rules prohibiting any person from smoking tobacco on, or in, any other district-owned or district-leased facility or property between the hours of 6 a.m. and midnight.

Any rules adopted by district school boards under the authority provided in this bill, would not be subject to the citation provisions in s. 386.212(2), F.S. The citation authority is limited to violations of the prohibition in s. 386.212(1), F.S., and would not apply to violations of school district rules. The civil penalty provisions in s. 386.212(3), F.S., and the failure to comply with a citation provision in s. 386.212(4), F.S., would also not apply to violations of any rule adopted by a school district board pursuant to the authority in this bill. Enforcement of any such rule

[7] Section 386.212(3), F.S.
[8] Section 386.212(4), F.S.
[9] Fla. AGO 2010-53 (December 29, 2010). *See also*, Fla. AGO 2005-63 (November 21, 2005), which opined that a municipality is preempted from regulating smoking in a public park other than as prescribed by the Legislature.

would be limited to ordering the person who is violating the board's rule to cease from smoking or to leave the property.

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:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

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

None.

B. Amendments:

None.

348922

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Between lines 22 and 23

insert:

Section 2. Section 386.209, Florida Statutes, is amended to read:

386.209 Regulation of smoking preempted to state.—Except as provided in s. 386.212, this ~~This~~ part expressly preempts regulation of smoking to the state and supersedes any municipal or county ordinance on the subject.

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

348922

And the title is amended as follows:

Delete line 7

and insert:

day; amending 386.209, F.S., providing an exception to the state preemption of the regulation of smoking in the state; providing an effective date

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 Regulated Industries Committee

BILL:	SB 1594
INTRODUCER:	Senator Sachs
SUBJECT:	Pari-mutuel Permitholders
DATE:	March 14, 2011
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Harrington	Imhof	RI	**Pre-meeting**
2.			BC	
3.			RC	
4.				
5.				
6.				

I. Summary:

This bill deletes the live racing requirements for greyhound permitholders. The bill extends the application for the live racing dates deadline with the Division of Pari-mutuel Wagering (division) of the Department of Business and Professional Regulation (department) to allow greyhound permitholders time to amend their completed applications and remove or reduce their live racing schedule.

The bill permits greyhound permitholders to transfer unused tax credits at any time during the year, rather than once per year. The bill reduces the tax on handle for greyhound tracks that run live racing. However, any greyhound permitholder that is not conducting live racing during the fiscal year shall provide three percent of the intertrack wagering handle to the host track as a payment of purses at the host track.

The bill provides that greyhound permitholders may conduct intertrack wagering, operate cardrooms, and, if applicable, operate slot machine gaming operations, regardless of whether they have run live greyhound racing.

This bill amends the following sections of the Florida Statutes: 550.002, 550.01215, 550.054, 550.0951, 550.09514, 550.26165, 550.615, 550.6305, 551.104, 551.114, and 849.086.

II. Present Situation:

Background

The Division of Pari-mutuel Wagering of the Department of Business and Professional Regulation provides regulatory oversight to pari-mutuel wagering activities, cardrooms located at pari-mutuel facilities, and slot machines located at pari-mutuel facilities located in Miami-Dade and Broward Counties. The mission of the division is the efficient, effective and fair regulation of authorized gaming at pari-mutuel facilities in Florida.[1]

The division's primary responsibilities include:

- Ensuring that races and games are conducted fairly and accurately;
- Ensuring the safety and welfare of racing animals;
- Collecting state revenue accurately and timely;
- Issuing occupational and permitholder operating licenses;
- Regulating pari-mutuel, cardroom, and slot machine operations;
- Ensuring that permitholders, licensees, and businesses related to the industries comply with state law; and
- Serving as the State Compliance Agency for the Compact between the Seminole Tribe of Florida and the State of Florida.

The division provides oversight to:

- 35 permitholders operating at 28 facilities:
  - 16 Greyhound
  - 3 Thoroughbred
  - 1 Harness
  - 6 Jai-Alai
  - 1 track offering limited intertrack wagering and horse sales
  - 1 Quarter Horse
- 23 Cardrooms operating at pari-mutuel facilities
- 5 Slot facilities located in Broward and Miami-Dade County pari-mutuel facilities

Greyhound Racing

Greyhound racing was authorized in Florida in 1931.[2] Betting is permitted on the outcome of the races around an oval track. The greyhounds typically chase a "lure," which is usually a mechanical hare or rabbit. Racing greyhounds are those which are bred, raised, or trained to be used in racing at a pari-mutuel facility and are registered with the National Greyhound Association.[3]

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[1] http://www.myflorida.com/dbpr/pmw/index.html (last visited February 28, 2011).
[2] *Deregulation of Intertrack and Simulcast Wagering at Florida's Pari-Mutuel Facilities*, Interim Report No. 2006-145, Florida Senate Committee on Regulated Industries, September 2005.
[3] Section 550.002(29), F.S.

Greyhound Racing Pari-Mutuel Facilities			
Facility	**Location**	**Cardroom**	**Slots**
Daytona Beach Kennel Club	960 South Williamson Blvd. Daytona Beach, FL 32114	Yes	No
Derby Lane (St. Petersburg Kennel Club)	Post Office Box 22099 St. Petersburg, Florida 33742	Yes	No
Ebro Greyhound Park (Washington County Kennel Club)	6558 Dog Track Road Ebro, Florida 32437	Yes	No
Flagler Greyhound Track	Post Office Box 350940 Miami, Florida 33135	Yes	Yes
Jacksonville Kennel Club (racing at Orange Park)	Post Office Box 959 Orange Park, Florida 32067	No	No
Jefferson County Kennel Club	Post Office Box 400 Monticello, Florida 32345	Yes	No
Mardi Gras Racetrack	Post Office Box 2007 Hollywood, Florida 33022	Yes	Yes
Melbourne Greyhound Park	1100 North Wickham Road Melbourne, Florida 32935	Yes	No
Naples/Ft. Meyers Greyhound Track	Post Office Box 2567 Bonita Springs, Florida 34133	Yes	No
Orange Park Kennel Club	Post Office Box 959 Orange Park, Florida 32067	Yes	No
Palm Beach Kennel Club	1111 North Congress Avenue West Palm Beach, Florida 33409	Yes	No
Pensacola Greyhound Track	Post Office Box 12824 Pensacola, Florida 32591	Yes	No
Sanford Orlando/Penn Sanford	301 Dog Track Road Longwood, Florida 32750	No	No
Sarasota Kennel Club	5400 Bradenton Road Sarasota, Florida 34234	Yes	No
St. Johns Kennel Club (racing at Orange Park)	Post Office Box 959 Orange Park, Florida 32067	Yes	No
Tampa Greyhound Track (racing at Derby Lane)	Post Office Box 8096 Tampa, Florida 33674	Yes	No

Full Schedule of Live Racing

Section 550.002(11), F.S., defines what constitutes a full schedule of live racing. Each type of permit has a different requirement.

FULL SCHEDULE OF LIVE RACING OR GAMES	
Type of Facility	**Full Schedule**
Greyhound Racing	100 live evening or matinee performances
Jai Alai[4]	100 live evening or matinee performances
Harness Racing	100 live regular wagering performances
Thoroughbred Racing	40 live regular wagering performances
Quarter horse Racing[5]	30 live regular wagering performances

A live performance must consist of no fewer than eight races or games conducted live for a minimum of three performances each week at the permitholder's facility.[6]

Intertrack Wagering

Wagers on live races at other tracks are divided into categories called intertrack and simulcast wagering under the Florida Statutes. Intertrack wagering is defined as "a particular form of pari-mutuel wagering in which wagers are accepted at a permitted, in-state track, fronton, or pari-mutuel facility on a race or game transmitted from and performed live at, or simulcast signal re-broadcast from, another in-state pari-mutuel facility."[7] Simulcast wagering on the other hand, is defined as "broadcasting events occurring live at an in-state location to an out-of-state location, or receiving at an in-state location events occurring live at an out-of-state location, by the

[4] Generally a jai alai fronton must conduct 100 performances to constitute a full schedule of games. However, two exceptions exist. 1) For a jai alai permitholder who does not operate slot machines in its pari-mutuel facility, who has conducted at least 100 performances per year for at least 10 years after December 31, 1992, and whose handle on live jai alai games conducted at its facility has been less than $4 million per state fiscal year for at least 2 consecutive years after June 30, 1992, the conduct of at least 40 live evening or matinee performances constitutes a full schedule of live games. 2) If the fronton operates slot machines in its facility, then the conduct of at least 150 performances constitutes a full schedule.

[5] For every year after 2012-2013, a full schedule of live racing for a quarter horse facility will be 40 live regular wagering performances. If the quarter horse facility leases another track, the conduct of 160 events (or 20 performances) will constitute a full schedule of live racing. However, any quarter horse facility running live at its own track may agree to an alternate schedule of 20 live performances if the permitholder and either the Quarter Horse Racing Association or the horsemen's association representing the majority of the owners and trainers at the facility agree to the reduced racing schedule.

[6] Section 550.002(11), F.S.

[7] Section 550.002(17), F.S.

transmittal, retransmittal, reception, and re-broadcast of television or radio signals by wire, cable, satellite, microwave, or other electrical or electronic means for receiving or re-broadcasting the events."[8]

Intertrack and simulcast wagering transactions occur between guest and host tracks. The host track is defined as "a track or fronton conducting a live or simulcast race or game that is the subject of an intertrack wager."[9] A host track transmits signals to a guest track.

Simulcasting may only be accepted between facilities with the same class of pari-mutuel permits. For example, horseracing permitholders may only receive signals from other horseracing permitholders.

Simulcast and intertrack wagering have rules and regulations depending on the market area, which is the area within 25 miles of the track or fronton.[10] For example, guest tracks within the market area of the operating permitholder must receive consent from the host track to receive the same class signal.[11] However, in general, in order for the track or fronton to participate in intertrack or simulcast wagering, the track or fronton must be licensed by the division and must have conducted a full schedule of live racing in the preceding year to receive broadcasts and accept wagers.[12]

Cardrooms

Pari-mutuel facilities within the state are allowed to operate poker cardrooms under s. 849.086, F.S. A cardroom may be operated only at the location specified on the cardroom license issued by the division and such location may be only where the permitholder is authorized to conduct pari-mutuel wagering activities subject to its pari-mutuel permit. Section 849.086(2)(c), F.S., defines "cardroom" to mean a facility where authorized card games are played for money or anything of value and to which the public is invited to participate in such games and charges a fee for participation by the operator of such facility. Authorized games and cardrooms do not constitute casino gaming operations. Instead, such games are played in a non-banking matter, i.e. where the facility has no stake in the outcome. Such activity is regulated by the department and must be approved by ordinance of the county commission where the pari-mutuel facility is located.

Section 849.086(2)(a), F.S., defines an "authorized game" at a cardroom as a game or series of games of poker which are played in a non-banking manner.[13] Wagering may only be conducted using chips or tokens; the player's cash must be converted by the cardroom before the player

[8] Section 550.002(32), F.S.
[9] Section 550.002(16), F.S.
[10] Section 550.002(19), F.S.
[11] Section 550.615(4), F.S.
[12] Section 550.615(2), F.S.
[13] A "banking game" is defined in s. 849.086(2)(b), F.S., as "a game in which the house is a participant in the game, taking on players, paying winners, and collecting from losers or in which the cardroom establishes a bank against which participants play."

may participate in a game of poker.[14] The cardroom operator may limit the amount wagered in any game.[15]

A cardroom may operate at the pari-mutuel facility for 18 hours per day on Monday through Friday and 24 hours on Saturday and Sunday and specified holidays.[16] Cardrooms may not be operated beyond the hour limitations regardless of the number of permits located at a single facility.[17]

In order to renew a cardroom operator license, the applicant must have requested, as part of its pari-mutuel annual license application, to conduct at least 90 percent of the total number of live performances conducted by such permitholder during either the state fiscal year in which its initial cardroom license was issued or the state fiscal year immediately prior to the initial application if the permitholder conducted a full schedule of live racing in the prior year. If the application is for a harness permitholder cardroom, the applicant must have requested authorization to conduct a minimum of 140 live performances during the state fiscal year immediately prior to the application. If more than one permitholder is operating at a facility, each permitholder must have applied for a license to conduct a full schedule of live racing.[18]

Slot Machines

During the 2004 General Election, the electors approved Amendment 4 to the Florida Constitution, codified as s. 23, Art. X, Florida Constitution, which authorized slot machines at existing pari-mutuel facilities in Miami-Dade and Broward Counties upon an affirmative vote of the electors in those counties. Both Miami-Dade and Broward Counties held referenda elections on March 8, 2005. The electors approved slot machines at the pari-mutuel facilities in Broward County, but the measure was defeated in Miami-Dade County. On January 29, 2008, another referendum was held under the provisions of Amendment 4, in which the slot machines in Miami-Dade County were approved. Under the provisions of the amendment, seven pari-mutuel facilities are eligible to conduct slot machine gaming. Of the seven, five are operating slot machines.[19]

In addition to the seven locations authorized for slot machines under the Florida Constitution, on July 1, 2010, a statutory amendment expanded the locations that were authorized slot machine gaming to include pari-mutuel facilities located in a charter county or a county that has a referendum approving slots that was approved by law or the Constitution, provided that such facility has conducted live racing for two calendar years preceding its application and complies with other requirements for slot machine licensure.[20] Currently, only existing pari-mutuel facilities in Miami-Dade County qualify for slot machine authorization. Under the statutory provision, one additional facility became eligible for slot machine gaming, Hialeah Park (a

[14] Section 849.086(8)(a), F.S.
[15] Section 849.086(8)(b), F.S.
[16] Section 849.086(7)(b), F.S.
[17] Section 849.086(7)(a), F.S.
[18] Section 849.086(5)(b), F.S.
[19] The Isle at Pompano Park, Mardi Gras Gaming, Gulfstream Park, Calder/Tropical Park, and Flagler Dog Track and Magic City are currently operating slot machines.
[20] *See*, ch. 2010-29, L.O.F. and s 551.102(4), F.S.

quarter horse facility).[21] Hialeah Park has applied for a license to conduct slot machine gaming but is not currently operating slot machine gaming.

In order to conduct slot machine gaming, the slot machine applicant must conduct a full schedule of live racing the prior year.[22] Slot machine licensees are required to pay a licensure fee of $2.5 million for fiscal year 2010-2011. The annual slot machine licensure fee is reduced in fiscal year 2011-2012 to $2 million.[23]

In addition to the license fees, the tax rate on slot machine revenues at each facility is 35 percent.[24] If, during any state fiscal year, the aggregate amount of tax paid to the state by all slot machine licensees in Broward and Miami-Dade counties is less than the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year, each slot machine licensee shall pay to the state within 45 days after the end of the state fiscal year a surcharge equal to its pro rata share of an amount equal to the difference between the aggregate amount of tax paid to the state by all slot machine licensees in the 2008-2009 fiscal year and the amount of tax paid during the fiscal year.[25]

Purses

Section 550.09514, F.S., governs greyhound purse payments. Greyhound permitholders are required to pay a minimum purse payment plus a supplement payment of 75 percent of the daily license fees paid during the 1994-1995 fiscal year.[26]

Greyhound permitholders who conduct at least three live performances during a week must pay purses on wagers it accepts as a guest track on intertrack and simulcast greyhound races at the same rate it pays on live races. In addition, greyhound tracks pay one-third of any tax reduction on live and simulcast handle as purses.[27]

The division requires adequate documentation to ensure that the purses paid by greyhound permitholders on live racing does not fall below the amount paid in the 1993-1994 fiscal year.[28] During each race week, the permitholder is required to have a weekly report available to show the division staff and kennel operators the amount of purses paid on live racing, simulcast, and intertrack wagering.[29]

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[21] Currently the provision is being challenged as violating s. 23, Art. X, Florida Constitution. The trial court upheld the constitutionality in Leon County. That decision is on appeal to the First District Court of Appeal. *See* consolidated cases, *Calder Race Course, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, 1D11-130 (Fla. 1st DCA) and *Florida Gaming Centers, Inc. v. Department of Business and Professional Regulation and South Florida Racing Association*, 1D10-6780 (Fla. 1st DCA).

[22] Chapter 551.104(4)(c), F.S.

[23] Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the license fee was $3 million.

[24] Chapter 551.106(1), F.S. Prior to the effective date of 2010-29, L.O.F., the tax rate was 50 percent.

[25] Chapter 551.106(2), F.S. The 2008-2009 tax paid on slot machine revenue was $103,895,349. It does not appear that this provision will be triggered because of the additional facilities beginning slot operations. Calder began slot operations in January 2010 and Flagler began operations in October 2009. Miami Jai Alai and Dania Jai Alai have not begun slot operations.

[26] Sections 550.09514(2)(a)-(b), F.S.

[27] Section 550.09514(2)(e), F.S.

[28] Section 550.09514(2)(d), F.S.

[29] Section 550.09514(2)(f), F.S.

Each greyhound permitholder shall pay purse awards directly to the dog owners who have filed proper tax paperwork with the permitholder.[30]

In addition to paying purses on pari-mutuel activity, each greyhound permitholder is also required to pay 4 percent of the cardroom's monthly gross receipts to supplement greyhound purses.[31]

Greyhound Taxes and Credits[32]

Greyhound permitholders pay a tax on handle of 5.5 percent.[33] Each host greyhound track must also pay taxes on the greyhound broadcasts it sends to other tracks.[34] For the dog tracks located in three contiguous counties, the tax on handle for intertrack wagers is 3.9 percent.[35] However, each permitholder has a tax credit of $360,000 and pays no tax on handle until that credit is utilized.[36] For the three greyhound permitholders that conducted a full schedule of live racing in 1995, and are closest to another state that authorizes greyhound pari-mutuel wagering, the maximum tax savings per state fiscal year shall be $500,000.[37] Each permitholder, who cannot utilize the full tax exemption, may notify the division that the permitholder wishes to transfer their credits to another greyhound permitholder.[38] Each permitholder may only transfer credits once per year, and may only transfer credits to another greyhound permitholder who acted as a host track to the permitholder for intertrack wagering.

III. Effect of Proposed Changes:

The bill provides that there is no live racing requirement for greyhound permitholders. The bill extends the deadline for application for live racing to August 31, 2011, to give greyhound permitholders time to amend their applications and reduce or remove their live racing performances. The bill removes all references that require a live schedule of racing for greyhound racing permitholders.

The bill allows each greyhound permitholder to transfer unused credits at any time, rather than once per state fiscal year. The bill provides that the division shall disapprove of any credit transfer if the transferring permitholder did not conduct live racing in the fiscal year. The bill does not prohibit the permitholder from receiving the full tax credit or transferring the credit to another facility if the track only runs once per year.

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[30] Section 550.09514(2)(g), F.S.
[31] Section 849.086(13)(d)1., F.S.
[32] In fiscal year 2009-2010, greyhound tracks generated over $290 million in total handle. The division collected over $5 million in taxes and fees, over $2.5 million of which was generated from live greyhound racing. Division of Pari-mutuel Wagering, *79th Annual Report*, Fiscal Year 2009-2010.
[33] Section 550.0951(3)(b)1., F.S.
[34] Section 550.09514(2)(c), F.S.
[35] Section 550.0951(3)(c)2., F.S.
[36] *See*, s. 550.09514(1), F.S.
[37] *Id*. The three tracks that receive a $500,000 credit are Jefferson County Kennel Club, Pensacola Greyhound Track, and Washington County Kennel Club (Ebro Greyhound Park).
[38] Section 550.0951(1)(b), F.S.

The bill deletes the provision that provides that greyhound permitholders in a county where there are only two greyhound permitholders shall pay an aggregate daily license fee tax equal to 75 percent of the daily license fees paid by such permitholders for the 1994-1995 fiscal year. Instead, all greyhound permitholders who conduct live racing must pay a daily license fee tax equal to 75 percent of the daily license fees paid by each permitholder for the 1994-1995 fiscal year.

The bill reduces the tax on handle for greyhound racing from 5.5 percent to 3.45 percent. For greyhound permitholders who do not conduct live racing during the fiscal year, 3 percent of the greyhound's intertrack handle shall be paid to the host greyhound permitholder for payment of purses at the host track.

The bill deletes the provision that prohibited intertrack wagering without consent to be conducted in any county where there are only two permits, one for dogracing and one for jai alai, except during live racing.

The bill provides that greyhound facilities may conduct intertrack wagering even if they do not conduct live racing in the prior year.

The bill provides that greyhound facilities may conduct slot machine gaming, if authorized, regardless of whether the facility has conducted live racing.

The bill amends the requirements for a cardroom, and provides that a greyhound permitholder may operate a cardroom even if it did not run live racing the prior year. If the greyhound facility runs live racing, 4 percent of the cardroom gross receipts must supplement greyhound purses. However, if no live racing occurs, no part of the cardroom receipts are required to be used to supplement purses.

Currently, there is one inactive greyhound permit in Key West, Florida. The inactive permit could, as a result of this bill, begin operations of cardrooms and intertrack wagering without opening a pari-mutuel track or conducting a single live race.[39]

The bill provides an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[39] There are two greyhound permits operating at the Mardi Gras facility in Broward County. Under current law, one permit could reopen its facility back at the permitted location (in Miami-Dade County) and lease live racing back to the Mardi Gras facility. Under current law, the new facility could operate a cardroom and conduct intertrack wagering so long as live races occur either at the new facility or are continued to be leased back to the Mardi Gras facility. As a result of this bill, the new track would not be required to lease races or run any live races to operate a cardroom or intertrack wagering. However, it appears that in order for the track to be an "eligible facility" for the purpose of conducting slot machine gaming, the new facility would be required to run live races for two calendar years prior to applying for a slot machine license from the division. This bill does not change the definition of "eligible facility" in s. 551.102(4), F.S.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The impact conference has not met to determine the impact of the tax reduction.

B. Private Sector Impact:

If greyhound facilities choose not to run pari-mutuel events, the dogs that normally run at those tracks will likely be unable to run in other events. Dog breeders, owners, and trainers could potentially be out of business or experience a decrease in business as a result of less greyhound racing in the state.

Opponents of the legislation also note that a pari-mutuel permitholder that no longer runs live racing at the facility will solely be operating a cardroom, intertrack wagering, and, if authorized, a slot machine facility. At the present time, the operation of cardrooms and slot machine gaming is contingent on the facility satisfying minimum racing requirements. This bill removes those requirements for greyhounds and allows the facilities to cease all live racing.

C. Government Sector Impact:

The committee has not received an analysis from the Department of Business and Professional Regulation regarding this bill.

There may be a reduction in the number of persons needed to inspect the tracks that are no longer conducting live greyhound races.

VI. Technical Deficiencies:

None.

VII. Related Issues:

This bill deletes the live racing requirements for greyhound permitholders but the full schedule of live racing or performance requirements for horse racing and jai alai still exist.

Revenue sharing with the Seminole Indian Compact relies on continued exclusivity of casino style and Class III gaming. Games legal as of February 1, 2010 have no impact on payments from the Tribe. Pari-mutuel wagering activities have no impact on payments from the Tribe. Because this bill provides flexibility in the minimum number of live racing for greyhound

permitholders and does not authorize any new facilities or new gaming in the state, this bill should have no impact on revenue sharing with the Tribe.

VIII. Additional Information:

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

None.

B. Amendments:

None.

514990

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment

Delete line 162

and insert:

conduct at least 100 live performances of at least eight races during the fiscal year, or when the permitholder

603192

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment

Delete lines 384 - 389

and insert:

(4) In no event shall any intertrack wager be accepted on the same class of live races or games of any permitholder without the written consent of such operating permitholders conducting the same class of live races or games if the guest track is within the market area of such operating permitholder. The written consent required by this subsection shall not be required for greyhound permitholders that accept intertrack wagers on live greyhound signals.

697146

LEGISLATIVE ACTION

Senate . House

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

Senate Substitute for Amendment (603192)

Delete lines 384 - 389
and insert:
(4) In no event shall any intertrack wager be accepted on the same class of live races or games of any permitholder without the written consent of such operating permitholders conducting the same class of live races or games if the guest track is within the market area of such operating permitholder. A greyhound permitholder that accepts intertrack wagers on live greyhound signals shall not be required to obtain the written consent required by this subsection from any operating greyhound

697146

permitholder within its market area.

109032

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment

Delete lines 534 - 536
and insert:
that has conducted live racing during each of the 10 years immediately preceding its application for a cardroom license or a greyhound permitholder converted pursuant to s. 550.054(14) shall be issued a cardroom license without regard to licensure for or actual conduct of live racing.

128800

LEGISLATIVE ACTION

Senate . House

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

Senate Amendment (with title amendment)

Delete line 589

and insert:

Section 12. This act shall take effect July 1 of the year after approval by a referendum vote held in the county in which the pari-mutuel facility is located.

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

And the title is amended as follows:

Delete line 32

and insert:

128800

license; providing a contingent effective date.

THE INNOVATION GROUP
OF COMPANIES

Florida Pari-mutuel Gaming Analysis

Paul Girvan
The Innovation Group

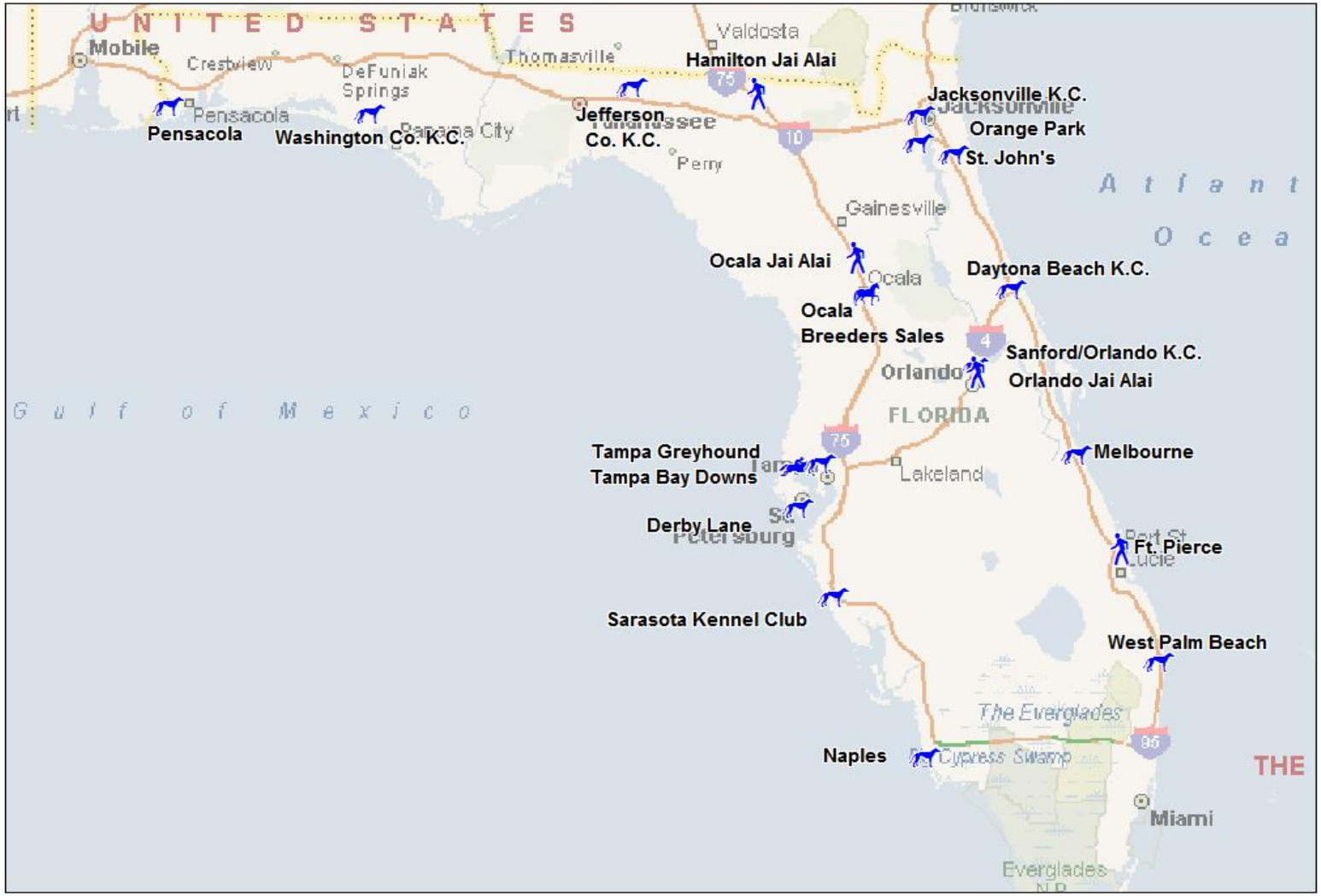
March 2011

Methodology

Assumptions

- EGD's similar to those previously operated by the Seminole Indians
- Will operate 18 hours on weekdays and 24 hours on weekends
- Number of machines per location not to exceed 1,500
- Included 20 pari-mutuel operators outside Dade and Broward counties

Florida Pari-Mutuels
other than Broward and Dade Counties



Methodology

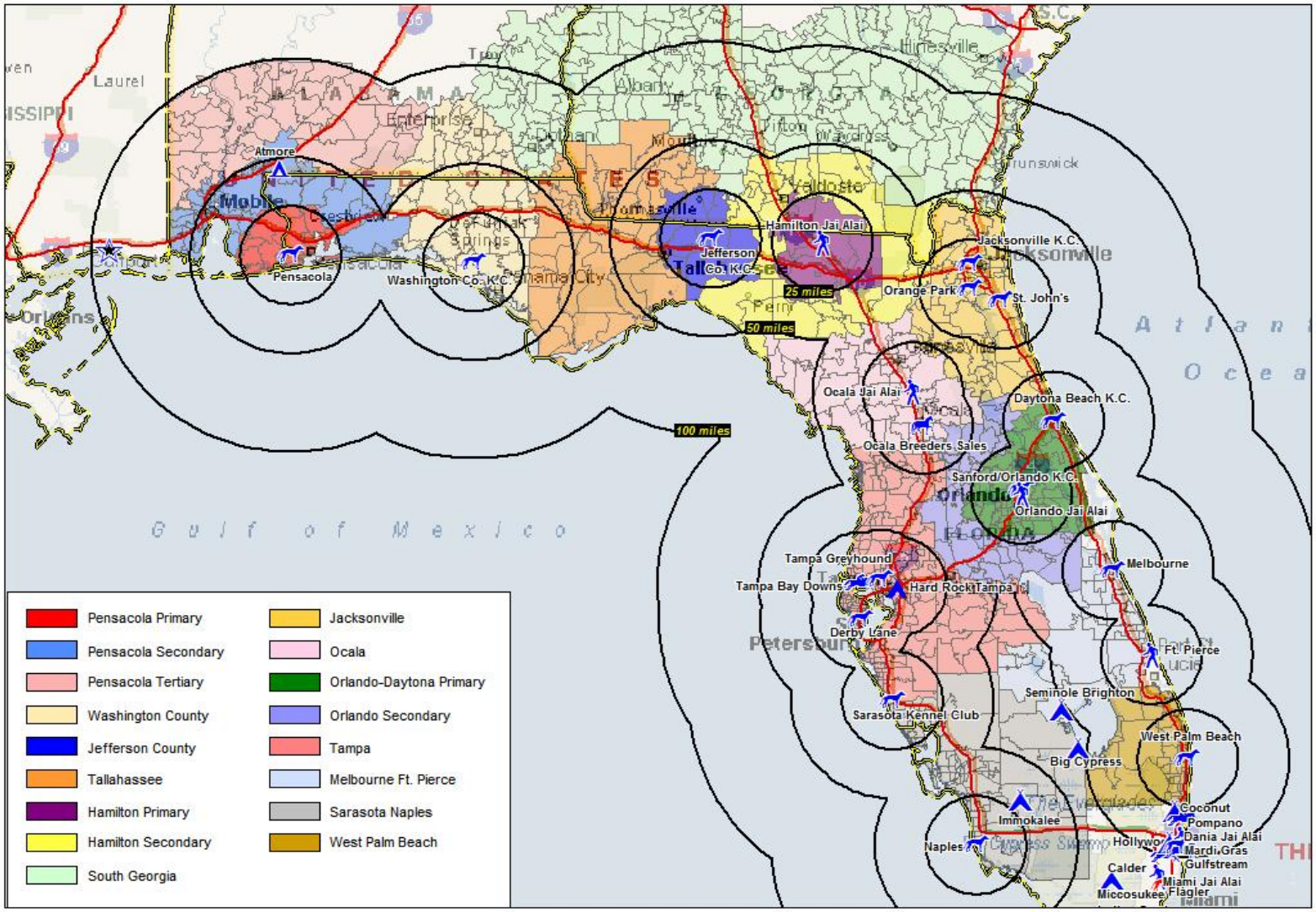
Four market segments considered:

1. **Local Market**
2. **Seasonal Housing Market**
3. **Tourist Market**
4. **Traffic Intercept Market**

1. Local Market

- Defined gaming markets based on distance from gaming location: primary 0-25 miles, secondary 25-50 miles and tertiary 50-100 miles

Florida Gaming and Pari-Mutuel Market Areas



Local Market (contd.)

- Obtained demographics and applied following factors to derive visitation and revenue estimates:
  - Propensity (23% to 41%)
  - Frequency (7 to 14)
  - Win per Visit ($36 to $54)
- Utilized proprietary gravity model to distribute visits and revenues among the properties

Seasonal Housing Market

- Utilized data from the American Housing Survey to derive residential units and adult population for each market area
- Applied gaming factors to derive revenues and visits.
- Propensity of 28% to reflect older patrons who spend less time in area
- Frequency of 3 visits annually to reflect shorter period in area.
- Win per visit averaged $48
- Varied capture rates based on presence of competing facilities.

Tourist Market

- Utilized data from Visitflorida.org for 2008
- Visits, LOS, HHI and % by purpose (Vacation, VFR, Other Leisure, Convention/Group, Other Business) by Tourist Region
- Applied propensity (3% to 14% depending on purpose), win per visit (average $52) and capture rates to determine visits and revenues to pari-mutuel gaming facilities
- Estimated market share for each pari-mutuel operator in each region

Traffic Intercept

- Obtained traffic counts from the Florida Department of Transportation
- Estimated through traffic 3% to 20%
- Assumed adults per vehicle of 1.5
- Capture rate of 1% and win per visit of $23

Results

Gaming Revenue Projections

Year	Pari-mutuel Gaming Revenue
2012	$1,170,000,000
2013	$1,300,000,000
2014	$1,332,000,000
2015	$1,365,000,000
2016	$1,400,000,000

Total Gaming Positions across all 20 Pari-mutuels = 25,620

Recapture from Gulf Coast Casinos

	Gulf Coast Gaming Revenue From Study Market Areas
2013	$500,000,000
2013 With Pari-mutuels	$319,000,000
$ Recaptured	**$181,000,000**
% Recapture	**36.2%**
% of Florida Pari-mutuel Revenue	**13.94%**

Out of State Revenue

Out of State Day Trips	$197,000,000
Tourists	$144,000,000
Seasonal Visitors	$14,000,000
Total Out of State	**$355,000,000**
% of Total	**27.35%**

State of Florida Revenues Over 20 Years @ 35% Tax Rate

Year	Annual State Tax
2012	$409,383,000
2013	$454,870,000
2014	$466,242,000
2015	$477,898,000
2016	$489,846,000
2017	$502,092,000
2018	$514,644,000
2019	$527,510,000
2020	$540,698,000
2021	$554,215,000
2022	$568,071,000
2023	$582,273,000
2024	$596,829,000
2025	$611,750,000
2026	$627,044,000
2027	$642,720,000
2028	$658,788,000
2029	$675,258,000
2030	$692,139,000
2031	$709,443,000
Total	**$11,301,713,000**

Reasonableness

Market	Win Per Capita
West Virginia	$714.25
Iowa	$660.27
Rhode Island	$613.44
Indiana	$591.80
Miami-Dade + Broward	**$336.68**
Rest of Florida	**$176.21**

Economic Impact

Assumptions

- No hotels
- A reasonable level of food and beverage outlets to accommodate demand
- No significant retail
- Gaming tax rate of 35%
- A moderate level of finish

Methodology

Construction Impacts

- IG estimated **construction costs** ($890 Million) based on:
  - Size of facility
  - Proportion of new build versus retrofit
  - Included parking, F&B , and other costs
- Construction phase a ***one-time benefit***

Operating impacts

- IG estimated operating expenses, employment and salaries by applying standard operating pro formas for like facilities
- Operations phase generates ***ongoing benefits***

Economic Impacts from Construction

	DIRECT	INDIRECT	TOTAL
Spending	**$798,057,000**	$936,493,000	**$1,734,550,000**
Earnings	**$228,374,000**	$200,133,000	**$428,507,000**
Employment (Man Years)	**5,847**	5,925	**11,772**

Economic Impacts from Operations

	DIRECT	INDUCED	INDIRECT	TOTAL
Spending	**$406,859,000**	$153,907,000	$565,114,000	**$1,125,880,000**
Earnings	**$211,986,000**	$25,266,000	$237,633,000	**$474,885,000**
Employment	**7,971**	927	7,036	**15,934**

What's at Risk?
The Economic Contribution of the Pari-mutuel Operators

Annual Payroll & benefits	$97,382,000
Purses & Breeder Awards	$40,357,000
Goods & Services Purchase	$66,724,000
Real Estate Taxes	$3,809,000
Total Local Spending	$208,282,000
Pari-mutuel & Cardroom tax	$23,303,000
Sales tax	$2,397,000
Direct State Tax	$25,700,000
Employee	5,425
Charitable contributions	$1,709,000

Questions