

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Bradley, Chair
Senator Margolis, Vice Chair

MEETING DATE: Wednesday, March 11, 2015
TIME: 2:00 —4:00 p.m.
PLACE: *Toni Jennings Committee Room*, 110 Senate Office Building

MEMBERS: Senator Bradley, Chair; Senator Margolis, Vice Chair; Senators Abruzzo, Bean, Braynon, Diaz de la Portilla, Flores, Latvala, Negron, Richter, Sachs, and Stargel

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 338 Altman (Compare CS/CS/H 217)	Engineers; Prohibiting a person who is not licensed as an engineer from using specified names and titles; providing licensure and application requirements for a structural engineer license, etc. RI 03/11/2015 Fav/CS AGG FP	Fav/CS Yeas 12 Nays 0
2	SB 548 Clemens (Identical H 671)	Use of Tobacco Products in Motor Vehicles; Prohibiting a person from smoking a tobacco product in a motor vehicle in which a child under 13 years of age is present; providing penalties, etc. RI 03/11/2015 Favorable HP RC	Favorable Yeas 8 Nays 4
3	SB 490 Thompson (Similar H 1189)	State Lotteries; Requiring the Department of the Lottery to equitably apportion revenues to certain state universities to be used for funding breast cancer research and providing services for certain individuals who have breast cancer; offering a special instant lottery game called "Ticket for the Cure" by the department for a limited time, etc. RI 03/11/2015 Fav/CS AED AP	Fav/CS Yeas 9 Nays 3
4	SB 662 Latvala (Similar CS/H 307)	Mobile Homes; Requiring the Division of Florida Condominiums, Timeshares, and Mobile Homes to approve training and educational programs for board members of mobile home owners' associations; providing and revising requirements for lot rental increases; providing for the removal of a member of the board of directors under certain conditions, etc. RI 03/11/2015 Favorable CA AP	Favorable Yeas 12 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Regulated Industries

Wednesday, March 11, 2015, 2:00 —4:00 p.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
5	SB 932 Stargel (Similar CS/CS/H 453)	Timeshares; Revising provisions pertaining to multisite timeshare plans and clarifying single-site timeshare plan developer liability for nonmaterial errors or omissions; providing that leasehold accommodations or facilities may be added to a timeshare trust; providing for extension or termination of timeshare plans; providing for the transfer of reservation system data upon termination of managing entity; clarifying the annual fees due from managing entities of all timeshare plans, etc. RI 03/11/2015 Favorable JU FP	Favorable Yeas 12 Nays 0
6	SB 596 Hays (Similar H 263)	Craft Distilleries; Defining the term "branded product"; applying the current limitation on the number of containers that may be sold to consumers by craft distilleries to individual containers for each branded product, etc. RI 03/11/2015 Fav/CS CM FP	Fav/CS Yeas 11 Nays 1

Other Related Meeting Documents

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 338

INTRODUCER: Regulated Industries Committee and Senator Altman

SUBJECT: Engineers

DATE: March 12, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Fav/CS
2.			AGG	
3.			FP	

Please see Section IX. for Additional Information:

PLEASE MAKE SELECTION

I. Summary:

CS/SB 338 amends existing law regulating engineers to specifically address the practice of structural engineering. Structural engineering, which is the analysis and design of threshold buildings and other structures of a certain height, size, or occupancy, is currently regulated as an aspect of engineering. Additional and more detailed regulation is deemed to be warranted, in view of the size and capacity of those structures, because significant injuries and loss of human life occur when a structure fails (collapses).

II. Present Situation:

Regulation of the practice of engineering was mandated by the Legislature in 1979.¹ Professional engineers are regulated by the Board of Professional Engineers (FBPE) within the Department of Business and Professional Regulation (department), which enforces and administers the provisions of ch. 471, F.S. The Florida Engineers Management Corporation (FEMC) provides administrative, investigative, and prosecutorial services to the FBPE pursuant to ch. 455, F.S., and ch. 471, F.S.² The contract between the Department of Professional Regulation and FEMC for Fiscal Years 2013-2017 provides that FEMC's services apply to all licensees under the jurisdiction of the FBPE.³

¹ See ch. 471, F.S., and ch. 79-243, L.O.F.

² See s. 471.038, F.S.

³ See <http://www.fbpe.org/index.php/2014-12-08-17-12-31/corporate-contract/send/51-corporate-contracts/165-contract-2012-2013-dbpr-femc> (last visited Mar. 9, 2015).

According to industry representatives, there is a need to specifically license the practice of structural engineering as a separate component of engineering. The Florida Structural Engineers Association supports the creation of an additional license requirement for structural engineers in the state due to the increasingly technical nature of the work, and decreasing redundancies and safety measures in project design resulting from the effort to reduce construction costs.⁴ In the event of failure of a threshold building, its mere size and capacity create a significant potential for injuries and loss of human life.⁵

III. Effect of Proposed Changes:

CS/SB 338 defines “structural engineering” as service or creative work that includes analysis and design of threshold structures.⁶ The term includes services and work defined as “engineering.”⁷

Beginning March 1, 2019, no person other than a licensed structural engineer shall practice structural engineering or use the title of structural engineer, or variations prefaced by the terms “licensed,” “professional,” “registered,” or any other term indicating that a person is actively licensed as a structural engineer. Similar to licensed engineers, structural engineers are required to pay fees, be of good moral character, and meet requirements for continuing education and the use of seals.

The requirements for licensure are set forth in **Section 5** of the bill. Section 471.015, F.S., is amended to direct the Florida Engineers Management Corporation to issue a structural engineer license to applicants certified by the Florida Board of Engineers, who must:

- Be licensed as an engineer or be qualified for licensure as an engineer in Florida;
- Submit an application with the required fee;
- Provide evidence of good moral character as defined by the FBPE board;⁸
- Provides a record of 4 years of active structural engineering experience, as defined by the FBPE board, under the supervision of a licensed engineer; and

⁴ See <http://www.flsea.com/Structural-Engineering-Licensure> (last visited Mar. 9, 2015).

⁵ *Id.*

⁶ The committee substitute references “threshold buildings” in lieu of “significant buildings” for which structural analysis and design must be performed by a licensed structural engineer beginning March 1, 2019. A threshold building is defined in s. 553.71, F.S., law as one that is greater than three stories or 50 feet in height, or has occupancy measurements exceeding 5,000 square feet or 500 persons.

⁷ Section 471.005(7), F.S., provides the following lengthy definition of “engineering:” any service or creative work, the adequate performance of which requires engineering education, training, and experience in the application of special knowledge of the mathematical, physical, and engineering sciences to such services or creative work as consultation, investigation, evaluation, planning, and design of engineering works and systems, planning the use of land and water, teaching of the principles and methods of engineering design, engineering surveys, and the inspection of construction for the purpose of determining in general if the work is proceeding in compliance with drawings and specifications, any of which embraces such services or work, either public or private, in connection with any utilities, structures, buildings, machines, equipment, processes, work systems, projects, and industrial or consumer products or equipment of a mechanical, electrical, hydraulic, pneumatic, or thermal nature, insofar as they involve safeguarding life, health, or property; and includes such other professional services as may be necessary to the planning, progress, and completion of any engineering services.

⁸ Section 471.005(1), F.S., provides that a reference to “board” means the Board of Professional Engineers, as contrasted with the term “board of directors,” which is defined in s. 471.005(2), F.S., as the board of directors of the Florida Engineers Management Corporation (FEMC).

- Has passed the structural examination offered by the National Council of Examiners for Engineering and Surveying.

In addition, the bill provides for a “grandfather” period through February 28, 2019, to allow licensure as a structural engineer if a licensed engineer applicant pays the required fee, evidences good moral character, submits an affidavit attesting to at least 4 years of active structural engineering experience, and indicates a willingness to meet with the Florida Board of Professional Engineers or its representative, upon request, for the purpose of evaluating the applicant’s qualifications for licensure as a structural engineer.

The bill amends s. 471.031(1), F.S., to prohibit the practice of structural engineering by any person beginning March 1, 2019, unless the person is licensed as a structural engineer, or exempt from licensure. With respect to exemption from licensure as a structural engineer, the bill amends s. 471.031(1)(b)2., F.S. First, it adds additional terms to the listing of those terms that may not be used by persons legally exempt from licensure as an engineer in Florida, such as certain defense, space, or aerospace employees.⁹ In addition to those terms already prohibited to be used by exempt persons, the terms “licensed engineer,” “licensed professional engineer,” “licensed structural engineer,” “professional structural engineer,” “registered structural engineer,” and “structural engineer” may not be used by those exempted from licensure as engineers under Florida law. Second, those terms may also not be used by those persons exempted from licensure who work for a manufacturer on a full-time basis on the design or fabrication of products, or are employees working in a company under the supervision of a licensed person.¹⁰

The bill also provides that licensed structural engineers are subject to the same disciplinary proceedings and consequences as exist for engineers in current law. It includes the services of structural engineers to those services subject to local building codes, zoning codes, or ordinances, which are more restrictive than the provisions of ch. 471, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁹ See s. 471.003(2)(j), F.S.

¹⁰ See s. 471.003(2)(c) and (e), F.S.

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

None.

B. Private Sector Impact:

According to the Florida Engineers Management Corporation (FEMC), which provides administrative, investigative, and prosecutorial services to the Florida Board of Professional Engineers pursuant to ch. 455, F.S., and ch. 471, F.S., the bill will restrict the performance of structural engineering to those licensed professional engineers who obtain licenses to perform structural engineering. In addition, the bill provides for a “grandfather” period through February 28, 2019, to allow some licensed engineers to qualify for licensure as a structural engineer.

C. Government Sector Impact:

According to the FEMC, there is no impact other than minor modifications to technology systems that can be made using existing resources.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 471.003, 471.005, 471.011, 471.013, 471.015, 471.019, 471.025, 471.031, 471.033, and 471.037.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

CS by Regulated Industries on March 11, 2015:

CS/SB 338 mandates that beginning March 1, 2019, no person other than a licensed structural engineer shall practice structural engineering or use the title of structural engineer, or variations prefaced by the terms “licensed,” “professional,” “registered,” or any other term indicating that a person is actively licensed as a structural engineer.

The committee substitute references “threshold buildings,” which are greater than three stories or 50 feet in height, or have occupancy measurements exceeding 5,000 square feet or 500 persons, for which structural analysis and design must be performed by a licensed structural engineer beginning March 1, 2019.

The committee substitute provides that structural engineering education, training, experience and examination will be defined by the Board of Professional Engineers. It provides for fees, licensure by endorsement, use of seals, licensure beginning March 1, 2019, discipline, and applicability of local ordinances to licensed structural engineers. The committee substitute allows certain applicants for licensure as structural engineers prior to February 28, 2019 to be licensed based on their prior experience and evaluation by the Board of Professional Engineers or its designee.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/12/2015	.	
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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. Subsection (1) and paragraphs (f) and (i) of
subsection (2) of section 471.003, Florida Statutes, are amended
to read:

471.003 Qualifications for practice; exemptions.—

(1) (a) No person other than a duly licensed engineer shall
practice engineering or use the name or title of "licensed



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11 engineer," "professional engineer," "registered engineer," or
12 any other title, designation, words, letters, abbreviations, or
13 device tending to indicate that such person holds an active
14 license as an engineer in this state.

15 (b) Beginning March 1, 2019, no person other than a duly
16 licensed structural engineer shall practice structural
17 engineering or use the name or title of "licensed structural
18 engineer," "professional structural engineer," "registered
19 structural engineer," "structural engineer," or any other title,
20 designation, words, letters, abbreviations, or device tending to
21 indicate that such person holds an active license as a
22 structural engineer in this state.

23 (2) The following persons are not required to be licensed
24 under the provisions of this chapter as a licensed engineer or
25 structural engineer:

26 (a) Any person practicing engineering for the improvement
27 of, or otherwise affecting, property legally owned by her or
28 him, unless such practice involves a public utility or the
29 public health, safety, or welfare or the safety or health of
30 employees. This paragraph shall not be construed as authorizing
31 the practice of engineering through an agent or employee who is
32 not duly licensed under the provisions of this chapter.

33 (b)1. A person acting as a public officer employed by any
34 state, county, municipal, or other governmental unit of this
35 state when working on any project the total estimated cost of
36 which is \$10,000 or less.

37 2. Persons who are employees of any state, county,
38 municipal, or other governmental unit of this state and who are
39 the subordinates of a person in responsible charge licensed



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40 under this chapter, to the extent that the supervision meets
41 standards adopted by rule of the board.

42 (c) Regular full-time employees of a corporation not
43 engaged in the practice of engineering as such, whose practice
44 of engineering for such corporation is limited to the design or
45 fabrication of manufactured products and servicing of such
46 products.

47 (d) Regular full-time employees of a public utility or
48 other entity subject to regulation by the Florida Public Service
49 Commission, Federal Energy Regulatory Commission, or Federal
50 Communications Commission.

51 (e) Employees of a firm, corporation, or partnership who
52 are the subordinates of a person in responsible charge, licensed
53 under this chapter.

54 (f) Any person as contractor in the execution of work
55 designed by a professional engineer or structural engineer or in
56 the supervision of the construction of work as a foreman or
57 superintendent.

58 (g) A licensed surveyor and mapper who takes, or contracts
59 for, professional engineering services incidental to her or his
60 practice of surveying and mapping and who delegates such
61 engineering services to a licensed professional engineer
62 qualified within her or his firm or contracts for such
63 professional engineering services to be performed by others who
64 are licensed professional engineers under the provisions of this
65 chapter.

66 (h) Any electrical, plumbing, air-conditioning, or
67 mechanical contractor whose practice includes the design and
68 fabrication of electrical, plumbing, air-conditioning, or



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69 mechanical systems, respectively, which she or he installs by
70 virtue of a license issued under chapter 489, under part I of
71 chapter 553, or under any special act or ordinance when working
72 on any construction project which:

73 1. Requires an electrical or plumbing or air-conditioning
74 and refrigeration system with a value of \$125,000 or less; and

75 2.a. Requires an aggregate service capacity of 600 amperes
76 (240 volts) or less on a residential electrical system or 800
77 amperes (240 volts) or less on a commercial or industrial
78 electrical system;

79 b. Requires a plumbing system with fewer than 250 fixture
80 units; or

81 c. Requires a heating, ventilation, and air-conditioning
82 system not to exceed a 15-ton-per-system capacity, or if the
83 project is designed to accommodate 100 or fewer persons.

84 (i) Any general contractor, certified or registered
85 pursuant to the provisions of chapter 489, when negotiating or
86 performing services under a design-build contract as long as the
87 engineering services offered or rendered in connection with the
88 contract are offered and rendered by an engineer or structural
89 engineer licensed in accordance with this chapter.

90 (j) Any defense, space, or aerospace company, whether a
91 sole proprietorship, firm, limited liability company,
92 partnership, joint venture, joint stock association,
93 corporation, or other business entity, subsidiary, or affiliate,
94 or any employee, contract worker, subcontractor, or independent
95 contractor of the defense, space, or aerospace company who
96 provides engineering for aircraft, space launch vehicles, launch
97 services, satellites, satellite services, or other defense,



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98 space, or aerospace-related product or services, or components
99 thereof.

100 Section 2. Subsections (14) and (15) are added to section
101 471.005, Florida Statutes, to read:

102 471.005 Definitions.—As used in this chapter, the term:

103 (14) "Licensed structural engineer," "professional
104 structural engineer," "registered structural engineer," or
105 "structural engineer" means a person who is licensed to engage
106 in the practice of structural engineering under this chapter.

107 (15) "Structural engineering" means an engineering service
108 or creative work that includes the structural analysis and
109 design of structural components or systems for threshold
110 buildings as defined in s. 553.71. The term includes
111 engineering, as defined in subsection (7), that requires
112 significant structural engineering education, training,
113 experience, and examination, as defined by the board.

114 Section 3. Subsections (1) and (6) of section 471.011,
115 Florida Statutes, are amended to read:

116 471.011 Fees.—

117 (1) The board by rule may establish fees to be paid for
118 applications, examination, reexamination, licensing and renewal,
119 inactive status application and reactivation of inactive
120 licenses, and recordmaking and recordkeeping. The board may also
121 establish by rule a delinquency fee. The board shall establish
122 fees that are adequate to ensure the continued operation of the
123 board. Fees shall be based on department estimates of the
124 revenue required to implement this chapter and the provisions of
125 law with respect to the regulation of engineers and structural
126 engineers.



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127 (6) The fee for a temporary registration or certificate to
128 practice engineering or structural engineering shall not exceed
129 \$25 for an individual or \$50 for a business firm.

130 Section 4. Paragraph (a) of subsection (2) of section
131 471.013, Florida Statutes, is amended to read:

132 471.013 Examinations; prerequisites.—

133 (2) (a) The board may refuse to certify an applicant for
134 failure to satisfy the requirement of good moral character only
135 if:

136 1. There is a substantial connection between the lack of
137 good moral character of the applicant and the professional
138 responsibilities of a licensed engineer or structural engineer;
139 and

140 2. The finding by the board of lack of good moral character
141 is supported by clear and convincing evidence.

142 Section 5. Subsections (3) through (7) of section 471.015,
143 Florida Statutes, are redesignated as subsections (4) through
144 (8), respectively, present subsection (3) is amended, and a new
145 subsection (3) is added to that section, to read:

146 471.015 Licensure.—

147 (3) (a) The management corporation shall issue a structural
148 engineer license to any applicant who the board certifies as
149 qualified to practice structural engineering and who:

150 1. Is licensed under this chapter as an engineer or is
151 qualified for licensure as an engineer.

152 2. Submits an application in the format prescribed by the
153 board.

154 3. Pays a fee established by the board under s. 471.011.

155 4. Provides satisfactory evidence of good moral character,



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156 as defined by the board.

157 5. Provides a record of 4 years of active structural
158 engineering experience, as defined by the board, under the
159 supervision of a licensed professional engineer.

160 6. Has successfully passed the National Council of
161 Examiners for Engineering and Surveying structural engineering
162 examination.

163 (b) Before February 28, 2019, an applicant who satisfies
164 subparagraphs (a)1.-5. may satisfy subparagraph (a)6. by
165 submitting a signed affidavit in the format prescribed by the
166 board that states:

167 1. The applicant is currently a licensed engineer in this
168 state and has been engaged in the practice of structural
169 engineering with a record of at least 4 years of active
170 structural engineering experience.

171 2. The applicant is willing to meet with the board or a
172 representative of the board, upon its request, for the purpose
173 of evaluating the applicant's qualifications for licensure.

174 (c) An applicant who is qualified for licensure as an
175 engineer under s. 471.013 may simultaneously apply for licensure
176 as a structural engineer if all requirements of s. 471.013 and
177 this subsection are met.

178 (4)~~(3)~~ The board shall certify as qualified for a license
179 by endorsement an applicant who:

180 (a) Qualifies to take the fundamentals examination and the
181 principles and practice examination as set forth in s. 471.013,
182 has passed a United States national, regional, state, or
183 territorial licensing examination that is substantially
184 equivalent to the fundamentals examination and principles and



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185 practice examination required by s. 471.013, and has satisfied
186 the experience requirements set forth in s. 471.013; or

187 (b) Holds a valid license to practice engineering or, for
188 structural engineer applicants, a license to practice structural
189 engineering issued by another state or territory of the United
190 States, if the criteria for issuance of the license were
191 substantially the same as the licensure criteria that existed in
192 this state at the time the license was issued.

193 Section 6. Section 471.019, Florida Statutes, is amended to
194 read:

195 471.019 Reactivation.—The board shall prescribe by rule
196 continuing education requirements for reactivating a license.
197 The continuing education requirements for reactivating a license
198 for a licensed engineer or structural engineer may not exceed 12
199 classroom hours for each year the license was inactive.

200 Section 7. Subsection (2) of section 471.025, Florida
201 Statutes, is amended to read:

202 471.025 Seals.—

203 (2) It is unlawful for any person to seal or digitally sign
204 any document with a seal or digital signature after his or her
205 license has expired or been revoked or suspended, unless such
206 license is ~~has been~~ reinstated or reissued. When an engineer's
207 or structural engineer's license is ~~has been~~ revoked or
208 suspended by the board, the licensee shall, within a period of
209 30 days after the revocation or suspension has become effective,
210 surrender his or her seal to the executive director of the board
211 and confirm to the executive director the cancellation of the
212 licensee's digital signature in accordance with ss. 668.001-
213 668.006. In the event the engineer's license has been suspended



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214 for a period of time, his or her seal shall be returned to him
215 or her upon expiration of the suspension period.

216 Section 8. Paragraphs (b) through (g) of subsection (1) of
217 section 471.031, Florida Statutes, are redesignated as
218 paragraphs (c) through (h), respectively, present paragraph (b)
219 is amended, and a new paragraph (b) is added to that subsection,
220 to read:

221 471.031 Prohibitions; penalties.—

222 (1) A person may not:

223 (b) Beginning March 1, 2019, practice structural
224 engineering unless the person is licensed as a structural
225 engineer or exempt from licensure under this chapter.

226 (c) ~~(b)~~1. Except as provided in subparagraph 2. or
227 subparagraph 3., use the name or title "professional engineer"
228 or any other title, designation, words, letters, abbreviations,
229 or device tending to indicate that such person holds an active
230 license as an engineer when the person is not licensed under
231 this chapter, including, but not limited to, the following
232 titles: "agricultural engineer," "air-conditioning engineer,"
233 "architectural engineer," "building engineer," "chemical
234 engineer," "civil engineer," "control systems engineer,"
235 "electrical engineer," "environmental engineer," "fire
236 protection engineer," "industrial engineer," "manufacturing
237 engineer," "mechanical engineer," "metallurgical engineer,"
238 "mining engineer," "minerals engineer," "marine engineer,"
239 "nuclear engineer," "petroleum engineer," "plumbing engineer,"
240 "structural engineer," "transportation engineer," "software
241 engineer," "computer hardware engineer," or "systems engineer."

242 2. Any person who is exempt from licensure under s.



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243 471.003(2)(j) may use the title or personnel classification of
244 "engineer" in the scope of his or her work under that exemption
245 if the title does not include or connote the term "licensed
246 engineer," "professional engineer," "registered engineer,"
247 "licensed professional engineer," ~~"licensed engineer,"~~
248 "registered professional engineer," "licensed structural
249 engineer," "professional structural engineer," "registered
250 structural engineer," or "structural engineer." ~~or "licensed~~
251 ~~professional engineer."~~

252 3. Any person who is exempt from licensure under s.
253 471.003(2)(c) or (e) may use the title or personnel
254 classification of "engineer" in the scope of his or her work
255 under that exemption if the title does not include or connote
256 the term "licensed engineer," "professional engineer,"
257 "registered engineer," "licensed professional engineer,"
258 ~~"licensed engineer,"~~ "registered professional engineer,"
259 "licensed structural engineer," "professional structural
260 engineer," "registered structural engineer," or "structural
261 engineer," ~~or "licensed professional engineer"~~ and if that
262 person is a graduate from an approved engineering curriculum of
263 4 years or more in a school, college, or university which has
264 been approved by the board.

265 Section 9. Paragraph (e) of subsection (1) and subsection
266 (4) of section 471.033, Florida Statutes, are amended to read:

267 471.033 Disciplinary proceedings.—

268 (1) The following acts constitute grounds for which the
269 disciplinary actions in subsection (3) may be taken:

270 (e) Making or filing a report or record that the licensee
271 knows to be false, willfully failing to file a report or record



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272 required by state or federal law, willfully impeding or
273 obstructing such filing, or inducing another person to impede or
274 obstruct such filing. Such reports or records include only those
275 that are signed in the capacity of a licensed engineer or
276 structural engineer.

277 (4) The management corporation shall reissue the license of
278 a disciplined engineer, structural engineer, or business upon
279 certification by the board that the disciplined person has
280 complied with all of the terms and conditions set forth in the
281 final order.

282 Section 10. Subsection (1) of section 471.037, Florida
283 Statutes, is amended to read:

284 471.037 Effect of chapter locally.-

285 (1) Nothing contained in this chapter shall be construed to
286 repeal, amend, limit, or otherwise affect any local building
287 code or zoning law or ordinance, now or hereafter enacted, which
288 is more restrictive with respect to the services of licensed
289 engineers or structural engineers than the provisions of this
290 chapter.

291 Section 11. This act shall take effect July 1, 2015.

292
293 ===== T I T L E A M E N D M E N T =====

294 And the title is amended as follows:

295 Delete everything before the enacting clause
296 and insert:

297 A bill to be entitled
298 An act relating to engineers; amending s. 471.003,
299 F.S.; prohibiting a person who is not licensed as an
300 engineer or a structural engineer from using specified



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301 names and titles or practicing engineering or
302 structural engineering; exempting certain persons from
303 the licensing requirements; amending s. 471.005, F.S.;
304 providing definitions; amending s. 471.011, F.S.;
305 establishing various fees for the examination and
306 licensure of structural engineers; amending s.
307 471.013, F.S.; revising provisions authorizing the
308 Board of Professional Engineers to refuse to certify
309 an applicant due to lack of good moral character to
310 include structural engineer licensure applicants, to
311 conform; amending s. 471.015, F.S.; providing
312 licensure and application requirements for a
313 structural engineer license; exempting under certain
314 conditions a structural engineer who applies for
315 licensure before a specified date from passage of a
316 certain national examination; requiring the board to
317 certify certain applicants for licensure by
318 endorsement; amending ss. 471.019 and 471.025, F.S.;
319 revising continuing education requirements for
320 reactivation of a license and provisions requiring an
321 engineer with a revoked or suspended license to
322 surrender his or her seal, respectively, to include
323 structural engineers, to conform; amending s. 471.031,
324 F.S.; prohibiting specified persons from using
325 specified names and titles; amending s. 471.033, F.S.;
326 providing various acts which constitute grounds for
327 disciplinary action against a structural engineer, to
328 which penalties apply; amending s. 471.037, F.S.;
329 revising applicability, to conform to changes made by



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330

the act; providing an effective date.

By Senator Altman

16-00686-15

2015338__

1 A bill to be entitled
 2 An act relating to engineers; amending s. 471.003,
 3 F.S.; prohibiting a person who is not licensed as an
 4 engineer from using specified names and titles;
 5 amending s. 471.0035, F.S.; conforming a cross-
 6 reference; amending s. 471.005, F.S.; providing
 7 definitions; amending s. 471.015, F.S.; providing
 8 licensure and application requirements for a
 9 structural engineer license; amending s. 471.031,
 10 F.S.; prohibiting specified persons from using the
 11 titles of "licensed structural engineer,"
 12 "professional structural engineer," "registered
 13 structural engineer," or "structural engineer";
 14 providing an effective date.
 15
 16 Be It Enacted by the Legislature of the State of Florida:
 17
 18 Section 1. Subsection (1) of section 471.003, Florida
 19 Statutes, is amended to read:
 20 471.003 Qualifications for practice; exemptions.-
 21 (1) No person other than a duly licensed engineer shall
 22 practice engineering or use the name or title of "licensed
 23 engineer," "professional engineer," "registered engineer,"
 24 "licensed structural engineer," "professional structural
 25 engineer," "registered structural engineer," "structural
 26 engineer," or any other title, designation, words, letters,
 27 abbreviations, or device tending to indicate that such person
 28 holds an active license as an engineer in this state.
 29 Section 2. Section 471.0035, Florida Statutes, is amended

Page 1 of 5

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

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30 to read:
 31 471.0035 Instructors in postsecondary educational
 32 institutions; exemption from licensure requirement.-For the sole
 33 purpose of teaching the principles and methods of engineering
 34 design, notwithstanding the provisions of s. 471.005(8) ~~or~~
 35 ~~471.005(7)~~, a person employed by a public postsecondary
 36 educational institution, or by an independent postsecondary
 37 educational institution licensed or exempt from licensure
 38 pursuant to the provisions of chapter 1005, is not required to
 39 be licensed under the provisions of this chapter as a
 40 professional engineer.
 41 Section 3. Present subsections (4) through (12) of section
 42 471.005, Florida Statutes, are redesignated as subsections (5)
 43 through (13), respectively, present subsection (13) is
 44 redesignated as subsection (4), and new subsections (14) and
 45 (15) are added to that section, to read:
 46 471.005 Definitions.-As used in this chapter, the term:
 47 (14) "Licensed structural engineer," "professional
 48 structural engineer," "registered structural engineer," or
 49 "structural engineer" means a person who is licensed to engage
 50 in the practice of structural engineering under this chapter.
 51 (15) "Structural engineering" means a service or creative
 52 work that includes the analysis and design of significant
 53 structures as defined by the board. The term includes
 54 "engineering" as defined in subsection (8) and may be further
 55 defined by the board by rule.
 56 Section 4. Present subsections (3) through (7) of section
 57 471.015, Florida Statutes, are redesignated as subsections (4)
 58 through (8), respectively, and a new subsection (3) is added to

Page 2 of 5

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

16-00686-15

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59 that section, to read:

60 471.015 Licensure.—

61 (3) (a) The management corporation shall issue a structural
 62 engineer license to any applicant whom the board certifies as
 63 qualified to practice structural engineering and who:

64 1. Is licensed under this chapter as an engineer or is
 65 qualified for licensure as an engineer;

66 2. Submits an application in the format prescribed by the
 67 board;

68 3. Pays a fee established by the board under s. 471.011;

69 4. Provides satisfactory evidence of good moral character,
 70 as defined by the board;

71 5. Provides a record of 4 years of active structural
 72 engineering experience, as defined by the board, under the
 73 supervision of a licensed professional engineer; and

74 6. Has successfully passed the National Council of
 75 Examiners for Engineering and Surveying structural examination.

76 (b) Before February 28, 2020, an applicant who satisfies
 77 subparagraphs (a)1.-5. may satisfy subparagraph (a)6. by
 78 submitting a signed affidavit in the format prescribed by the
 79 board that states:

80 1. The applicant is currently a licensed engineer in the
 81 state and has been engaged in the practice of structural
 82 engineering with a record of at least 4 years of active
 83 structural engineering experience; and

84 2. The applicant is willing to meet with the board or a
 85 representative of the board, upon its request, for the purpose
 86 of evaluating the applicant's qualifications for licensure.

87 (c) An applicant who is qualified for licensure as an

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88 engineer under s. 471.013 may simultaneously apply for licensure
 89 as a structural engineer if all requirements of s. 471.013 and
 90 this subsection are met.

91 Section 5. Paragraph (b) of subsection (1) of section
 92 471.031, Florida Statutes, is amended to read:

93 471.031 Prohibitions; penalties.—

94 (1) A person may not:

95 (b)1. Except as provided in subparagraph 2. or subparagraph
 96 3., use the name or title "professional engineer" or any other
 97 title, designation, words, letters, abbreviations, or device
 98 tending to indicate that such person holds an active license as
 99 an engineer when the person is not licensed under this chapter,
 100 including, but not limited to, the following titles:

101 "agricultural engineer," "air-conditioning engineer,"

102 "architectural engineer," "building engineer," "chemical

103 engineer," "civil engineer," "control systems engineer,"

104 "electrical engineer," "environmental engineer," "fire

105 protection engineer," "industrial engineer," "manufacturing

106 engineer," "mechanical engineer," "metallurgical engineer,"

107 "mining engineer," "minerals engineer," "marine engineer,"

108 "nuclear engineer," "petroleum engineer," "plumbing engineer,"

109 "structural engineer," "transportation engineer," "software

110 engineer," "computer hardware engineer," or "systems engineer."

111 2. Any person who is exempt from licensure under s.

112 471.003(2)(j) may use the title or personnel classification of

113 "engineer" in the scope of his or her work under that exemption

114 if the title does not include or connote the term "licensed

115 engineer," "professional engineer," "registered engineer,"

116 "licensed professional engineer," ~~licensed engineer,"~~

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117 "registered professional engineer," "licensed structural
118 engineer," "professional structural engineer," "registered
119 structural engineer," or "structural engineer ~~or "licensed~~
120 ~~professional engineer."~~

121 3. Any person who is exempt from licensure under s.
122 471.003(2)(c) or (e) may use the title or personnel
123 classification of "engineer" in the scope of his or her work
124 under that exemption if the title does not include or connote
125 the term "licensed engineer," "professional engineer,"
126 "registered engineer," "licensed professional engineer,"
127 "licensed engineer," "registered professional engineer,"
128 "licensed structural engineer," "professional structural
129 engineer," "registered structural engineer," or "structural
130 engineer" or "licensed professional engineer" and if that person
131 is a graduate from an approved engineering curriculum of 4 years
132 or more in a school, college, or university which has been
133 approved by the board.

134 Section 6. This act shall take effect July 1, 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Military and Veterans Affairs, Space, and Domestic Security, *Chair*
Children, Families, and Elder Affairs, *Vice-Chair*
Appropriations
Appropriations Subcommittee on General Government
Environmental Preservation and Conservation
Finance and Tax

SENATOR THAD ALTMAN

16th District

February 5, 2015

The Honorable Rob Bradley
Senate Committee on Regulated Industries, Chair
330 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chairman Bradley:

I respectfully request that SB 0338, related to *Engineers*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in black ink that reads "Thad Altman".

Thad Altman

CC: Patrick L. "Booter" Imhof, Staff Director, 330 Knott Building
Lynn Koon, Committee Administrative Assistant

TA/svb

REPLY TO:

- 8710 Astronaut Blvd, Cape Canaveral, FL 32920 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/2015
Meeting Date

SB 338
Bill Number (if applicable)

Topic STRUCTURAL ENGINEERING LICENSURE

Amendment Barcode (if applicable)

Name SCOTT MARTIN

Job Title SENIOR STRUCTURAL ENGINEER

Address 10901 BRIGHTON BAY BLVD NE, #4203
Street

Phone ~~727~~ 727.642.6212

ST. PETE FL 33716
City State Zip

Email smartin@walterpaine.com

Speaking: For Against Information

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

Representing FL ENGINEERING SOCIETY

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

APPEARANCE RECORD

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

3/11/15

Meeting Date

338

Bill Number (if applicable)

Topic Structural Engineering Licensure

Amendment Barcode (if applicable)

Name Brett Rylands

Job Title VP of Structural Engineering

Address 1925 Prospect Ave

Phone ~~407-661-9100~~ 407-661-9100

Orlando FL 32814

City

State

Zip

Email brettre@cs-p.com

Speaking: For Against Information

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

Representing FSEA (Florida Structural Engineers Assoc.)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

338

Meeting Date

Bill Number (if applicable)

Topic Engineering

Amendment Barcode (if applicable)

Name Douglas R Barkley

Job Title President BCEI

Address 3494 Martin Hurst Rd

Phone 850-297-0440

Street
Tallahassee FL 32312
City State Zip

Email douglas.barkley@bcei.us

Speaking: For Against Information

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

Representing Structural Director Florida Institute of Consulting Engineers (FICE)

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3.11.05

Meeting Date

338

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name THOMAS A. GROGAN JR

Job Title CHIEF STRUCTURAL ENGINEER

Address 1598 COUNTRY WALK DR.

Phone 904.635.2699

Street

FLEMING ISLAND, FL 32003

Email THOMAS.GROGAN@

City

State

Zip

HASKELL.COM

Speaking: For Against Information

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

Representing FLORIDA STRUCTURAL ENGINEERS ASSOCIATION

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3 / 11 / 2015

Meeting Date

Topic _____

Bill Number 338
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City *State* *Zip*

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
COMMITTEE VOTE RECORD

COMMITTEE: Regulated Industries
ITEM: SB 338
FINAL ACTION: Favorable with Committee Substitute
MEETING DATE: Wednesday, March 11, 2015
TIME: 2:00 —4:00 p.m.
PLACE: 110 Senate Office Building

FINAL VOTE		SENATORS	3/11/2015 ¹ Amendment 224476		3/11/2015 ² Motion to vote "YEA" after Roll Call				
			Diaz de la Portilla	Abruzzo	Yea	Nay	Yea	Nay	Yea
VA		Abruzzo							
X		Bean							
X		Braynon							
X		Diaz de la Portilla							
X		Flores							
X		Latvala							
X		Negron							
X		Richter							
X		Sachs							
X		Stargel							
X		Margolis, VICE CHAIR							
X		Bradley, CHAIR							
12	0		RCS	-	FAV	-			
Yea	Nay	TOTALS	Yea	Nay	Yea	Nay	Yea	Nay	

CODES: FAV=Favorable RCS=Replaced by Committee Substitute TP=Temporarily Postponed WD=Withdrawn
 UNF=Unfavorable RE=Replaced by Engrossed Amendment VA=Vote After Roll Call OO=Out of Order
 -R=Reconsidered RS=Replaced by Substitute Amendment VC=Vote Change After Roll Call AV=Abstain from Voting

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 548

INTRODUCER: Senators Clemens and Gaetz

SUBJECT: Use of Tobacco Products in Motor Vehicles

DATE: March 11, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Oxamendi</u>	<u>Imhof</u>	<u>RI</u>	Favorable
2.	_____	_____	<u>HP</u>	_____
3.	_____	_____	<u>RC</u>	_____

I. Summary:

SB 548 prohibits smoking in a motor vehicle in which a child under 13 years of age is present.

A violation of this prohibition would result in a nonmoving traffic citation. The total amount of the fine, court costs, and other fees for a nonmoving violation varies by jurisdiction. For example, in Leon County, a nonmoving violation is a \$116 citation; in the City of Tallahassee, a non-moving violation is a \$123 citation; and in Miami-Dade County a nonmoving violation is a \$129 citation.

The bill defines the term “smoking” as having the same meaning as under the Florida Clean Indoor Air Act.

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

II. Present Situation:

Florida Uniform Traffic Control Law

The purpose of the “Florida Uniform Traffic Control Law” in ch. 316, F.S., is to make uniform traffic laws to apply throughout the state and its several counties and uniform traffic ordinances to apply in all municipalities.¹

Section 316.003(21), F.S., defines the term “motor vehicle” as a self-propelled vehicle not operated upon rails or guideway. The definition does not include bicycles, motorized scooters, electric personal assistive mobility devices, swamp buggies, or mopeds.

¹ Section 316.002, F.S.

The fine for a nonmoving traffic violation is \$30.² However, in addition to the stated fine, court costs and other fees must also be paid.³ The court cost for a nonmoving traffic infraction is \$18.⁴ The total amount of fine, court costs, and other fees varies by jurisdiction. For example, in Leon County, a nonmoving violation is a \$116 citation; in the City of Tallahassee, a non-moving violation is \$123 citation;⁵ and in Miami-Dade County a nonmoving violation is a \$129 citation.⁶

Smoking in Privately Owned Vehicles while Children are Present

Seven states⁷ and the Commonwealth of Puerto Rico have prohibited smoking in privately owned vehicles while children are present. The ages range from under 8 (Vermont) to under 18 (California and Oregon).⁸

According to the American Lung Association's affiliate in Oregon, the Environmental Protection Agency classifies secondhand smoke as a Group A carcinogen which causes cancer in humans.⁹ It also indicated that the U.S. Surgeon General that children exposed to secondhand smoke have increased risk for health problems.¹⁰

Florida Clean Indoor Air Act

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.¹¹

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.”

² Section 318.18(2), F.S.

³ See ss. 318.18(11) - (22), F.S.

⁴ Section 318.18 (11)(a), F.S.

⁵ See *How do I figure out what I owe on my ticket?*, Frequently Asked Questions, Leon County Clerk of Court at: http://www.clerk.leon.fl.us/index.php?section=204&server&page=clerk_services/faqs/index.php&division=traffic (last visited March 7, 2015).

⁶ The fee schedule for the Miami-Dade County Clerk of Courts is available at: http://www.miami-dadeclerk.com/service_fee_schedule.asp#traffic (last visited March 7, 2015).

⁷ Arkansas, California, Louisiana, Maine, Oregon, Utah, and Vermont.

⁸ *Secondhand smoke, kids, and cars*, Campaign for Tobacco-Free Kids, June 2014. www.tobaccofreekids.org/research/factsheets/pdf/0334.pdf (last visited March 9, 2015).

⁹ *Smoke-free Cars, Frequently Asked Questions*, American Lung Association in Oregon, September 2013. www.lung.org/associations/states/oregon/assets/docs/smokefree-cars-for-kids-fact.pdf (last visited March 9, 2015).

¹⁰ *Id.*

¹¹ Section 386.202, F.S.

The amendment defines “work” as “any persons providing any employment or employment-type service for or at the request of another individual or individuals 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.

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;¹² stand-alone bars;¹³ designated smoking rooms in hotels and other public lodging establishments;¹⁴ and retail tobacco shops, including businesses that manufacture, import, or distribute tobacco products and tobacco loose leaf dealers.¹⁵

Section 386.203(10), F.S., defines ‘smoking’ to mean:

inhaling, exhaling, burning, carrying, or possessing any lighted tobacco product, including cigarettes, cigars, pipe tobacco, and any other lighted tobacco product.

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.¹⁶ 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.

¹² Section 386.2045(1), F.S. *See also* definition of the term “private residence” in s. 386.203(1), F.S.

¹³ Section 386.2045(4), F.S. *See also* definition of the term “stand-alone bar” in s. 386.203(11), F.S.

¹⁴ Section 386.2045(3), F.S. *See also* definition of the term “designated guest smoking room” in s. 386.203(4), F.S.

¹⁵ Section 386.2045(2), F.S. *See also* definition of the term “retail tobacco shop” in s. 386.203(8), F.S.

¹⁶ 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.

Enforcement

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 ch. 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.¹⁷

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.¹⁸

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.

As an exception to the state’s preemption of smoking regulation, s. 386.209, F.S., permits school districts to further restrict smoking by persons on school district property,

Regarding the issue of preemption, a recent Florida Attorney General Opinion concluded that the St. Johns Water Management District could not adopt a regulation prohibiting smoking by all persons on district property.¹⁹ 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 for indoor and outdoor smoking. The Attorney General noted that the 2011 amendment of s. 386.209, F.S.,²⁰ to authorize school districts to prohibit smoking on school district property and concluded that further legislative authorization would be required for the water management district to regulate smoking on its property.

III. Effect of Proposed Changes:

The bill creates s. 316.6136, F.S., to prohibit persons from smoking in a motor vehicle in which a child under 13 years of age is present. This prohibition is not limited to the driver of the vehicle. It applies to all persons in the vehicle.

The bill provides that a person who violates this section commits a nonmoving violation, punishable as provided in ch. 318, F.S.

¹⁷ Section 386.212(3), F.S.

¹⁸ Section 386.212(4), F.S.

¹⁹ Fla. AGO 2011-15 (July 21, 2011). *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.

²⁰ Chapter 2011-108, L.O.F.

The bill defines the term “smoking” as having the same meaning as in s. 386.203, F.S.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons who violate the prohibition against smoking in a motor vehicle in which a child under 13 years of age is present may be subject to a nonmoving traffic citation. The total amount of the fine, court costs, and other fees for a nonmoving violation vary by jurisdiction. For example, in Leon County, a nonmoving violation is a \$116 citation; in the City of Tallahassee, a non-moving violation is \$123 citation; and in Miami-Dade County a nonmoving violation is a \$129 citation.²¹

C. Government Sector Impact:

Local governments may have an indeterminate increase in revenue from fines, court costs, and other fees collected from nonmoving violations arising from the prohibition in this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

²¹ *Supra*, notes 5 and 6.

VIII. Statutes Affected:

This bill creates section 316.6136 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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

By Senator Clemens

27-00539-15

2015548__

1 A bill to be entitled
2 An act relating to the use of tobacco products in
3 motor vehicles; creating s. 316.6136, F.S.;
4 prohibiting a person from smoking a tobacco product in
5 a motor vehicle in which a child under 13 years of age
6 is present; providing penalties; providing an
7 effective date.
8

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

11 Section 1. Section 316.6136, Florida Statutes, is created
12 to read:

13 316.6136 Smoking in vehicle in which a child under 13 years
14 of age is present; prohibition.—A person smoking a tobacco
15 product in a motor vehicle in which a child under 13 years of
16 age is present commits a nonmoving violation, punishable as
17 provided in chapter 318. As used in this section, the term
18 “smoking” has the same meaning as defined in s. 386.203.

19 Section 2. This act shall take effect October 1, 2015.



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on Transportation,
Tourism, and Economic Development, *Vice Chair*
Banking and Insurance
Criminal Justice
Education Pre-K-12
Ethics and Elections
Fiscal Policy

SENATOR JEFF CLEMENS

27th District

February 10, 2015

Senator Rob Bradley, Chair
Committee on Regulated Industries
330 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chair Bradley:

I respectfully request that SB 548 – Use of Tobacco in Motor Vehicles be added to the agenda for the next Committee on Regulated Industries meeting.

SB 548 will make it unlawful to smoke cigarettes and other tobacco products in a car with a person under the age of 13. The bill is the result of a “There Ought To Be A Law” competition that I host in the District among high school students. The students spend a few weeks developing a proposal, making sure to document all relevant research, which they then present to me and a few other local community leaders and elected officials.

The “Law “competition provides students with an opportunity to be a part of the legislative process and a hands-on experience in to how their government works. In the past, I have arranged for the students to travel to Tallahassee to present their bill. I am hoping to do the same this Session.

Please feel free to contact me with any questions. Thank you, in advance, for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeff Clemens".

Senator Jeff Clemens
Florida Senate District 27

REPLY TO:

- 508 Lake Avenue, Unit C, Lake Worth, Florida 33460 (561) 540-1140 FAX: (561) 540-1143
- 226 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

“THERE OUGHT TO BE A LAW”

By: Natalie C., Ruben G., Deili G., Zindi R.

DESCRIPTION OF PROPOSAL

- ⦿ A law that will make people unable to smoke with children in a car.

- ⦿ Title of law:

“let the children breathe”

SUMMARY OF PROPOSAL

- ◉ We all understand that smoking itself is harmful to the body but it can also be understood that second hand smoking is just as bad. Second hand smoking could affect just about anyone in contact with a smoker and that's why there 'ought to be a law' to protect children's health. The proposal will prevent children from developing a higher risk of lung cancer or respiratory illnesses.
- ◉ Children most times in these kind of situations can not reach out to others stating the harm the smoke is causing them.

EFFECTS OF PROPOSAL CHANGES

- ⦿ Children will not be exposed to the harmful effects of secondhand smoke.
- ⦿ The law will be in place for children 13 and under.

FACTS ABOUT SECOND HAND-SMOKING

- ⦿ Secondhand smoke causes more than an estimated **202,000** asthma episodes, **790,000** physician visits for buildup of fluid in the middle ear, and **430** sudden infant death syndrome (SIDS) cases each year. (ALA)
- ⦿ Kids now under 18 and alive in Florida who will ultimately die prematurely from smoking **270,000** (TFK)

DID YOU KNOW?

After just half a cigarette has been smoked in a car, the quality of the air can reach levels 10 times over what the United States Environmental Protection Agency considers hazardous. (Tobacco Free CA)



Image: BBC News

MORE INFO

Smokefree Car Laws

U.S. State / Commonwealth	Smokefree Provision	Effective Date
Arkansas	Persons < than age 6 and under 60 pounds in a child safety seat. <i>Effective 07/21/2006</i> Persons < age 14. <i>Effective 07/27/2011</i>	07/21/2006 07/27/2011
California	Persons < age 18	01/01/2008
Louisiana	Persons < age 13	08/15/2006
Maine	Persons < age 16	09/01/2008
Oregon	Persons < age 18. <i>The Legislature enacted SB444, which prohibits smoking in any motor vehicle in which a child under age 18 is a passenger. Enacted 6/11/2013 as Chapter 361 2013 Laws.</i>	01/01/2014
Puerto Rico	Persons < age 13	03/02/2007
Utah	Persons < age 15	05/14/2013
Vermont	Persons aged 8 and under	07/01/2014

SOURCE NOTES

- ◉ *General smoking facts.* America Lung Association, n.d. Web. 09 Dec. 2014.
- ◉ *Smoke free cars.* American's for nonsmokers rights, n.d. Web. 09 Dec. 2014.
- ◉ *Smoking in cars is Toxic.* TobaccoFree CA, n.d. Web. 09 Dec. 2014.
- ◉ *The Toll of Tobacco in Florida.* Tobacco free kids, 31 Oct. 2014.

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/11/15

Meeting Date

548

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Zindi Rios

Job Title _____

Address 160 Dorothy Dr
Street

Phone (561) 907-1152

West Palm Beach FL 33415
City State Zip

Email zindi.winee.rios@gmail.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-11-15
Meeting Date

548
Bill Number (if applicable)

Topic use of Tobacco in Motor Vehicles

Amendment Barcode (if applicable)

Name Deili GOMEZ

Job Title _____

Address 3880 NoLomis Ave
Street

Phone 561-232-1245
~~561-959-8602~~

W.P.B FL 33409
City State Zip

Email _____

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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THE FLORIDA SENATE
APPEARANCE RECORD

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

3-11-15

Meeting Date

SB 543 / HB 671

Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Ruben Garcia

Job Title _____

Address 405 Executive Center DR apt E105
Street

Phone 561-452-8181

West Palm Beach FL 33401
City State Zip

Email rubengarcia180@yahoo.com

Speaking: For Against Information

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

Representing _____

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/11/2015
Meeting Date

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

SB 548
Bill Number (if applicable)

Topic Tobacco in Motor Vehicles

Amendment Barcode (if applicable)

Name ERICA WHITFIELD

Job Title School Board Member - PBC

Address 133 Duke Drive
Street

Phone 561-329-0310

Lake Worth, FL 33460
City State Zip

Email ERICA.WHITFIELD@palmbeachschools.org

Speaking: For Against Information

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

Representing Palm Beach County School Board

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-11-15
Meeting Date

548
Bill Number (if applicable)

Topic Smoking in Cars

Amendment Barcode (if applicable)

Name Jill Gran

Job Title Director Legislative Affairs

Address 28108 Mahan Dr
Street

Phone 878-2194

Tallahassee FL 32308
City State Zip

Email jill@today.org

Speaking: For Against Information

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

Representing Florida Alcohol & Drug Abuse Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3 / 11 / 2015

Meeting Date

Topic _____

Bill Number 548

(if applicable)

Name BRIAN PITTS

Amendment Barcode _____

(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH

Phone 727-897-9291

Street

SAINT PETERSBURG FLORIDA 33705

E-mail JUSTICE2JESUS@YAHOO.COM

City

State

Zip

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 490

INTRODUCER: Regulated Industries Committee and Senator Thompson

SUBJECT: State Lotteries

DATE: March 12, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	Fav/CS
2.			AED	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 490 requires the Department of the Lottery (department) to offer a special instant scratch-off ticket lottery game to be known as “Ticket for the Cure,” for a six-year period beginning January 1, 2016 and ending on December 31, 2021. The lottery ticket sales revenues from this special game, after reductions for payments of prizes to players and the actual expenses of the department solely related to the game, will be split evenly and paid by the department to two groups: state and private universities that either have medical research facilities or are associated with such facilities, and non-university direct service providers that provide care directly to individuals who seek breast cancer services. Direct service providers must use fee schedules with the lowest cost to the state, and must use a system that guides and tracks patients over time through comprehensive health services at all levels and intensities of care. Breast and cancer screening must be also funded through the appropriations act at a level that matches federal funds for screening and early detection.

II. Present Situation:

Lottery Operations:

The Department of the Lottery is authorized by Article X, section 15, of the Florida Constitution, which states that “[l]otteries may be operated by the state.” The constitution initially provided that the lotteries would be known as the “Florida Education Lotteries,” and the proceeds from the

lotteries were to be deposited into a trust fund designated “The State Education Lotteries Trust Fund.” The constitution allows these provisions to be amended by general law.

Chapter 24, F.S., was enacted by ch. 87-65, L.O.F., to establish the state lottery. The Legislature recognized the operation of a lottery is a unique activity for state government, and procedures appropriate to the performance of other governmental functions are not necessarily appropriate to the operation of a state lottery; and further statements of legislative purpose and intent may be summarized as:¹

- Implementing the constitutional authorization to enable the people of the state to benefit from significant education funding and to play the best lottery games available;
- Supporting improvements in public education with the net proceeds of lottery games, without using those proceeds as a substitute for existing public education resources;
- Operating lottery games by a state agency that functions to the extent possible as an entrepreneurial business enterprise that is self-supporting and revenue-producing, but is also accountable to the Legislature and the people of the state through audits and compliance with financial disclosure, open meetings, and public records laws.

The department’s headquarters must be in Tallahassee, but regional offices may be established throughout the state as necessary for the efficient operation of the lottery.² The lottery must be operated “to maximize revenues in a manner consonant with the dignity of the state and the welfare of its citizens.”³

The Florida Department of Lottery (department) is authorized to supervise and conduct the operation of the state lottery under ch. 24, F.S. Currently, the department operates both online games (games where the player picks numbers and the drawing occurs at a later time and location and which are connected to a central computer) and instant games (paper scratch-off tickets). The department conducts state online games⁴ and offers two multi-state lottery games - Powerball and Mega Millions. Players may purchase tickets at one of approximately 13,000 retailers.⁵ Online games and instant (scratch-off) tickets may be purchased using full service vending machines.⁶ Instant tickets may also be purchased from instant ticket vending machines.⁷ Currently, there are approximately 1,500 instant ticket vending machines and 500 full service

¹ See s. 24.102, F.S.

² See s. 20.317(3), F.S.

³ See s. 24.104, F.S.

⁴ The current online games are Florida Lotto, Lucky Money, Mega Millions, Fantasy 5, Play 4, and Cash 3. See <http://www.flalottery.com/> (last visited March 9, 2015).

⁵ See *Lottery Transfers Continue to Increase; Options Remain to Enhance Transfers and Improve Efficiency*, Report No. 15-03, Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, (January 2015) at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1503rpt.pdf> at page 7 (last accessed Mar. 10, 2015) (hereinafter OPPAGA Report 15-03).

⁶ Full service vending machines offer both online games and scratch-off games.

⁷ See *Lottery Transfers Have Recovered; Options Remain to Enhance Transfers*, Report No. 14-06, Office of Program Policy Analysis and Gov’t Accountability, Florida Legislature, (January 2014) at <http://www.oppaga.state.fl.us/MonitorDocs/Reports/pdf/1406rpt.pdf> (last accessed Mar. 10, 2015).

vending machines in use in the state.⁸ Florida ranked second highest among U.S. lotteries in Fiscal Year 2013-2014, with total lottery ticket sales of \$5.4 billion.⁹

In 2010, the state entered into a tribal-state agreement (Gaming Compact) with the Seminole Tribe of Florida (Tribe), granting the Tribe substantial exclusivity to offer Class III gaming including slot machines and raffles and drawings at all 7 casinos, and banking or banked card games (blackjack (21), baccarat, and chemin de fer games) at 5 of 7 of its casinos, in exchange for revenue sharing with the state.¹⁰ The compact provides that games authorized by ch. 24, F.S., as of February 1, 2010, and the operation of “lottery vending machines,”¹¹ as defined in the compact, have no impact on revenue sharing between the Tribe and the state.¹²

Use of Lottery Revenues:

The department generates revenues through the sale of lottery game tickets. Online games allow players to select from a range of numbers on a play slip that are printed by computer terminals that are connected to the department’s system (online) for a drawing at a later time.¹³ Scratch-off games are tickets with latex covering that players scratch off to determine instantly whether they have won.¹⁴ To increase sales during 2014, the department launched new products and enhanced product distribution.¹⁵

No monies from the General Revenue Fund are appropriated to the department, which is supported solely by game ticket sales. For Fiscal Year 2013-2014, the Legislature appropriated \$163.5 million for operations from lottery revenue, with 420 positions authorized.¹⁶ In Fiscal Year 2014-2015, the department allocated approximately 75 percent, or \$122.5 million, of its \$163.5 million appropriation to produce and advertise online and scratch-off games.¹⁷

In addition to funding the operational appropriation, lottery revenue is used to pay prizes and retailer commissions.¹⁸ In Fiscal Year 2013-2014, prizes totaled \$3.43 billion and retailer commissions totaled \$297.3 million.¹⁹ Lottery tickets are sold through retailers across the state, such as supermarkets, convenience stores, gas stations, and newsstands.²⁰ Retailers receive commissions for selling tickets at a rate of five percent of the ticket price and/or one percent of

⁸ *Id.* at page 7.

⁹ See OPPAGA Report 15-03 at page 1; however, as indicated therein in footnote 4, Florida is ranked ninth in per capita sales, meaning that the eight states that are higher in the ranking than Florida sell more tickets per person in their states.

¹⁰ See the executed Gaming Compact at http://www.myfloridalicense.com/dbpr/pmw/documents/2010_Compact-Signed1.pdf (last accessed Mar. 10, 2015). Banking or banked card games may not be offered at the Brighton or Big Cypress facilities unless and until the state allows any other person or entity to offer those games, as set forth in paragraph F.2. of Part III of the Gaming Compact, at page 4.

¹¹ *Id.* at page 10 of the Gaming Compact; as to the definitions of the 3 types of “Lottery Vending Machine.”

¹² *Id.* at page 42 of the Gaming Compact.

¹³ OPPAGA Report 15-03, at page 1.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at page 10.

¹⁷ *Id.* at page 2.

¹⁸ See s. 24.121(2) and (3), F.S.

¹⁹ *Id.* at page 1.

²⁰ *Id.* at page 1 (footnote 3).

the prize value (up to \$599) for winning tickets that they redeem at their location.²¹ Retailers are eligible to receive bonuses for selling select winning tickets and performance incentive payments.²²

Funding from lottery ticket sales (excluding the prize and retailer payments described above) to the Educational Enhancement Trust Fund (EETF)²³ administered by the Department of Education²⁴ increased by \$71 million in Fiscal Year 2013-2014 to \$1.495 billion.²⁵ The transfer of funds by the department to the EETF must occur quarterly (EETF transfer), to be used to benefit public education in accordance with the provisions of the Florida Public Education Lottery Act as set forth in ch. 24, F.S.²⁶

All EETF transfers must be reserved as needed to meet debt service requirements for certain bonds authorized by the state, or distributed to school districts for the Classrooms First Program.²⁷

Pursuant to s. 24.121(5)(a), F.S., public educational programs and purposes funded by the EETF may include, but are not limited to:

- Endowment;
- Scholarship;
- Matching funds;
- Direct grants;
- Research and economic development related to education;
- Salary enhancement;
- Contracts with independent institutions to conduct programs consistent with the state master plan for postsecondary education; or
- Any other educational program or purpose deemed desirable by the Legislature.

Prior to the expenditure of funds, each school district must establish policies and procedures that define enhancement and the types of expenditures consistent with that definition.²⁸ In addition, each school district must make available to the public and distribute on a quarterly basis, in an easy to understand format, how the lottery funds allocated to the school district have been spent.²⁹

²¹ Section 24.115(1)(e), F.S., limits on-site redemption of tickets to amounts less than \$600, and validation procedures must be performed appropriate to the lottery game involved.

²² OPPAGA Report 2015-03, at page 1 (footnote 3).

²³ As noted above, the implementation schedule in the Florida Constitution was adopted in 1986, subject to amendment by general law, refers to the “State Education Lotteries Trust Fund.” See Fla. Const. art. X, s. 15. The Florida Public Education Lottery Act, enacted in 1987, reflects the term “Educational Enhancement Trust Fund.” See ch. 87-65, s. 21, L.O.F.

²⁴ See s. 24.121(2), F.S.

²⁵ See *Financial Audit of the Department of the Lottery, for the Fiscal Years Ended June 30, 2014, and 2013*, Report No. 2015-092, State of Florida Auditor General (January 2015), at page 4 (2015 Financial Audit) at http://www.myflorida.com/audgen/pages/pdf_files/2015-092.pdf (last accessed Mar. 10, 2015).

²⁶ See s. 24.121(2), F.S.

²⁷ See ss. 1013.68, 1013.70, and 1013.737, F.S., regarding the Classrooms First Program, the 1997 School Capital Outlay Bond Program, and the Class Size Reduction and Educational Facilities Lottery Revenue Bond Program, respectively.

²⁸ See s. 24.121(5)(a), F.S.

²⁹ See s. 24.121(5)(f), F.S.

The Legislature must equitably apportion funds in the EETF among public schools, community colleges, and universities, except for the following three exceptions that are handled differently, as described below.

- A portion of such net revenues, as determined annually by the Legislature, shall be distributed to each school district (for each public school in that district), allocated to each school in an equal amount for each student enrolled, for enhancing school performance through development and implementation of a school improvement plan. These moneys may be expended only on programs or projects selected by the school advisory council (SAC), or if a school does not have a SAC, by a parent advisory committee (PAC) appointed by the school district's advisory council. The PAC, to be composed of parents of students enrolled in that school and representative of the ethnic, racial, and economic community served by the school, must advise the school's principal on the programs or projects to be funded. Neither school district staff nor principals may override the recommendations of a SAC or, if applicable, a PAC. These moneys may not be used for capital improvements or for any project or program with a duration of more than 1 year; however, a SAC or PAC may independently determine that a program or project formerly funded should receive funds in a subsequent year.³⁰
- Funds from the EETF may not be released for any purpose to any school district in which one or more schools do not have an approved school improvement plan pursuant to existing law³¹ or do not have a SAC meeting legal requirements as to the composition of its membership.³² The Commissioner of Education must withhold disbursements from the EETF to any school district that fails to adopt the performance-based salary schedule required by law.³³
- Funds must be allocated annually for all components of the Florida Bright Futures Scholarship Program prior to application of the formula for equitable distribution to public schools, community colleges, and state universities.³⁴ If shortages require reductions in estimated distributions from the EETF, funds for the Florida Bright Futures Scholarship Program shall be reduced only after reductions in all other distributions are made.³⁵

III. Effect of Proposed Changes:

SB 490 creates s. 24.132, F.S., titled "Ticket for the Cure," and directs the Department of the Lottery (department) to offer a special instant lottery game with that name for a six-year period beginning January 1, 2016 and ending December 31, 2021. According to the department, scratch-off game tickets for a new game are pre-printed all at one time, and a prize structure is established for the new game. The tickets are then distributed across the state and sold until the pre-printed number of tickets is sufficiently diminished or the top prizes have been claimed by winning players. Depending on how receptive players are to a new game, the life cycle for a new scratch-off game varies between 6 and 18 months. According to the department, reissuance of scratch-off tickets for a game is typically based on demand for the tickets rather than a mandated

³⁰ See s. 24.121(5)(c), F.S.

³¹ See s. 1001.42(18), F.S.

³² See s. 24.121(5)(d), F.S.

³³ See s. 1012.22(1), F.S.

³⁴ See s. 24.121(5)(e), F.S.

³⁵ *Id.*

time period for the game,³⁶ and an end-date mandated for a special game could result in depressed sales in advance of the end-date specified for that game.

During the period that tickets for the “Ticket for a Cure” game are sold, marketing activities for the new game must supplement current marketing efforts; the department may not “unreasonably diminish the efforts devoted to marketing other instant lottery games.”³⁷

The bill amends s. 24.121(5), F.S., to direct the department to equitably apportion the net revenues received from a special instant lottery game to be created called “Ticket for the Cure.” The term “net revenues” is defined as the total amount of moneys received from ticket sales, less the amounts paid in prizes and the actual administrative expenses of the department “solely related to the Ticket for the Cure lottery game.”

The net revenues from the new game are to be split evenly and paid by the department to two groups:

- Those state and private universities that either have medical research facilities or are associated with them; and
- Non-university direct service providers that:
 - Provide care directly to individuals who seek breast cancer services;
 - Use a system that guides and tracks patients over time through comprehensive health services at all levels and intensities of care; and
 - Pay for services, equipment, or supplies based on the Medicare fee schedule or the fee schedule that results in the lowest cost to the state.

The term “medical research facilities” is not defined in the bill or in existing law. There is no identification of state or private universities that are, or may be in the future, associated with medical research facilities, nor any parameters required for a state or private university to qualify to be “associated with” a medical research facility. The term “research” is defined as expenditures to “advance the understanding, techniques, and modalities [methods] that are effective in the detection, screening, prevention, and treatment of breast cancer, including clinical trials.”

There is no frequency or time frame for the department to split or pay net revenues from the new lottery game. The department does not currently have authority to split or to pay any lottery revenue to third parties other than the quarterly transfers required to be made to the Educational Enhancement Trust Fund.³⁸

³⁶ For example, the new Monopoly Millionaire game was launched on October 19, 2014 in Florida. Despite launches in 23 other states, ticket sales for the new game ceased after two months due to slow sales, and the last drawing took place on December 26, 2014. See <http://edr.state.fl.us/Content/conferences/lottery/lotterysummary.pdf> (last accessed Mar. 10, 2015).

³⁷ Information and charts detailing historical lottery sales by lottery game are in the 2015 Financial Audit at pages 8-9, supra note 25.

³⁸ Appropriation of EETF monies is made through legislation implementing the General Appropriations act; the latest appropriation was enacted during the 2014 Legislative Session. See ch. 2014-51, s. 1, L.O.F., at pages 1-5, available at <http://laws.flrules.org/2014/51> (last visited Mar. 10, 2015).

Pursuant to s. 24.121(5)(a), F.S., the public educational programs and purposes that are listed in the Florida Public Education Lottery Act “may include, but are not limited to” those in existing law, and other programs and purposes may be added by the Legislature.

The bill prohibits the use of the funds for institutional, organizational, or community-based overhead costs, indirect costs, or levies. No definitions of these terms are stated in the bill.

The bill grants the department rulemaking authority to administer the new game.

Section 3 of the bill amends s. 381.93, F.S., the Mary Brogan Breast and Cervical Cancer Early Detection Program, to require that appropriations in the General Appropriations Act match the amounts of federal funds provided for screening and early detection purposes.

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:

The use of lottery ticket revenues for other programs and purposes other than those in existing law may impact existing programs and purposes that have been funded in the past.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Clarification may be needed respecting the reference of “community-based” in the prohibition on Lines 39-41 of the bill against use of the funds for overhead costs, indirect costs, or levies. No definition of that term is given, and it is unclear whether the prohibition is directed to institutions or organizations that are community-based, or to another type of entity.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 24.121, 381.93. This bill creates section 24.132 of the Florida Statutes.

IX. Additional Information:

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

CS by Regulated Industries on March 11, 2015:

CS/SB 490 provides that the Department of the Lottery shall divide the net revenue from the “Ticket for the Cure” scratch-off game evenly between two groups: state and private cancer research universities that have or are associated with medical research facilities, and non-university direct service providers that provide care directly to individuals who seek breast cancer services.

Direct service providers must use the Medicare fee schedule or the fee schedule that results in the lowest cost to the state, and a system that guides and tracks patients over time through comprehensive health services at all levels and intensities of care.

Breast and cancer screening through the Mary Brogan Breast and Cervical Cancer Early Detection Program must be also funded through the appropriations act at a level that matches federal funds for screening and early detection.

- B. **Amendments:**

None.



925440

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/11/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 33 - 69

and insert:

(f) The department shall split evenly the net revenue received under s. 24.132 between public or private universities located in this state which have medical research facilities or which are associated with medical research facilities, and direct service providers. The moneys shall be used for the purposes of funding breast cancer research and providing



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11 services for low-income, uninsured individuals who have breast
12 cancer. The funds may not be used for institutional,
13 organizational, or community-based overhead costs, indirect
14 costs, or levies. If services, equipment, or supplies are
15 provided by a direct service provider, the funds must be used to
16 pay for the services, equipment, or supplies based on the
17 Medicare fee schedule or the fee schedule resulting in the
18 lowest cost to the state. A direct service provider must provide
19 a continuum of care. As used in this paragraph, the term:

20 1. "Direct service provider" means a nonuniversity
21 organization that provides care directly to an individual who
22 seeks services related to breast cancer.

23 2. "Continuum of care" means a system that guides and
24 tracks patients over time through a comprehensive array of
25 health services spanning all levels and intensity of care.

26 Section 2. Section 24.132, Florida Statutes, is created to
27 read:

28 24.132 Ticket for the Cure.-

29 (1) The department shall offer a special instant lottery
30 game called "Ticket for the Cure." The game shall commence on
31 January 1, 2016, and shall be discontinued on December 31, 2021.
32 While instant lottery tickets are sold for the Ticket for the
33 Cure lottery game, the department may not unreasonably diminish
34 the efforts devoted to marketing other instant lottery games.

35 (2) The department shall allocate the net revenue from the
36 Ticket for the Cure lottery game pursuant to s. 24.121(5)(f) for
37 the purposes of funding breast cancer research and providing
38 services for low-income, uninsured individuals who have breast
39 cancer. The funds may not be used for institutional,



925440

40 organizational, or community-based overhead costs, indirect
41 costs, or levies. The funds generated under this section may not
42 supplant those funds otherwise appropriated for breast cancer
43 research by this state. As used in this subsection, the term:

44 (a) "Net revenue" means the total amount of moneys received
45 for instant lottery tickets that have been sold, less the sum of
46 the amount paid out in prizes and the actual administrative
47 expenses of the department related solely to the Ticket for the
48 Cure lottery game.

49 (b) "Research" includes, but is not limited to,
50 expenditures to develop and advance the understanding,
51 techniques, and modalities that are effective in the detection,
52 screening, prevention, and treatment of breast cancer, including
53 clinical trials.

54 (3) The department may adopt rules to administer this
55 section.

56 Section 3. Subsection (3) of section 381.93, Florida
57 Statutes, is amended to read:

58 381.93 Breast and cervical cancer early detection program.—
59 This section may be cited as the "Mary Brogan Breast and
60 Cervical Cancer Early Detection Program Act."

61 (3) The Mary Brogan Breast and Cervical Cancer Early
62 Detection Program shall be funded through grants for such
63 screening and early detection purposes from the federal Centers
64 for Disease Control and Prevention under Title XV of the Public
65 Health Service Act, 42 U.S.C. ss. 300k et seq and through the
66 appropriation of funds under the General Appropriations Act
67 which must match the federal funds provided for screening and
68 early detection purposes.



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

And the title is amended as follows:

Delete lines 4 - 17

and insert:

to split evenly the net revenue between certain universities located in this state and direct service providers for breast cancer research and the provision of services for certain individuals who have breast cancer; restricting certain uses of the funds; requiring that direct service providers be reimbursed on the basis of specified fee schedules for services, equipment, or supplies; requiring a direct service provider to provide a continuum of care; defining terms; creating s. 24.132, F.S.; offering a special instant lottery game called "Ticket for the Cure" by the department for a limited time; prohibiting the department from unreasonably diminishing the efforts devoted to marketing other instant lottery games; requiring the department to allocate net revenue to be used for funding breast cancer research and providing services for certain individuals who have breast cancer; restricting the use of funds; providing that the funds generated may not supplant those funds otherwise appropriated for breast cancer research by this state; defining terms; authorizing the department to adopt rules; amending s. 381.93, F.S.; requiring the Mary Brogan Breast and Cervical Cancer Early Detection Program be funded through specified federal



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98 and state funds; requiring the state to appropriate
99 funds from the General Appropriations Act to match
100 federal funds provided for screening and early
101 detection purposes; providing

By Senator Thompson

12-00397-15

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1 A bill to be entitled
 2 An act relating to state lotteries; amending s.
 3 24.121, F.S.; requiring the Department of the Lottery
 4 to equitably apportion revenues to certain state
 5 universities to be used for funding breast cancer
 6 research and providing services for certain
 7 individuals who have breast cancer; creating s.
 8 24.132, F.S.; offering a special instant lottery game
 9 called "Ticket for the Cure" by the department for a
 10 limited time; prohibiting the department from
 11 unreasonably diminishing the efforts devoted to
 12 marketing other instant lottery games; requiring the
 13 department to allocate net revenue to be used for
 14 funding breast cancer research and providing services
 15 for certain individuals who have breast cancer;
 16 restricting the use of funds; defining terms;
 17 authorizing the department to adopt rules; providing
 18 an effective date.

19
 20 Be It Enacted by the Legislature of the State of Florida:

21
 22 Section 1. Paragraph (b) of subsection (5) of section
 23 24.121, Florida Statutes, is amended, present paragraph (f) of
 24 that subsection is redesignated as paragraph (g), and a new
 25 paragraph (f) is added to that subsection, to read:

26 24.121 Allocation of revenues and expenditure of funds for
 27 public education.—

28 (5)

29 (b) Except as provided in paragraphs (c)-(f) ~~(c), (d), and~~

Page 1 of 3

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

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30 ~~(e)~~, the Legislature shall equitably apportion moneys in the
 31 trust fund among public schools, community colleges, and
 32 universities.

33 (f) The department shall equitably apportion the net
 34 revenues received under s. 24.132 to state universities that
 35 have medical research facilities or that are associated with
 36 medical research facilities. The moneys received by the state
 37 universities shall be used for the purposes of funding breast
 38 cancer research and providing services for low-income, uninsured
 39 individuals who have breast cancer. The funds may not be used
 40 for institutional, organizational, or community-based overhead
 41 costs, indirect costs, or levies.

42 Section 2. Section 24.132, Florida Statutes, is created to
 43 read:

44 24.132 Ticket for the Cure.—

45 (1) The department shall offer a special instant lottery
 46 game called "Ticket for the Cure." The game shall commence on
 47 January 1, 2016, and shall be discontinued on December 31, 2021.
 48 While instant lottery tickets are sold for the Ticket for the
 49 Cure lottery game, the department may not unreasonably diminish
 50 the efforts devoted to marketing other instant lottery games.

51 (2) The department shall allocate the net revenue from the
 52 Ticket for the Cure lottery game pursuant to s. 24.121(5) (f) for
 53 the purposes of funding breast cancer research and providing
 54 services for low-income, uninsured individuals who have breast
 55 cancer. The funds may not be used for institutional,
 56 organizational, or community-based overhead costs, indirect
 57 costs, or levies. As used in this subsection, the term:

58 (a) "Net revenue" means the total amount of moneys received

Page 2 of 3

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59 for instant lottery tickets that have been sold less the sum of
60 the amount paid out in prizes and the actual administrative
61 expenses of the department solely related to the Ticket for the
62 Cure lottery game.

63 (b) "Research" includes, but is not limited to,
64 expenditures to develop and advance the understanding,
65 techniques, and modalities that are effective in the detection,
66 screening, prevention, and treatment of breast cancer, including
67 clinical trials.

68 (3) The department may adopt rules to administer this
69 section.

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



The Florida Senate

Committee Agenda Request

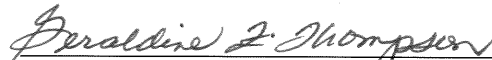
To: Senator Rob Bradley, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: March 4, 2015

I respectfully request that **Senate Bill # 0490**, relating to State Lotteries, be placed on the:

- committee agenda at your earliest possible convenience.
- next committee agenda.



Senator Geraldine F. Thompson
Florida Senate, District 12

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/2015

Meeting Date

Topic _____

Bill Number 490
(if applicable)

Name BRIAN PITTS

Amendment Barcode _____
(if applicable)

Job Title TRUSTEE

Address 1119 NEWTON AVNUE SOUTH
Street

Phone 727-897-9291

SAINT PETERSBURG FLORIDA 33705
City State Zip

E-mail JUSTICE2JESUS@YAHOO.COM

Speaking: For Against Information

Representing JUSTICE-2-JESUS

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/20/11)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 662

INTRODUCER: Senator Latvala

SUBJECT: Mobile Homes

DATE: March 11, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Favorable
2.	_____	_____	CA	_____
3.	_____	_____	AP	_____

I. Summary:

SB 662 relates to the Florida Mobile Home Act, which regulates residential tenancies in which a mobile home is placed on a rented or leased lot in a mobile home park with 10 or more lots. The Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department) enforces the act. The bill provides that:

- The division is required to provide training and educational programs for mobile home owners' associations;
- Mobile home owners must comply with all building permit and construction requirements. A mobile home owner is responsible for fines imposed for violating any local codes;
- A mobile home owner's right to notice of a rental increase or change in services may not be waived;
- A homeowners' committee must make a written request for a meeting with the park owner to discuss a proposed rental increase or change in services or rules;
- Automatically renewable leases are assumable by the homeowner's spouse; however, this right of assumption may only be exercised once during the term of the lease;
- A member of the board of directors of the Florida Mobile Home Relocation Corporation must be removed immediately upon written request for removal from the association that originally nominated that member;
- A homeowners' association's bylaws must include specific provisions related to meetings, voting requirements, proxies, amending the articles of incorporation and bylaws, duties of officers and directors, vacancies on the board, and recall of directors;
- The division must promulgate rules to provide binding arbitration or recall election disputes;
- Board members must either certify that they have read the association's organizing documents, rules, and regulations and that they will faithfully discharge their fiduciary responsibility, or complete the division's educational program within one year of taking office; and

- The homeowners' association is required to retain and make available certain official records to the members of the association, but may not disclose specified information.

The department estimates that the creation of mobile home arbitration program will have an anticipated fiscal impact of approximately \$176,071 in FY 2015-16 and \$165,301 annually thereafter.

The bill has an effective date of July 1, 2015

II. Present Situation:

Mobile Home Act

Chapter 723, F.S., is known as the “Florida Mobile Home Act” (act) and provides for the regulation of mobile homes by the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation (department).

The Florida Mobile Home Act was enacted in 1984.¹ The act was created to address the unique relationship between a mobile home owner and a mobile home park owner. The act provides in part that:

Once occupancy has commenced, unique factors can affect the bargaining position of the parties and can affect the operation of market forces. Because of those unique factors, there exist inherently real and substantial differences in the relationship which distinguish it from other landlord-tenant relationships. The Legislature recognizes that mobile home owners have basic property and other rights which must be protected. The Legislature further recognizes that the mobile home park owner has a legitimate business interest in the operation of the mobile home park as part of the housing market and has basic property and other rights which must be protected.²

The provisions in ch. 723, F.S., apply to residential tenancies where a mobile home is placed upon a lot that is rented or leased from a mobile home park that has 10 or more lots offered for rent or lease.³

Section 723.003(6), F.S., defines the term “mobile home park” or “park” to mean:

a use of land in which lots or spaces are offered for rent or lease for the placement of mobile homes and in which the primary use of the park is residential.

Section 723.003(8), F.S., defines the term “mobile home subdivision” to mean:

¹ Chapter 84-80, L.O.F. Formerly ch. 720, F.S.

² Section 723.004(1), F.S.; *see also Mobile Home Relocation*, Interim Report No. 2007-106, Florida Senate Committee on Community Affairs, October 2006.

³ Section 723.002(1), F.S.

a subdivision of mobile homes where individual lots are owned by owners and where a portion of the subdivision or the amenities exclusively serving the subdivision are retained by the subdivision developer.

The terms “mobile home park,” “park,” and “mobile home subdivision” have remained unchanged since the enactment of the Florida Mobile Home Act in 1984.⁴

Prospectus or Offering Circular

The prospectus in a mobile home park is the document that governs the landlord-tenant relationship between the park owner and the mobile home owner. The prospectus or offering circular, together with its attached exhibits, is a disclosure document intended to afford protection to the homeowners and prospective homeowners in the mobile home park. The purpose of the document is to disclose the representations of the mobile home park owner concerning the operations of the mobile home park.⁵

In a mobile home park containing 26 or more lots, the park owner must file a prospectus with the division for approval. Prior to entering into an enforceable rental agreement for a mobile home lot, the park owner must deliver to the homeowner a prospectus that has been approved by the division.⁶ The division maintains copies of each prospectus and all amendments to each prospectus that it has approved. The division must also provide copies of documents within 10 days of receipt of a written request.⁷

The park owner must furnish a copy of the prospectus with all the attached exhibits to each prospective lessee prior to the execution of the lot rental agreement or at the time of occupancy, whichever occurs first. Upon delivery of a prospectus to a prospective lessee, the lot rental agreement is voidable by the lessee for a period of 15 days.⁸

If a prospectus is not provided to the prospective lessee before the execution of a lot agreement or prior to occupancy, the rental agreement is voidable by the lessee until 15 days after the lessee receives the prospectus.⁹ If the homeowner cancels the rental agreement, he or she is entitled to a refund of any deposit together with relocation costs for the mobile home, or the market value thereof including any appurtenances thereto paid for by the mobile home owner, from the park owner.¹⁰

The prospectus distributed to a home owner or prospective home owner is binding for the length of the tenancy, including any assumptions of that tenancy, and may not be changed except in the specified circumstances.¹¹

⁴ See ch. 84-80, L.O.F. The definitions in s. 723.003, were formerly in s. 720.103, F.S. (1984).

⁵ Section 723.011(3), F.S.

⁶ Section 723.011(1)(a), F.S.

⁷ Section 723.011(1)(d), F.S.

⁸ Section 723.011(2), F.S.

⁹ Section 723.014(1), F.S.

¹⁰ Section 723.014(2), F.S.

¹¹ See rule 61B-31.001, F.A.C.

Written Notification in the Absence of a Prospectus

Section 723.013, F.S., provides that when a park owner does not give a prospectus prior to the execution of a rental agreement or prior to the purchaser's occupancy, the park owner must give written notification of specified information prior to the purchaser's occupancy, including zoning information, the name and address of the mobile home park owner or a person authorized to receive notices and demands on his or her behalf, and all fees and charges, assessments, or other financial obligations not included in the rental agreement and a copy of the rules and regulations in effect.

This provision only applies to mobile home parks containing at least 10 lots but no more than 25 lots. Section 723.011, F.S., requires mobile home park owners to provide a prospectus to all prospective lessees in mobile home parks containing 26 lots or more.

Mobile Home Park Rent Increases

The mobile home park owner has the right to increase rents "in an amount deemed appropriate by the mobile home park owner." The park owner must give affected mobile home owners and the board of directors of the homeowners' association, if one has been formed, at least 90-day notice of a lot rental increase.¹²

A committee of up to five people, designated by a majority of the owners or by the board of directors, and the park owner must meet within 30 days of the notice of change to discuss the reasons for the changes.¹³ At the meeting, the park owner or subdivision developer must in good faith disclose and explain all material factors resulting in the decision to increase the lot rental amount, reduce services or utilities, or change rules and regulations, including how those factors justify the specific change proposed.¹⁴

If the meeting does not resolve the issue, then additional meetings may be requested. If subsequent meetings are unsuccessful, within 30 days of the last scheduled meeting, the homeowners may petition the division to initiate mediation.¹⁵ If the mediation does not successfully resolve the dispute, then the parties may file an action in circuit court to challenge the rental increase as unreasonable.¹⁶

Unreasonable lot rental agreements and unreasonable rent increases are unenforceable.¹⁷ A lot rental amount that exceeds market rent shall be considered unreasonable.¹⁸ Market rent is defined as rent which would result from market forces absent an unequal bargaining position between mobile home park owners and mobile home owners.¹⁹

¹² Section 723.037(1), F.S.

¹³ Section 723.037(4)(a), F.S.

¹⁴ Section 723.037(4)(b), F.S.

¹⁵ Section 723.037(5)(a), F.S.

¹⁶ Section 723.0381, F.S.

¹⁷ Section 723.033(1), F.S.

¹⁸ Section 723.033(5), F.S.

¹⁹ Section 723.033(4), F.S.

In determining market rent, the court may consider “rents charged by comparable mobile home parks in its competitive area. To be comparable, a mobile home park must offer similar facilities, services, amenities, and management.”²⁰ In determining whether a rent increase or resulting lot rental amount is unreasonable, the court may consider “economic or other factors, including, but not limited to, increases or decreases in the consumer price index, published by the Bureau of Labor Statistics of the Department of Labor; increases or decreases in operating costs or taxes; and prior disclosures.”²¹ These same standards are to be employed by the arbitrator or mediator in any arbitration or mediation under ch. 723, F.S.²²

Homeowners’ Associations

Training and Educational Programs

The division is required to provide training and educational programs for condominium and cooperative association board members and owners.²³ The training may include web-based electronic media, and live training and seminars in various locations throughout the state. The division may also approve education and training programs and maintain a list of approved programs and providers and make such list available to board members and unit owners in a reasonable and cost-effective manner. Chapter 723, F.S., does not provide a comparable provision for mobile home homeowners’ associations and mobile homeowners.

Mobile Home Owner's General Obligations

Section 723.023, F.S., requires a mobile home owner to comply with all building, housing, and health codes; to keep the mobile home lot clean and sanitary; to comply with park rules and regulations and require others on the premises to comply the rules and regulations; and to conduct themselves in a manner that does not unreasonably disturb other residents of the park.

Rights of Purchasers - Assumption of the Lease

Section 723.059(5), F.S., provides that lifetime leases to mobile home lots entered into after July 1, 1986, are not assumable unless allowed by the lot rental agreement or unless the transferee is the homeowner's spouse. Automatically renewable leases are not assumable unless provided for in the lease agreement.

Florida Mobile Home Relocation Corporation

Section 723.0611, F.S., creates the Florida Mobile Home Relocation Corporation (corporation) to provide compensation to homeowners in mobile home parks who receive an eviction notices due to a change in land use of the mobile home park. The corporation provides compensation for relocation of the mobile home or its abandonment.²⁴ The corporation is administered by a board of directors made up of six members, three of whom are appointed by the Secretary of Business and Professional Regulation (secretary of the department) from a list of nominees submitted by

²⁰ Section 723.033(5), F.S.

²¹ Section 723.033(6), F.S.

²² Section 723.033(7), F.S.

²³ Sections 718.501(1)(j), and 719.501(1)(k), F.S.

²⁴ Section 723.0612, F.S.; Florida Mobile Home Relocation Corporation Website, <http://www.fmhrc.org/> (last accessed Feb. 5, 2015).

the largest nonprofit association representing mobile home owners in Florida, and three of whom are appointed by the secretary of the department from a list of nominees submitted by the largest nonprofit association representing the manufactured housing industry in Florida.²⁵

Homeowners' Association Bylaws – Required Provisions

Section 723.078, F.S., provides that in order for a mobile home owners' association to exercise its right to purchase the mobile home park pursuant to s. 723.071, F.S., the association's bylaws must contain a number of statutory provisions.

Administration

Section 723.078(2)(a), F.S., provides that a board of directors of a homeowners' association must have a president, secretary, and treasurer. It does not specify how those positions are to be filled. The board of directors may appoint and designate other officers. The Condominium Act and the Cooperative Act contain similarly worded provisions.²⁶

Quorum; Voting Requirements; and Proxies

Section 723.078(2)(b)1., F.S., provides that a majority of the association's members constitutes a quorum.

Section 723.078(2)(b)1., F.S., also provides that the association's bylaws must provide for the use of a proxy. Any proxy given must be effective only for the specific meeting for which originally given. A proxy may be valid for up to 120 days after the date of the first meeting for which it was given. Every proxy must also be revocable at any time.

Board of Directors' and Committee Meetings

Section 723.078(c), F.S., requires that meetings of the board of directors must be open to members, and notice of meetings must be posted in a conspicuous place on park property at least 48 hours in advance, except in an emergency. Notice of any meeting in which assessments are to be considered must contain a statement that assessments will be considered and the nature of such assessments.

Chapter 723, F.S., does not provide a procedure to fill vacancies on the association's board of directors.

Officer and Director Duties

Section 723.078(2)(i), F.S., provides that the officers and directors of a mobile homeowners' association have a fiduciary relationship to the members.

Member Meetings

Section 723.078(2)(d), F.S., requires annual member meetings during which members of the board of the directors are elected. The association's bylaws may not restrict any member desiring

²⁵ Section 723.0611(1), F.S.

²⁶ Sections 718.112(2)(a)1. and 719.106(1)(a)1., F.S.

to be a candidate for board membership from being nominated. Written notice of all meetings must be provided at least 14 days in advance of the meeting. Unless waived, the notice of the annual meeting must be sent by mail to each member.

Minutes of Meetings

Section 723.078(2)(e), F.S., requires the minutes of all meetings of members and of the board of directors to be maintained, available for inspection, and retained for at least 7 years.

Amendment of Articles of Incorporation and Bylaws

Section 723.078(2)(h), F.S., requires that the bylaws of associations provide a method of amendment. If the bylaws do not provide a method of amendment, they may be amended by the board of directors and approved by a majority of the membership.

Recall of Board Members

Section 723.08(2), F.S., provides a limited procedure for the recall of members of a mobile homeowners' association board of directors. Any member of the board of directors may be recalled and removed from office by the vote or written agreement of a majority of all members.

The division provides nonbinding arbitration of recall election disputes in condominium and cooperative associations.²⁷

Board Member Training Programs

Chapter 723, F.S., does not require board members to attend training related to the association's organizing documents, rules, and statutes.

Maintenance of Records

Section 723.079(4), F.S., requires mobile homeowners' associations to maintain and make available for inspection basic accounting records, such as records of all receipts and expenditures and records of assessments and payments by each member.

III. Effect of Proposed Changes:

Definitions

The bill amends s. 73.072, F.S., relating to compensation for permanent improvements by mobile homeowners, to correct the cross-reference to the definition of "mobile home park" in s. 723.003, F.S.

The bill amends s. 723.003, F.S., to define the terms "electronic transmission," "homeowners' association," and "mediation."

²⁷ See s. 718.1255, F.S., for the division's dispute resolution authority; and ss. 718.112(2)(j) and 719.106(1)(f), F.S., for the arbitration of recall election disputes in condominium and cooperative associations, respectively.

The bill defines the term "homeowners' committee" as a committee, not to exceed five persons, that is designated by the majority of affected homeowners to in a mobile home park for the purpose of meeting with the park owner or subdivision developer to discuss rental increases, reduction in services or utilities, or changes in rules and regulations and other matters authorized by the association. The committee is also authorized to enter into a binding agreement with the park owner, or a subdivision developer, on behalf of the association, its members, and all other mobile homeowners in the mobile home park.

The bill amends s. 723.003(9), F.S., to define the term "mobile home lot" to mean a lot described by a park owner pursuant to the requirements of s 723.012, F.S., or in a disclosure statement pursuant to s. 723.013, F.S., as a lot intended for the placement of a mobile home.

The bill defines the term "offering circular" as having the same meaning as the term "prospectus."

The bill defines "mobile home owner" to include "mobile homeowner" and "homeowner."

Education and Training of HOA Board Members and Homeowners - Providers

The bill creates s. 723.006(12), F.S., to require the division to approve training and education programs for board members and mobile homeowners. The training may include web-based electronic media and live training and seminars in various locations throughout the state.

The bill creates s. 723.006(13), F.S., to require the division to maintain a list of currently approved providers and programs. It requires that the cost of the training and educational programs must be borne by the providers of the programs. The bill requires that the division establish a fee structure for the training programs sufficient to recover any costs incurred by the division in operating the program.

These education and training provisions for mobile homeowners are comparable to the training and education program offered to homeowners' associations and homeowners in condominium and cooperative associations under ss. 718.501(1)(j), and 719.501(1)(k), F.S., respectively.

The bill creates s. 723.006(14), F.S., to specify the information that must be included in the required education curriculum for mobile home owners and associations. The bill provides that the required information provided to board member and home owners must include the provider of the training programs, including the price, physical location if not web-based, dates, and curriculum for the programs. The curriculum must provide information about statutory and regulatory matters relating to the board of directors of the homeowners' association and their responsibilities. The educational programs may not contain editorial comments. The bill provides that the division has the right to approve and require changes to the education and training programs.

Mobile Home Owners' General Obligations

The bill amends s. 723.023, F.S., to provide additional obligations for mobile home owners. It provides that they must comply with all building permit and construction requirements and keep

the mobile home lot neat and maintained in compliance with all local codes. It provides that the homeowner is responsible for all fines imposed by the local government for noncompliance with any local codes.

The bill also requires that other persons on the premises with the mobile home owner's consent must conduct themselves, and other persons on the premises with his or her consent, in a manner which does not reasonably disturb other residents or constitute a breach of the peace.

Lot Rental Increases and Homeowners' Committee Negotiations

The bill amends s. 723.037(1), F.S., to provide that a mobile home owner's right to the 90-day notice may not be waived or precluded by agreement with the park owner. It amends s. 723.037(4)(a), F.S., to require that the homeowners' committee and the park owner must meet no later than 60 days before the effective date of the change rather than within 30 days after receipt of the notice of change as currently required. The bill requires that the homeowners' committee must also make a written request for a meeting with the park owner to discuss the matters in the 90-day notice and may include in the request a list of any other issue the committee intends to discuss at the meeting.

The bill creates s. 723.037(7), F.S., to define term "parties" for the purposes of mediation pursuant to ss. 723.037, F.S., to mean a park owner and the homeowners' committee.

Rights of Purchasers - Assumption of the Lease

The bill amends s. 723.059(5), F.S., to provide that automatically renewable leases are assumable unless the transferee is the homeowner's spouse. The right to assume the lease by a spouse may only be exercised once during the term of the lease.

The bill deletes the provision that lifetime leases to mobile home lots entered into after July 1, 1986, are not assumable unless allowed by the lot rental agreement or unless the transferee is the homeowner's spouse, and are not assumable unless provided for in the lease agreement.

Florida Mobile Home Relocation Corporation - Removal of Members

The bill amends s. 723.0611, F.S., to provide that a member of the board of directors must be removed by the secretary of the department, with or without cause, immediately after a written request for removal from the association that originally nominated that board member. The nominating entity must include nominees for replacement with the request for removal and the secretary must immediately fill the vacancy created by the removal. This removal process may not occur more than once in a calendar year.

Homeowners' Association Bylaws

Required Bylaw Provisions

The bill amends s. 723.078, F.S., to remove the requirement that the bylaws contain the enumerated provisions for the association in order to exercise its right to purchase a mobile home park.

Administration

The bill amends s. 723.078(2)(a), F.S., to provide that the board of directors must elect a president, secretary, and treasurer, and that the board of directors may elect and designate other officers.

Quorum; Voting Requirements; and Proxies

The bill amends s. 723.078(2)(b)1., F.S., to provide that, unless otherwise provided in the bylaws, 30 percent of the total membership is required to constitute a quorum.

The bill amends s. 723.078(2)(b)1., F.S., to reduce the number of days a proxy may be valid from 120 days to 90 days. The bill also incorporates a number of proxy provisions found in chs. 718 and 719, relating to condominiums and cooperatives, respectively.²⁸ The bill provides that:

- A member may not vote by general proxy;
- A member of the association may only vote by limited proxies that conform to a limited proxy form adopted by the division;
- Limited proxies and general proxies may be used to establish a quorum; and
- Limited proxies may be used for votes taken to amend the articles of incorporation or bylaws, and any other matters that ch. 723, F.S., requires or permits a vote of members, except that no proxy may be used in the election of board members.

The bill also provides that a member of the board of directors 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. However, a written agreement or disagreement may not be used as a vote for or against an action or to establish a quorum.

Board of Directors' and Committee Meetings

The bill creates s. 723.078(c)1., F.S., to provide that the requirement that board and committee meetings must be open to the members does not apply to meetings held for the purpose of discussing personnel matters or meetings with the association's attorney with respect to seeking or rendering legal advice and where the contents of the discussion would be governed by the attorney-client privilege.

The bill creates s. 723.078(c)2., F.S., to provide that members of the board of directors may participate in a meeting via telephone, real-time videoconferencing, or similar communication and that such participation may count towards a quorum. A member who participates electronically may vote as if physically present. A speaker must be used so that the board or committee members and association members attending in person may hear the person who is participating electronically.

²⁸ Sections 718.112(2)(a)1. and 719.106(1)(a)1., F.S. See *Sample Limited Proxy Form*, DBPR Form CO 6000-7, rule 61B-23.002, F.A.C.

The bill creates s. 723.078(c)3., F.S., to provide that the board of directors may use e-mail as a means of communication. However, members of the board may not cast a vote on an association matter via e-mail.

The bill creates s. 723.078(c)4., F.S., to provide that the right to attend meetings of the board and its committees includes the right to speak at such meetings. It provides that the association may adopt reasonable written rules governing members' statements. Any item not included on the notice may be taken up on an emergency basis by at least a majority plus one of the members of the board. Such emergency action must be noticed and ratified at the next regular meeting of the board. Any member may tape record or videotape meetings, and the division must adopt rules governing the tape recording and videotaping of meetings.

These provisions relating quorum, voting and the administration of meetings are comparable to the board and committee meeting requirements for condominium, cooperative, and homeowners' associations.²⁹

The bill creates ss. 723.078(2)(c)5., F.S., to provide a procedure to fill vacancies on the association's board of directors. It provides that except in cases of a recall vote, a vacancy occurring on the board of directors may be filled by:

- The affirmative vote of the majority of the remaining directors, even though the remaining directors constitute less than a quorum;
- By the sole remaining director;
- If no director remains, by the members; or
- By the circuit court of the county in which the registered office of the corporation is located.

The bill creates s. 723.078(2)(c)6., F.S., to provide that the term of a director elected or appointed to fill a vacancy expires at the next annual meeting at which directors are elected. A directorship to be filled by reason of an increase in the number of directors may be filled by the board of directors, but only for the term of office continuing until the next election of directors by the members.

The bill creates s. 723.078(2)(c)7., F.S., to provide that a vacancy that will occur at a specific later date, by reason of a resignation effective at a later date, may be filled before the vacancy occurs. However, the new director may not take office until the vacancy occurs.

Officer and Director Duties

The bill creates s. 723.078(2)(c)8., F.S., to expand the duties of officers and directors. In addition to providing that the officers and directors of a mobile homeowners' association have a fiduciary relationship to the members, as provided in current law, the bill requires a director and committee member to discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the best interests of the corporation.

²⁹ See ss. 718.112(2)(b) and (c), 719.106(1)(c), and 720.303(2), F.S.

The bill creates s. 723.078(2)(c)9., F.S., to provide that, in discharging his or her duties, a director may rely on information, opinions, reports, statements, or if prepared by officers, employees, and any other professional, such as legal counsel or accountants, who the director reasonably believes to be reliable and competent in the matters presented.

The bill creates s. 723.078(2)(c)10., F.S., to provide that a director is not acting in good faith if he or she has knowledge concerning the matter in question that makes such reliance unwarranted.

The bill creates s. 723.078(2)(c)11., F.S., to provide that, if a director has performed the duties of his or her office in compliance with this provision, he or she is not liable for any action taken as a director, or any failure to take any action.

These provisions are comparable to the fiduciary responsibilities for boards and committees in condominium associations and cooperative associations.³⁰

Member Meetings

The bill amends s. 723.078(2)(d), F.S., to provide that all nominations must be made from the floor at a meeting of the members held at least 30 days before the annual meeting. It permit the notice of the annual meeting to be mailed, hand delivered, or electronically transmitted. These provisions are comparable requirements for delivery of the notice of the annual meeting for condominium associations and cooperative associations.³¹

Minutes of Meetings

The bill amends s. 723.078(2)(e), F.S., to require that the minutes of all meetings of members of the association, the board of directors, and a committee must be maintained in written form and approved by the members, board, or committee, as applicable. It also requires that a vote or abstention from voting on each matter voted upon for each director present at a board meeting must be recorded in the minutes. These provisions are comparable to the vote recording requirements for boards in condominium, cooperative, and homeowners' associations.³²

Amendment of Articles of Incorporation and Bylaws

The bill amends s. 723.078(2)(h), F.S., to require that the articles of incorporation as well as the bylaws must provide a method of amendment. The bill provides that, if the bylaws do not provide a method of amendment, they may be amended by the board of directors and approved by a majority of members at a meeting at which a quorum is present rather than a majority of the membership as is currently required. It provides that, notwithstanding any other provision of s. 723.078, F.S., if an amendment to the articles of incorporation or the bylaws is required by any federal, state, or local governmental authority or agency, or any law, ordinance, or rule, the board of directors may, by a majority vote, amend the articles of incorporation or bylaws without a vote of the membership.

³⁰ See ss. 718.111(1)(d), F.S., and 719.104(8), F.S.

³¹ See ss. 718.112(2)(c) and 719.106(1)(c), F.S.

³² See ss. 718.111(1)(b), 719.104(8)(b), 720.303(5), F.S.

These provisions are not comparable to the amendment of articles of incorporation and bylaws in condominium associations and cooperative associations.³³

Recall of Board Members

The bill amends s. 723.08(2)(i), F.S., to provide for the recall of elected board members. The bill prohibits the use of electronic transmission as a method of giving notice of a meeting called in whole or in part for a recall vote.

The bill requires that a recall may be approved by a majority vote of all members at a meeting or by a written agreement by a majority of all members. If a recall is approved by the members, the board must duly notice and hold a board meeting within five full business days after the adjournment of the member meeting to determine whether to certify the recall. If the board does not certify a recall, the members may file a petition for binding arbitration with the division. The bill also provides a process for recall using a written agreement signed by a majority of all members.

The bill requires that a board member who has been recalled must return all records and property of the association in his or her possession within 5 business days. A board member who has been recalled may file a petition for binding arbitration with the division to challenge the validity of the recall. The petition must be filed within 60 days after the recall.

The bill provides that if a board fails to hold a meeting to certify a recall vote within five days after a meeting of the members or after a written agreement, the member's representative may file a petition with the division, as provided in s. 723.1255, F.S., which requires the division to provide binding arbitration of recall disputes. The petition must be filed within 60 days of the expiration of the five-day period.

The bill requires that a vacancy on a board due to a recall may be filled by a vote of a majority of the remaining directors. If a vacancy occurs on a board due to a recall and a majority of the board members are removed, the vacancies will be filled in accordance with rules to be adopted by the division.

These provisions are comparable to the recall requirements in condominium associations and cooperative associations.³⁴

The bill creates s. 723.1255, F.S., to require the division to adopt rules of procedure that will govern binding recall arbitration proceedings.

Board Member Training Programs

The bill creates s. 723.0781, F.S., to provide a post-election certification requirement for newly elected board members. Within 90 days after being elected or appointed, a new board member must certify that he or she:

³³ See ss. 718.110 and 719.1055(4)(a), F.S.

³⁴ Sections 718.112(2)(j) and 719.106(1)(f), F.S.

- Has read the association's articles of incorporation, bylaws, and the mobile home park's prospectus, rental agreement, rules, regulations, and written policies;
- Will work to uphold such documents and policies to the best of his or her ability; and
- Will faithfully discharge his or her fiduciary responsibility to the association's members.

As an alternative to a written certification, the newly elected or appointed director may submit a certificate of satisfactory completion of the educational curriculum within one year before the election or 90 days after the election or appointment.³⁵ The curriculum must be administered by a condominium education provider approved by the division.³⁶ A certification is valid and does not have to be resubmitted as long as the director continuously serves on the board.

A board member is suspended from service on the board until he or she files the written certification or submits a certificate of completion of the educational curriculum.³⁷ If a suspension occurs, the board may temporarily fill the vacancy during the period of suspension. The secretary of the association must keep the written certification or educational certificate for inspection by the members for five years after a director's election or appointment. The validity of any action by the condominium board is not affected by the association's failure to have the certification on file.

The training requirement is comparable to training and certification required for board members of condominium, cooperative, and homeowners' associations.³⁸

Maintenance of Records

The bill amends s. 723.079(4), F.S., to require an association to retain and make available specified records. The records that must be retained include articles of incorporation, bylaws and rules, meeting minutes, current roster of members, insurance policies, contracts, tax documents, and financial statements. The records must be retained for at least 7 years within the state and be available for inspection or photocopying. The email addresses and numbers of members who elect not to receive electronic transmission of notices must have email addresses and numbers removed from the association records.

The bill specifies the information that must be included in the associations financial records, which must be accurate, itemized, and detailed records of all receipts and expenditures and reflect the current assessment due from the members.

If the association has a photocopy machine available where the records are maintained, it must provide homeowners with copies on request during the inspection if the entire request is limited to no more than 25 pages. The association may impose fees to cover the cost of providing copies

³⁵ *Id.* The department's Internet site provides a listing of approved educational providers for condominium associations under ch. 718, F.S., and homeowners' associations under ch. 720, F.S. See Division of Florida Condominiums, Timeshares, and Mobile Homes, *Approved Education Providers*, available at <http://www.myfloridalicense.com/dbpr/lsc/condominiums/ApprovedEducationProviders.html> (Last visited March 28, 2013).

³⁶ Section 718.112(2)(d)3.b., F.S.

³⁷ *Id.*

³⁸ See ss. 718.112(2)(d)4.b., 719.106(1)(d)1.b., and 720.3033(1), F.S.

of the official records, including, without limitation, the cost of copying. The association may also charge any reasonable costs involving personnel fees and charges at an hourly rate to cover the association's or vendors administrative costs.

If the association fails to provide a member an opportunity to inspect the records within 10 days after a request to inspect the records, the association may be assessed a fine of \$10 per day up to 10 days. The association may develop reasonable rules related to the inspection of documents, including charging fees for copies, and may not allow inspection of documents that is protected by lawyer-client privilege or would reveal personal identifying information other than a person's name and address.

The bill also specifies the information that are not accessible to members or homeowners, including records protected by attorney-client privilege, electronic mailing addresses, telephone numbers, facsimile numbers, emergency contact information, any addresses for a homeowner other than that provided for association notice requirements, other person identifying information of any person, electronic security measures, and software and operating systems.

The bill requires that the outgoing board establish a system for relinquishing control of the records within five days after an election or removal.

This official records provision is comparable to that required for condominium, cooperative, and homeowners' associations.³⁹

Effective Date

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

³⁹ Sections 718.111(12), 719.104(2), and 720.303(5), F.S.

B. Private Sector Impact:

Members of a board of directors of a mobile home owners' association who choose to complete the required educational training in lieu of certifying that they have read the association's organizing documents, rules, and regulations may incur costs for such training. The cost for similar educational requirements in the newly elected members of the board of a condominium or cooperative association ranges from no fee to \$200.⁴⁰

C. Government Sector Impact:

The department estimates that the creation of mobile home arbitration program will have an anticipated fiscal impact of approximately \$176,071 in FY 2015-16 and \$165,301 annually thereafter.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 73.072, 723.003, 723.006, 723.023, 723.031, 723.037, 723.059, 723.0611, 723.078, 723.1255, 723.0781, and 723.079.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.

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

⁴⁰ List of division approved educational curriculums, Division of Florida Condominiums, Timeshares, and Mobile Homes, Florida Department of Business and Professional Regulation (April 24, 2014) (available at <http://www.myfloridalicense.com/dbpr/lsc/condominiums/BoardMemberEducation.html> (last visited March 5, 2015)).

By Senator Latvala

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1 A bill to be entitled
 2 An act relating to mobile homes; amending s. 73.072,
 3 F.S.; conforming a cross-reference; amending s.
 4 723.003, F.S.; providing definitions; amending s.
 5 723.006, F.S.; requiring the Division of Florida
 6 Condominiums, Timeshares, and Mobile Homes to approve
 7 training and educational programs for board members of
 8 mobile home owners' associations; providing duties of
 9 the division; providing requirements for education
 10 curriculum information for board member and mobile
 11 home owner training; amending s. 723.023, F.S.;
 12 revising mobile home owner's general obligations;
 13 amending s. 723.031, F.S.; conforming a cross-
 14 reference; amending s. 723.037, F.S.; providing and
 15 revising requirements for lot rental increases;
 16 amending s. 723.059, F.S.; revising provisions
 17 relating to rights of purchasers of lifetime leases;
 18 amending s. 723.0611, F.S.; providing for the removal
 19 of a member of the board of directors under certain
 20 conditions; amending s. 723.078, F.S.; revising
 21 provisions with respect to the bylaws of homeowners'
 22 associations; revising quorum and voting requirements;
 23 revising provisions relating to board of directors,
 24 committee, and member meetings; providing requirements
 25 for meeting minutes; revising requirements for the
 26 amendment of articles of incorporation and bylaws;
 27 revising requirements for the recall of board members;
 28 creating s. 723.1255, F.S.; providing requirements for
 29 the alternative resolution of recall disputes;

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30 creating s. 723.0781, F.S.; specifying certification
 31 or educational requirements for a newly elected or
 32 appointed board member; amending s. 723.079, F.S.;
 33 revising and providing requirements relating to the
 34 official records of the association; conforming cross-
 35 references; providing an effective date.
 36
 37 Be It Enacted by the Legislature of the State of Florida:
 38
 39 Section 1. Subsection (1) of section 73.072, Florida
 40 Statutes, is amended to read:
 41 73.072 Mobile home parks; compensation for permanent
 42 improvements by mobile home owners.—
 43 (1) When all or a portion of a mobile home park as defined
 44 in s. 723.003 ~~723.003(6)~~ is appropriated under this chapter, the
 45 condemning authority shall separately determine the compensation
 46 for any permanent improvements made to each site. This
 47 compensation shall be awarded to the mobile home owner leasing
 48 the site if:
 49 (a) The effect of the taking includes a requirement that
 50 the mobile home owner remove or relocate his or her mobile home
 51 from the site;
 52 (b) The mobile home owner currently leasing the site has
 53 paid for the permanent improvements to the site; and
 54 (c) The value of the permanent improvements on the site
 55 exceeds \$1,000 as of the date of taking.
 56 Section 2. Section 723.003, Florida Statutes, is reordered
 57 and amended to read:
 58 723.003 Definitions.—As used in this chapter, the term

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59 following words and terms have the following meanings unless
60 clearly indicated otherwise:

61 ~~(2)(1) The term "Division" means the Division of Florida~~
62 ~~Condominiums, Timeshares, and Mobile Homes of the Department of~~
63 ~~Business and Professional Regulation.~~

64 (3) "Electronic transmission" means a form of
65 communication, not directly involving the physical transmission
66 or transfer of paper, that creates a record that may be
67 retained, retrieved, and reviewed by a recipient and that may be
68 directly reproduced in a comprehensible and legible paper form
69 by the recipient through an automated process, such as a printer
70 or copy machine. Examples of electronic transmission include,
71 but are not limited to, telegrams, facsimile transmission of
72 images, and text that is sent via e-mail between computers.
73 Electronic transmission does not include oral communication by
74 telephone.

75 (4) "Homeowners' association" means a corporation for
76 profit or not for profit, which is formed and operates in
77 compliance with ss. 723.075-723.079; or, in a subdivision, the
78 homeowners' association authorized in the subdivision documents
79 in which all home owners must be members as a condition of
80 ownership.

81 (5) "Homeowners' committee" means a committee, not to
82 exceed five persons in number, designated by a majority of the
83 affected homeowners in a mobile home park or a subdivision; or,
84 if a homeowners' association has been formed, designated by the
85 board of directors of the association. The homeowners' committee
86 is designated for the purpose of meeting with the park owner or
87 park developer to discuss lot rental increases, reduction in

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88 services or utilities, or changes in rules and regulations and
89 any other matter authorized by the homeowners' association, or
90 the majority of the affected home owners, and who are authorized
91 to enter into a binding agreement with the park owner or
92 subdivision developer, or a binding mediation agreement, on
93 behalf of the association, its members, and all other mobile
94 home owners in the mobile home park.

95 ~~(6)(2) The term "Lot rental amount" means all financial~~
96 ~~obligations, except user fees, which are required as a condition~~
97 ~~of the tenancy.~~

98 (7) (a) "Mediation" means a process whereby a mediator
99 appointed by the Division of Florida Condominiums, Timeshares,
100 and Mobile Homes or mutually selected by the parties acts to
101 encourage and facilitate the resolution of a dispute. It is an
102 informal and nonadversarial process with the objective of
103 helping the disputing parties reach a mutually acceptable
104 agreement.

105 (b) For purposes of mediation, under s. 723.037 and s.
106 723.038, the term "parties" means a park owner as defined by s.
107 723.003(13) and a homeowners' committee selected pursuant to s.
108 723.037.

109 ~~(8)(3) The term "Mobile home" means a residential~~
110 ~~structure, transportable in one or more sections, which is 8~~
111 ~~body feet or more in width, over 35 body feet in length with the~~
112 ~~hitch, built on an integral chassis, designed to be used as a~~
113 ~~dwelling when connected to the required utilities, and not~~
114 ~~originally sold as a recreational vehicle, and includes the~~
115 ~~plumbing, heating, air-conditioning, and electrical systems~~
116 ~~contained therein.~~

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117 (9) "Mobile home lot" means a lot described by a park owner
 118 pursuant to the requirements of s. 723.012, or in a disclosure
 119 statement pursuant to s. 723.013, as a lot intended for the
 120 placement of a mobile home.

121 ~~(10)(4) The term~~ "Mobile home lot rental agreement" or
 122 "rental agreement" means any mutual understanding or lease,
 123 whether oral or written, between a mobile home owner and a
 124 mobile home park owner in which the mobile home owner is
 125 entitled to place his or her mobile home on a mobile home lot
 126 for either direct or indirect remuneration of the mobile home
 127 park owner.

128 ~~(11)(5) The term~~ "Mobile home owner," "mobile homeowner,"
 129 ~~or~~ "home owner," or "homeowner" means a person who owns a mobile
 130 home and rents or leases a lot within a mobile home park for
 131 residential use.

132 ~~(12)(6) The term~~ "Mobile home park" or "park" means a use
 133 of land in which lots or spaces are offered for rent or lease
 134 for the placement of mobile homes and in which the primary use
 135 of the park is residential.

136 ~~(13)(7) The term~~ "Mobile home park owner" or "park owner"
 137 means an owner or operator of a mobile home park.

138 ~~(14)(8) The term~~ "Mobile home subdivision" means a
 139 subdivision of mobile homes where individual lots are owned by
 140 owners and where a portion of the subdivision or the amenities
 141 exclusively serving the subdivision are retained by the
 142 subdivision developer.

143 (15) "Offering circular" has the same meaning as the term
 144 "prospectus" as it is used in this chapter.

145 ~~(16)(9) The term~~ "Operator of a mobile home park" means

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146 either a person who establishes a mobile home park on land that
 147 ~~which~~ is leased from another person or a person who has been
 148 delegated the authority to act as the park owner in matters
 149 relating to the administration and management of the mobile home
 150 park, including, but not limited to, authority to make decisions
 151 relating to the mobile home park.

152 ~~(17)(10) The term~~ "Pass-through charge" means the mobile
 153 home owner's proportionate share of the necessary and actual
 154 direct costs and impact or hookup fees for a governmentally
 155 mandated capital improvement, which may include the necessary
 156 and actual direct costs and impact or hookup fees incurred for
 157 capital improvements required for public or private regulated
 158 utilities.

159 ~~(18)(11) The term~~ "Proportionate share" as used in
 160 subsection ~~(17)~~ ~~(10)~~ means an amount calculated by dividing
 161 equally among the affected developed lots in the park the total
 162 costs for the necessary and actual direct costs and impact or
 163 hookup fees incurred for governmentally mandated capital
 164 improvements serving the recreational and common areas and all
 165 affected developed lots in the park.

166 ~~(20)(12) The term~~ "Unreasonable" means arbitrary,
 167 capricious, or inconsistent with this chapter.

168 ~~(21)(13) The term~~ "User fees" means those amounts charged
 169 in addition to the lot rental amount for nonessential optional
 170 services provided by or through the park owner to the mobile
 171 home owner under a separate written agreement between the mobile
 172 home owner and the person furnishing the optional service or
 173 services.

174 ~~(1)(14) The term~~ "Discrimination" or "discriminatory" means

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175 that a homeowner is being treated differently as to the rent
 176 charged, the services rendered, or an action for possession or
 177 other civil action being taken by the park owner, without a
 178 reasonable basis for the different treatment.

179 ~~(19)-(15) The term~~ "Resale agreement" means a contract in
 180 which a mobile home owner authorizes the mobile home park owner,
 181 or the park owner's designee, to act as exclusive agent for the
 182 sale of the homeowner's mobile home for a commission or fee.

183 Section 3. Subsections (12), (13), and (14) are added to
 184 section 723.006, Florida Statutes, to read:

185 723.006 Powers and duties of division.—In performing its
 186 duties, the division has the following powers and duties:

187 (12) The division shall approve training and educational
 188 programs for board members of mobile home owners' associations
 189 formed and operated pursuant to s. 723.075(1) and mobile home
 190 owners. The training may, at the division's discretion, include
 191 web-based electronic media and live training and seminars in
 192 various locations throughout the state.

193 (13) The division may review and approve educational
 194 curriculum and training programs for board members and mobile
 195 home owners to be offered by providers and shall maintain a
 196 current list of approved programs and providers, and make such
 197 list available to board members in a reasonable and cost-
 198 effective manner. The cost of such programs shall be borne by
 199 the providers of the programs. The division shall establish a
 200 fee structure for the approved training programs sufficient to
 201 recover any cost incurred by the division in operating this
 202 program.

203 (14) Required education curriculum information for board

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204 member and mobile home owner training shall include:

205 (a) The provider of the training programs, which shall
 206 include the following information regarding its training and
 207 educational programs:

208 1. A price list, if any, for the programs and copies of all
 209 materials.

210 2. The physical location where programs will be available,
 211 if not web-based.

212 3. Dates when programs will be offered.

213 4. The curriculum of the program to be offered.

214 (b) The programs shall provide information about statutory
 215 and regulatory matters relating to the board of directors of the
 216 homeowners' association and their responsibilities to the
 217 association and to the mobile home owners in the mobile home
 218 park.

219 (c) Programs and materials may not contain editorial
 220 comments.

221 (d) The division has the right to approve and require
 222 changes to such education and training programs.

223 Section 4. Section 723.023, Florida Statutes, is amended to
 224 read:

225 723.023 Mobile home owner's general obligations.—A mobile
 226 home owner shall at all times:

227 (1) Comply with all obligations imposed on mobile home
 228 owners by applicable provisions of building, housing, and health
 229 codes, including compliance with all building permits and
 230 construction requirements for construction on the mobile home
 231 and lot. The home owner is responsible for all fines imposed by
 232 the local government for noncompliance with any local code.

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233 (2) Keep the mobile home lot which he or she occupies
 234 clean, neat, and sanitary, and maintained in compliance with all
 235 local codes.

236 (3) Comply with properly promulgated park rules and
 237 regulations and require other persons on the premises with his
 238 or her consent to comply with such rules therewith and to
 239 conduct themselves, and other persons on the premises with his
 240 or her consent, in a manner that does not unreasonably disturb
 241 other residents of the park or constitute a breach of the peace.

242 Section 5. Paragraph (b) of subsection (5) of section
 243 723.031, Florida Statutes, is amended to read:

244 723.031 Mobile home lot rental agreements.—

245 (5) The rental agreement shall contain the lot rental
 246 amount and services included. An increase in lot rental amount
 247 upon expiration of the term of the lot rental agreement shall be
 248 in accordance with ss. 723.033 and 723.037 or s. 723.059(4),
 249 whichever is applicable, provided that, pursuant to s.
 250 723.059(4), the amount of the lot rental increase is disclosed
 251 and agreed to by the purchaser, in writing. An increase in lot
 252 rental amount shall not be arbitrary or discriminatory between
 253 similarly situated tenants in the park. No lot rental amount may
 254 be increased during the term of the lot rental agreement,
 255 except:

256 (b) For pass-through charges as defined in s. 723.003
 257 ~~723.003(10)~~.

258 Section 6. Subsection (1) and paragraph (a) of subsection
 259 (4) of section 723.037, Florida Statutes, are amended, and
 260 subsection (7) is added to that section, to read:

261 723.037 Lot rental increases; reduction in services or

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262 utilities; change in rules and regulations; mediation.—

263 (1) A park owner shall give written notice to each affected
 264 mobile home owner and the board of directors of the homeowners'
 265 association, if one has been formed, at least 90 days before
 266 ~~prior to~~ any increase in lot rental amount or reduction in
 267 services or utilities provided by the park owner or change in
 268 rules and regulations. The notice shall identify all other
 269 affected homeowners, which may be by lot number, name, group, or
 270 phase. If the affected homeowners are not identified by name,
 271 the park owner shall make the names and addresses available upon
 272 request. The home owner's right to the 90-day notice may not be
 273 waived or precluded by a home owner, or the homeowners'
 274 committee, in an agreement with the park owner. Rules adopted as
 275 a result of restrictions imposed by governmental entities and
 276 required to protect the public health, safety, and welfare may
 277 be enforced prior to the expiration of the 90-day period but are
 278 not otherwise exempt from the requirements of this chapter.
 279 Pass-through charges must be separately listed as to the amount
 280 of the charge, the name of the governmental entity mandating the
 281 capital improvement, and the nature or type of the pass-through
 282 charge being levied. Notices of increase in the lot rental
 283 amount due to a pass-through charge shall state the additional
 284 payment and starting and ending dates of each pass-through
 285 charge. The homeowners' association shall have no standing to
 286 challenge the increase in lot rental amount, reduction in
 287 services or utilities, or change of rules and regulations unless
 288 a majority of the affected homeowners agree, in writing, to such
 289 representation.

290 (4) (a) A committee, not to exceed five in number,

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291 designated by a majority of the affected mobile home owners or
 292 by the board of directors of the homeowners' association, if
 293 applicable, and the park owner shall meet, at a mutually
 294 convenient time and place no later than 60 days before the
 295 effective date of the change within 30 days after receipt by the
 296 homeowners of the notice of change, to discuss the reasons for
 297 the increase in lot rental amount, reduction in services or
 298 utilities, or change in rules and regulations. The negotiating
 299 committee shall make a written request for a meeting with the
 300 park owner or subdivision developer to discuss those matters
 301 addressed in the 90-day notice, and may include in the request a
 302 listing of any other issue, with supporting documentation, that
 303 the committee intends to raise and discuss at the meeting.

304
 305 This subsection is not intended to be enforced by civil or
 306 administrative action. Rather, the meetings and discussions are
 307 intended to be in the nature of settlement discussions prior to
 308 the parties proceeding to mediation of any dispute.

309 (7) The term "parties," for purposes of mediation under
 310 this section and s. 723.038, means a park owner and a
 311 homeowners' committee selected pursuant to this section.

312 Section 7. Subsection (5) of section 723.059, Florida
 313 Statutes, is amended to read:

314 723.059 Rights of purchaser.—

315 (5) Lifetime leases and the renewal provisions in
 316 automatically renewable leases, both those existing and those
 317 entered into after July 1, 1986, are not assumable shall be
 318 nonassumable unless otherwise provided in the mobile home lot
 319 rental agreement or unless the transferee is the home owner's

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320 spouse. The right to an assumption of the lease by a spouse may
 321 be exercised only one time during the term of that lease ~~The~~
 322 ~~renewal provisions in automatically renewable leases, both those~~
 323 ~~existing and those entered into after July 1, 1986, are not~~
 324 ~~assumable unless otherwise provided in the lease agreement.~~

325 Section 8. Subsection (1) of section 723.0611, Florida
 326 Statutes, is amended to read:

327 723.0611 Florida Mobile Home Relocation Corporation.—

328 (1) (a) There is created the Florida Mobile Home Relocation
 329 Corporation. The corporation shall be administered by a board of
 330 directors made up of six members, three of whom shall be
 331 appointed by the Secretary of Business and Professional
 332 Regulation from a list of nominees submitted by the largest
 333 nonprofit association representing mobile home owners in this
 334 state, and three of whom shall be appointed by the Secretary of
 335 Business and Professional Regulation from a list of nominees
 336 submitted by the largest nonprofit association representing the
 337 manufactured housing industry in this state. All members of the
 338 board of directors, including the chair, shall be appointed to
 339 serve for staggered 3-year terms.

340 (b) A member of the board of directors shall be removed
 341 from the board by the Secretary of Business and Professional
 342 Regulation, with or without cause, immediately after the written
 343 request for removal from the association in paragraph (a) that
 344 originally nominated that board member. The nominating entity
 345 must include nominees for replacement with the request for
 346 removal and the secretary must immediately fill the vacancy
 347 created by the removal. The removal process may not occur more
 348 than once in a calendar year.

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349 Section 9. Section 723.078, Florida Statutes, is amended to
350 read:

351 723.078 Bylaws of homeowners' associations. ~~In order for a~~
352 ~~homeowners' association to exercise the rights provided in s.~~
353 ~~723.071, the bylaws of the association shall provide for the~~
354 ~~following:~~

355 (1) The directors of the association and the operation
356 shall be governed by the bylaws.

357 (2) The bylaws shall provide and, if they do not, shall be
358 deemed to include, the following provisions:

359 (a) ~~Administration.~~ The form of administration of the
360 association shall be described, providing for the titles of the
361 officers and for a board of directors and specifying the powers,
362 duties, manner of selection and removal, and compensation, if
363 any, of officers and board members. Unless otherwise provided in
364 the bylaws, the board of directors shall be composed of five
365 members. The board of directors shall elect ~~have~~ a president,
366 secretary, and treasurer who shall perform the duties of those
367 offices customarily performed by officers of corporations, and
368 these officers shall serve without compensation and at the
369 pleasure of the board of directors. The board of directors may
370 elect ~~appoint~~ and designate other officers and grant them those
371 duties it deems appropriate.

372 (b) Quorum; voting requirements; proxies.

373 1. Unless otherwise provided in the bylaws, 30 percent of
374 the total membership is required to constitute a quorum ~~A~~
375 ~~majority of the members shall constitute a quorum.~~ Decisions
376 shall be made by a majority of members represented at a meeting
377 at which a quorum is present. ~~In addition, provision shall be~~

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378 ~~made in the bylaws for definition and use of proxy. Any proxy~~
379 ~~given shall be effective only for the specific meeting for which~~
380 ~~originally given and any lawfully adjourned meetings thereof. In~~
381 ~~no event shall any proxy be valid for a period longer than 120~~
382 ~~days after the date of the first meeting for which it was given.~~
383 ~~Every proxy shall be revocable at any time at the pleasure of~~
384 ~~the member executing it.~~

385 2. A member may not vote by general proxy but may vote by
386 limited proxies substantially conforming to a limited proxy form
387 adopted by the division. Limited proxies and general proxies may
388 be used to establish a quorum. Limited proxies may be used for
389 votes taken to amend the articles of incorporation or bylaws
390 pursuant to this section, and any other matters for which this
391 chapter requires or permits a vote of members, except that no
392 proxy, limited or general, may be used in the election of board
393 members. Notwithstanding the provisions of this section, members
394 may vote in person at member meetings.

395 3. A proxy is effective only for the specific meeting for
396 which originally given and any lawfully adjourned meetings
397 thereof. In no event shall any proxy be valid for a period
398 longer than 90 days after the date of the first meeting for
399 which it was given. Every proxy shall be revocable at any time
400 at the pleasure of the member executing it.

401 4. A member of the board of directors or a committee may
402 submit in writing his or her agreement or disagreement with any
403 action taken at a meeting that the member did not attend. This
404 agreement or disagreement may not be used as a vote for or
405 against the action taken and may not be used for the purposes of
406 creating a quorum.

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407 (c) Board of directors and committee meetings.-
 408 1. Meetings of the board of directors and meetings of its
 409 committees at which a quorum is present shall be open to all
 410 members. Notwithstanding any other provision of law, the
 411 requirement that board meetings and committee meetings be open
 412 to the members does not apply to board or committee meetings
 413 held for the purpose of discussing personnel matters or meetings
 414 between the board or a committee and the association's attorney,
 415 with respect to potential or pending litigation, where the
 416 meeting is held for the purpose of seeking or rendering legal
 417 advice, and where the contents of the discussion would otherwise
 418 be governed by the attorney-client privilege.~~and~~ Notice of
 419 meetings shall be posted in a conspicuous place upon the park
 420 property at least 48 hours in advance, except in an emergency.
 421 Notice of any meeting in which assessments against members are
 422 to be considered for any reason shall specifically contain a
 423 statement that assessments will be considered and the nature of
 424 such assessments.
 425 2. A board or committee member's participation in a meeting
 426 via telephone, real-time videoconferencing, or similar real-time
 427 telephonic, electronic, or video communication counts toward a
 428 quorum, and such member may vote as if physically present. A
 429 speaker shall be used so that the conversation of those board or
 430 committee members attending by telephone may be heard by the
 431 board or committee members attending in person, as well as by
 432 members present at a meeting.
 433 3. Members of the board of directors may use e-mail as a
 434 means of communication but may not cast a vote on an association
 435 matter via e-mail.

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436 4. The right to attend meetings of the board of directors
 437 and its committees includes the right to speak at such meetings
 438 with reference to all designated agenda items. The association
 439 may adopt reasonable written rules governing the frequency,
 440 duration, and manner of members' statements. Any item not
 441 included on the notice may be taken up on an emergency basis by
 442 at least a majority plus one of the members of the board. Such
 443 emergency action shall be noticed and ratified at the next
 444 regular meeting of the board. Any member may tape record or
 445 videotape meetings of the board of directors and its committees.
 446 The division shall adopt reasonable rules governing the tape
 447 recording and videotaping of the meeting.
 448 5. Except as provided in paragraph (i), a vacancy occurring
 449 on the board of directors may be filled by the affirmative vote
 450 of the majority of the remaining directors, even though the
 451 remaining directors constitute less than a quorum; by the sole
 452 remaining director; if the vacancy is not so filled or if no
 453 director remains, by the members; or, on the application of any
 454 person, by the circuit court of the county in which the
 455 registered office of the corporation is located.
 456 6. The term of a director elected or appointed to fill a
 457 vacancy expires at the next annual meeting at which directors
 458 are elected. A directorship to be filled by reason of an
 459 increase in the number of directors may be filled by the board
 460 of directors, but only for the term of office continuing until
 461 the next election of directors by the members.
 462 7. A vacancy that will occur at a specific later date, by
 463 reason of a resignation effective at a later date, may be filled
 464 before the vacancy occurs. However, the new director may not

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465 take office until the vacancy occurs.

466 8.a. The officers and directors of the association have a
 467 fiduciary relationship to the members.

468 b. A director and committee member shall discharge his or
 469 her duties in good faith, with the care an ordinarily prudent
 470 person in a like position would exercise under similar
 471 circumstances, and in a manner he or she reasonably believes to
 472 be in the best interests of the corporation.

473 9. In discharging his or her duties, a director may rely on
 474 information, opinions, reports, or statements, including
 475 financial statements and other financial data, if prepared or
 476 presented by:

477 a. One or more officers or employees of the corporation who
 478 the director reasonably believes to be reliable and competent in
 479 the matters presented;

480 b. Legal counsel, public accountants, or other persons as
 481 to matters the director reasonably believes are within the
 482 persons' professional or expert competence; or

483 c. A committee of the board of directors of which he or she
 484 is not a member if the director reasonably believes the
 485 committee merits confidence.

486 10. A director is not acting in good faith if he or she has
 487 knowledge concerning the matter in question that makes reliance
 488 otherwise permitted by subparagraph 9. unwarranted.

489 11. A director is not liable for any action taken as a
 490 director, or any failure to take any action, if he or she
 491 performed the duties of his or her office in compliance with
 492 this section.

493 (d) Member meetings.—Members shall meet at least once each

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494 calendar year, and the meeting shall be the annual meeting. All
 495 members of the board of directors shall be elected at the annual
 496 meeting unless the bylaws provide for staggered election terms
 497 or for their election at another meeting. The bylaws shall not
 498 restrict any member desiring to be a candidate for board
 499 membership from being nominated from the floor. All nominations
 500 from the floor must be made at a duly noticed meeting of the
 501 members held at least 30 days before the annual meeting. The
 502 bylaws shall provide the method for calling the meetings of the
 503 members, including annual meetings. The method shall provide at
 504 least 14 days' written notice to each member in advance of the
 505 meeting and require the posting in a conspicuous place on the
 506 park property of a notice of the meeting at least 14 days prior
 507 to the meeting. The right to receive written notice of
 508 membership meetings may be waived in writing by a member. Unless
 509 waived, the notice of the annual meeting shall be mailed, hand
 510 delivered, or electronically transmitted ~~sent by mail~~ to each
 511 member, and shall constitute ~~the mailing constitutes~~ notice. An
 512 officer of the association shall provide an affidavit affirming
 513 that the notices were mailed or hand delivered in accordance
 514 with the provisions of this section to each member at the
 515 address last furnished to the corporation. These meeting
 516 requirements do not prevent members from waiving notice of
 517 meetings or from acting by written agreement without meetings,
 518 if allowed by the bylaws.

519 (e) Minutes of meetings.—

520 1. Minutes of all meetings of members of an association,
 521 the board of directors, and a committee must be maintained in
 522 written form and approved by the members, board, or committee,

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523 as applicable. A vote or abstention from voting on each matter
 524 voted upon for each director present at a board meeting must be
 525 recorded in the minutes.

526 2. All approved minutes of all meetings of members,
 527 committees, and of the board of directors shall be kept in a
 528 businesslike manner and shall be available for inspection by
 529 members, or their authorized representatives, and board members
 530 at reasonable times. The association shall retain these minutes
 531 for a period of at least ~~not less than~~ 7 years.

532 (f) Manner of sharing assessments.—The share or percentage
 533 of, and manner of sharing, assessments and expenses for each
 534 member shall be stated.

535 (g) Annual budget.—If the bylaws provide for adoption of an
 536 annual budget by the members, the board of directors shall mail
 537 a meeting notice and copies of the proposed annual budget of
 538 expenses to the members at least ~~not less than~~ 30 days before
 539 prior to the meeting at which the budget will be considered. If
 540 the bylaws provide that the budget may be adopted by the board
 541 of directors, the members shall be given written notice of the
 542 time and place at which the meeting of the board of directors to
 543 consider the budget will be held. The meeting shall be open to
 544 the members. If the bylaws do not provide for adoption of an
 545 annual budget, this paragraph shall not apply.

546 (h) Amendment of articles of incorporation and bylaws.—

547 1. The method by which the articles of incorporation and
 548 bylaws may be amended consistent with the provisions of this
 549 chapter shall be stated. If the bylaws fail to provide a method
 550 of amendment, the bylaws may be amended by the board of
 551 directors and approved by a majority of members at a meeting at

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552 which a quorum is present of the membership. No bylaw shall be
 553 revised or amended by reference to its title or number only.

554 2. Notwithstanding any other provision of this section, if
 555 an amendment to the articles of incorporation or the bylaws is
 556 required by any action of any federal, state, or local
 557 governmental authority or agency, or any law, ordinance, or rule
 558 thereof, the board of directors may, by a majority vote of the
 559 board, at a duly noticed meeting of the board, amend the
 560 articles of incorporation or bylaws without a vote of the
 561 membership.

562 (i) ~~The officers and directors of the association have a~~
 563 ~~fiduciary relationship to the members.~~

564 ~~(j) Recall of board members.~~—Any member of the board of
 565 directors may be recalled and removed from office with or
 566 without cause by the vote of or agreement in writing by a
 567 majority of all members. A special meeting of the members to
 568 recall a member or members of the board of directors may be
 569 called by 10 percent of the members giving notice of the meeting
 570 as required for a meeting of members, and the notice shall state
 571 the purpose of the meeting. Electronic transmission may not be
 572 used as a method of giving notice of a meeting called in whole
 573 or in part for this purpose.

574 1. If the recall is approved by a majority of all members
 575 by a vote at a meeting, the recall is effective as provided in
 576 this paragraph. The board shall duly notice and hold a board
 577 meeting within 5 full business days after the adjournment of the
 578 member meeting to recall one or more board members. At the
 579 meeting, the board shall either certify the recall, in which
 580 case such member or members shall be recalled effective

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581 immediately and shall turn over to the board within 5 full
 582 business days any and all records and property of the
 583 association in their possession, or shall proceed under
 584 subparagraph 3.

585 2. If the proposed recall is by an agreement in writing by
 586 a majority of all members, the agreement in writing or a copy
 587 thereof shall be served on the association by certified mail or
 588 by personal service in the manner authorized by chapter 48 and
 589 the Florida Rules of Civil Procedure. The board of directors
 590 shall duly notice and hold a meeting of the board within 5 full
 591 business days after receipt of the agreement in writing. At the
 592 meeting, the board shall either certify the written agreement to
 593 recall members of the board, in which case such members shall be
 594 recalled effective immediately and shall turn over to the board,
 595 within 5 full business days, any and all records and property of
 596 the association in their possession, or shall proceed as
 597 described in subparagraph 3.

598 3. If the board determines not to certify the written
 599 agreement to recall members of the board, or does not certify
 600 the recall by a vote at a meeting, the board shall, within 5
 601 full business days after the board meeting, file with the
 602 division a petition for binding arbitration pursuant to the
 603 procedures of s. 723.1255. For purposes of this paragraph, the
 604 members who voted at the meeting or who executed the agreement
 605 in writing shall constitute one party under the petition for
 606 arbitration. If the arbitrator certifies the recall of a member
 607 of the board, the recall shall be effective upon mailing of the
 608 final order of arbitration to the association. If the
 609 association fails to comply with the order of the arbitrator,

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610 the division may take action under s. 723.006. A member so
 611 recalled shall deliver to the board any and all records and
 612 property of the association in the member's possession within 5
 613 full business days after the effective date of the recall.

614 4. If the board fails to duly notice and hold a board
 615 meeting within 5 full business days after service of an
 616 agreement in writing or within 5 full business days after the
 617 adjournment of the members' recall meeting, the recall shall be
 618 deemed effective and the board members so recalled shall
 619 immediately turn over to the board all records and property of
 620 the association.

621 5. If the board fails to duly notice and hold the required
 622 meeting or fails to file the required petition, the member's
 623 representative may file a petition pursuant to s. 723.1255
 624 challenging the board's failure to act. The petition must be
 625 filed within 60 days after expiration of the applicable 5-full-
 626 business-day period. The review of a petition under this
 627 subparagraph is limited to the sufficiency of service on the
 628 board and the facial validity of the written agreement or
 629 ballots filed.

630 6. If a vacancy occurs on the board as a result of a recall
 631 and less than a majority of the board members are removed, the
 632 vacancy may be filled by the affirmative vote of a majority of
 633 the remaining directors, notwithstanding any other provision of
 634 this chapter. If vacancies occur on the board as a result of a
 635 recall and a majority or more of the board members are removed,
 636 the vacancies shall be filled in accordance with procedural
 637 rules to be adopted by the division, which rules need not be
 638 consistent with this chapter. The rules must provide procedures

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639 governing the conduct of the recall election as well as the
 640 operation of the association during the period after a recall
 641 but before the recall election.

642 7. A board member who has been recalled may file a petition
 643 pursuant to s. 723.1255 challenging the validity of the recall.
 644 The petition must be filed within 60 days after the recall is
 645 deemed certified. The association and the member's
 646 representative shall be named as the respondents.

647 8. The division may not accept for filing a recall
 648 petition, whether or not filed pursuant to this subsection, and
 649 regardless of whether the recall was certified, when there are
 650 60 or fewer days until the scheduled reelection of the board
 651 member sought to be recalled or when 60 or fewer days have not
 652 elapsed since the election of the board member sought to be
 653 recalled.

654 (3) The bylaws may provide the following:

655 (a) A method of adopting and of amending administrative
 656 rules and regulations governing the details of the operation and
 657 use of the park property.

658 (b) Restrictions on, and requirements respecting, the use
 659 and maintenance of mobile homes located within the park, and the
 660 use of the park property, which restrictions and requirements
 661 are not inconsistent with the articles of incorporation.

662 (c) Other provisions not inconsistent with this chapter or
 663 with other documents governing the park property or mobile homes
 664 located therein.

665 (d) The board of directors may, in any event, propose a
 666 budget to the members at a meeting of members or in writing,
 667 and, if the budget or proposed budget is approved by the members

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668 at the meeting or by a majority of their whole number in
 669 writing, that budget shall be adopted.

670 (e) The manner of collecting from the members their shares
 671 of the expenses for maintenance of the park property shall be
 672 stated. Assessments shall be made against members not less
 673 frequently than quarterly, in amounts no less than are required
 674 to provide funds in advance for payments of all of the
 675 anticipated current operating expenses and for all of the unpaid
 676 operating expense previously incurred.

677 (4) No amendment may change the proportion or percentage by
 678 which members share in the assessments and expenses as initially
 679 established unless all the members affected by such change
 680 approve the amendment.

681 (5) Upon purchase of the mobile home park, the association
 682 organized under this chapter may convert to a condominium,
 683 cooperative, or subdivision. The directors shall have the
 684 authority to amend and restate the articles of incorporation and
 685 bylaws in order to comply with the requirements of chapter 718,
 686 chapter 719, or other applicable sections of the Florida
 687 Statutes.

688 (6) Notwithstanding the provisions of s. 723.075(1), upon
 689 purchase of the park by the association, and conversion of the
 690 association to a condominium, cooperative, or subdivision, the
 691 mobile home owners who were members of the association prior to
 692 the conversion and who no longer meet the requirements for
 693 membership, as established by the amended or restated articles
 694 of incorporation and bylaws, shall no longer be members of the
 695 converted association. Mobile home owners, as defined in this
 696 chapter, who no longer are eligible for membership in the

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697 converted association may form an association pursuant to s.
698 723.075.

699 Section 10. Section 723.1255, Florida Statutes, is created
700 to read:

701 723.1255 Alternative resolution of recall disputes.—The
702 Division of Florida Condominiums, Timeshares, and Mobile Homes
703 of the Department of Business and Professional Regulation shall
704 adopt rules of procedure to govern binding recall arbitration
705 proceedings.

706 Section 11. Section 723.0781, Florida Statutes, is created
707 to read:

708 723.0781 Board member training programs.—Within 90 days
709 after being elected or appointed to the board, a newly elected
710 or appointed director shall certify by an affidavit in writing
711 to the secretary of the association that he or she has read the
712 association's current articles of incorporation, bylaws, and the
713 mobile home park's prospectus, rental agreement, rules,
714 regulations, and written policies; that he or she will work to
715 uphold such documents and policies to the best of his or her
716 ability; and that he or she will faithfully discharge his or her
717 fiduciary responsibility to the association's members. In lieu
718 of this written certification, within 90 days after being
719 elected or appointed to the board, the newly elected or
720 appointed director may submit a certificate of having
721 satisfactorily completed the educational curriculum approved by
722 the division within 1 year before or 90 days after the date of
723 election or appointment. The educational certificate is valid
724 and does not have to be resubmitted as long as the director
725 serves on the board without interruption. A director who fails

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726 to timely file the written certification or educational
727 certificate is suspended from service on the board until he or
728 she complies with this section. The board may temporarily fill
729 the vacancy during the period of suspension. The secretary of
730 the association shall retain a director's written certification
731 or educational certificate for inspection by the members for 5
732 years after the director's election or the duration of the
733 director's uninterrupted tenure, whichever is longer. Failure to
734 have such written certification or educational certificate on
735 file does not affect the validity of any board action.

736 Section 12. Section 723.079, Florida Statutes, is amended
737 to read:

738 723.079 Powers and duties of homeowners' association.—

739 (1) An association may contract, sue, or be sued with
740 respect to the exercise or nonexercise of its powers. For these
741 purposes, the powers of the association include, but are not
742 limited to, the maintenance, management, and operation of the
743 park property.

744 (2) The powers and duties of an association include those
745 set forth in this section and ss. 723.075 and 723.077 and those
746 set forth in the articles of incorporation and bylaws and any
747 recorded declarations or restrictions encumbering the park
748 property, if not inconsistent with this chapter.

749 (3) An association has the power to make, levy, and collect
750 assessments and to lease, maintain, repair, and replace the
751 common areas upon purchase of the mobile home park.

752 (4) The association shall maintain the following items,
753 when applicable, which constitute the official records of the
754 association:

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- 755 (a) A copy of the association's articles of incorporation
 756 and each amendment to the articles of incorporation.
- 757 (b) A copy of the bylaws of the association and each
 758 amendment to the bylaws.
- 759 (c) A copy of the written rules or policies of the
 760 association and each amendment to the written rules or policies.
- 761 (d) The approved minutes of all meetings of the members,
 762 the board of directors, and committees of the board, which
 763 minutes must be retained within the state for at least 7 years.
- 764 (e) A current roster of all members and their mailing
 765 addresses and lot identifications. The association shall also
 766 maintain the e-mail addresses and the numbers designated by
 767 members for receiving notice sent by electronic transmission of
 768 those members consenting to receive notice by electronic
 769 transmission. The e-mail addresses and numbers provided by
 770 members to receive notice by electronic transmission shall be
 771 removed from association records when consent to receive notice
 772 by electronic transmission is revoked. However, the association
 773 is not liable for an erroneous disclosure of the e-mail address
 774 or the number for receiving electronic transmission of notices.
- 775 (f) All of the association's insurance policies or copies
 776 thereof, which must be retained for at least 7 years.
- 777 (g) A copy of all contracts or agreements to which the
 778 association is a party, including, without limitation, any
 779 written agreements with the park owner, lease, or other
 780 agreements or contracts under which the association or its
 781 members have any obligation or responsibility, which must be
 782 retained for at least 7 years.
- 783 (h) The financial and accounting records of the

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- 784 association, kept according to good accounting practices. All
 785 financial and accounting records must be maintained for a period
 786 of at least 7 years. The financial and accounting records must
 787 include:
- 788 1. Accurate, itemized, and detailed records of all receipts
 789 and expenditures.
- 790 2. A current account and a periodic statement of the
 791 account for each member, designating the name and current
 792 address of each member who is obligated to pay dues or
 793 assessments, the due date and amount of each assessment or other
 794 charge against the member, the date and amount of each payment
 795 on the account, and the balance due.
- 796 3. All tax returns, financial statements, and financial
 797 reports of the association.
- 798 4. Any other records that identify, measure, record, or
 799 communicate financial information.
- 800 (i) All other written records of the association not
 801 specifically included in the foregoing which are related to the
 802 operation of the association.
- 803 (5) The official records shall be maintained within the
 804 state for at least 7 years and shall be made available to a
 805 member for inspection or photocopying within 10 business days
 806 after receipt by the board or its designee of a written request
 807 submitted by certified mail, return receipt requested. The
 808 requirements of this subsection are satisfied by having a copy
 809 of the official records available for inspection or copying at
 810 the park or, at the option of the association, by making the
 811 records available to a member electronically via the Internet or
 812 by allowing the records to be viewed in electronic format on a

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813 computer screen and printed upon request. If the association has
 814 a photocopy machine available where the records are maintained,
 815 it must provide a member with copies on request during the
 816 inspection if the entire request is no more than 25 pages. An
 817 association shall allow a member or his or her authorized
 818 representative to use a portable device, including a smartphone,
 819 tablet, portable scanner, or any other technology capable of
 820 scanning or taking photographs, to make an electronic copy of
 821 the official records in lieu of the association's providing the
 822 member or his or her authorized representative with a copy of
 823 such records. The association may not charge a fee to a member
 824 or his or her authorized representative for the use of a
 825 portable device.

826 (a) The failure of an association to provide access to the
 827 records within 10 business days after receipt of a written
 828 request submitted by certified mail, return receipt requested,
 829 creates a rebuttable presumption that the association willfully
 830 failed to comply with this subsection.

831 (b) A member who is denied access to official records is
 832 entitled to the actual damages or minimum damages for the
 833 association's willful failure to comply with this subsection.
 834 The minimum damages are to be \$10 per calendar day up to 10
 835 days, the calculation to begin on the 11th business day after
 836 receipt of the written request, submitted by certified mail,
 837 return receipt requested.

838 (c) The association may adopt reasonable written rules
 839 governing the frequency, time, location, notice, records to be
 840 inspected, and manner of inspections, but may not require a
 841 member to demonstrate a proper purpose for the inspection, state

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842 a reason for the inspection, or limit a member's right to
 843 inspect records to less than 1 business day per month. The
 844 association may impose fees to cover the costs of providing
 845 copies of the official records, including the costs of copying
 846 and for personnel to retrieve and copy the records if the time
 847 spent retrieving and copying the records exceeds 30 minutes and
 848 if the personnel costs do not exceed \$20 per hour. Personnel
 849 costs may not be charged for records requests that result in the
 850 copying of 25 or fewer pages. The association may charge up to
 851 25 cents per page for copies made on the association's
 852 photocopier. If the association does not have a photocopy
 853 machine available where the records are kept, or if the records
 854 requested to be copied exceed 25 pages in length, the
 855 association may have copies made by an outside duplicating
 856 service and may charge the actual cost of copying, as supported
 857 by the vendor invoice. The association shall maintain an
 858 adequate number of copies of the recorded governing documents,
 859 to ensure their availability to members and prospective members.
 860 Notwithstanding this paragraph, the following records are not
 861 accessible to members or home owners:

862 1. A record protected by the lawyer-client privilege as
 863 described in s. 90.502 and a record protected by the work-
 864 product privilege, including, but not limited to, a record
 865 prepared by an association attorney or prepared at the
 866 attorney's express direction which reflects a mental impression,
 867 conclusion, litigation strategy, or legal theory of the attorney
 868 or the association and which was prepared exclusively for civil
 869 or criminal litigation, for adversarial administrative
 870 proceedings, or in anticipation of such litigation or

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871 proceedings until the conclusion of the litigation or
 872 proceedings.

873 2. E-mail addresses, telephone numbers, facsimile numbers,
 874 emergency contact information, any addresses for a home owner
 875 other than as provided for association notice requirements, and
 876 other personal identifying information of any person, excluding
 877 the person's name, lot designation, mailing address, and
 878 property address. Notwithstanding the restrictions in this
 879 subparagraph, an association may print and distribute to home
 880 owners a directory containing the name, park address, and
 881 telephone number of each home owner. However, a home owner may
 882 exclude his or her telephone number from the directory by so
 883 requesting in writing to the association. The association is not
 884 liable for the disclosure of information that is protected under
 885 this subparagraph if the information is included in an official
 886 record of the association and is voluntarily provided by a home
 887 owner and not requested by the association.

888 3. An electronic security measure that is used by the
 889 association to safeguard data, including passwords.

890 4. The software and operating system used by the
 891 association which allows the manipulation of data, even if the
 892 home owner owns a copy of the same software used by the
 893 association. The data is part of the official records of the
 894 association.

895 (6) An outgoing board or committee member must relinquish
 896 all official records and property of the association in his or
 897 her possession or under his or her control to the incoming board
 898 within 5 days after the election or removal. An association shall
 899 maintain accounting records in the county where the property is

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

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900 ~~located, according to good accounting practices. The records~~
 901 ~~shall be open to inspection by association members or their~~
 902 ~~authorized representatives at reasonable times, and written~~
 903 ~~summaries of such records shall be supplied at least annually to~~
 904 ~~such members or their authorized representatives. The failure of~~
 905 ~~the association to permit inspection of its accounting records~~
 906 ~~by members or their authorized representatives entitles any~~
 907 ~~person prevailing in an enforcement action to recover reasonable~~
 908 ~~attorney's fees from the person in control of the books and~~
 909 ~~records who, directly or indirectly, knowingly denied access to~~
 910 ~~the books and records for inspection. The records shall include,~~
 911 ~~but shall not be limited to:~~

912 ~~(a) A record of all receipts and expenditures.~~

913 ~~(b) An account for each member, designating the name and~~
 914 ~~current mailing address of the member, the amount of each~~
 915 ~~assessment, the dates on which and amounts in which the~~
 916 ~~assessments come due, the amount paid upon the account, and the~~
 917 ~~balance due.~~

918 ~~(7)(5) An association has the power to purchase lots in the~~
 919 ~~park and to acquire, hold, lease, mortgage, and convey them.~~

920 ~~(8)(6) An association shall use its best efforts to obtain~~
 921 ~~and maintain adequate insurance to protect the association and~~
 922 ~~the park property upon purchase of the mobile home park. A copy~~
 923 ~~of each policy of insurance in effect shall be made available~~
 924 ~~for inspection by owners at reasonable times.~~

925 ~~(9)(7) An association has the authority, without the~~
 926 ~~joinder of any home owner, to modify, move, or create any~~
 927 ~~easement for ingress and egress or for the purpose of utilities~~
 928 ~~if the easement constitutes part of or crosses the park property~~

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929 upon purchase of the mobile home park. This subsection does not
 930 authorize the association to modify or move any easement created
 931 in whole or in part for the use or benefit of anyone other than
 932 the members, or crossing the property of anyone other than the
 933 members, without his or her consent or approval as required by
 934 law or the instrument creating the easement. Nothing in this
 935 subsection affects the rights of ingress or egress of any member
 936 of the association.

937 (10)~~(8)~~ Any mobile home owners' association or group of
 938 residents of a mobile home park as defined in this chapter may
 939 conduct bingo games as provided in s. 849.0931.

940 (11)~~(9)~~ An association organized under this chapter may
 941 offer subscriptions, for the purpose of raising the necessary
 942 funds to purchase, acquire, and operate the mobile home park, to
 943 its members or other owners of mobile homes within the park.
 944 Subscription funds collected for the purpose of purchasing the
 945 park shall be placed in an association or other escrow account
 946 prior to purchase, which funds shall be held according to the
 947 terms of the subscription agreement. The directors shall
 948 maintain accounting records according to generally accepted
 949 accounting practices and shall, upon written request by a
 950 subscriber, furnish an accounting of the subscription fund
 951 escrow account within 60 days of the purchase of the park or the
 952 ending date as provided in the subscription agreement, whichever
 953 occurs first.

954 (12)~~(10)~~ For a period of 180 days after the date of a
 955 purchase of a mobile home park by the association, the
 956 association shall not be required to comply with the provisions
 957 of part V of chapter 718, ~~or~~ part V of chapter 719, or part II

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958 of chapter 720, as to mobile home owners or persons who have
 959 executed contracts to purchase mobile homes in the park.

960 (13)~~(11)~~ The provisions of subsections ~~subsection~~ (4) and
 961 (7) shall not apply to records relating to subscription funds
 962 collected pursuant to subsection (11) ~~(9)~~.

963 Section 13. This act shall take effect July 1, 2015.

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THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

SENATOR JACK LATVALA

20th District

February 6, 2015

The Honorable Senator Rob Bradley, Chair
Senate Committee on Regulated Industries
330 Knott Building
404 South Monroe Street
Tallahassee, FL 32399-1100

Dear Chair Bradley:

I respectfully request consideration of Senate Bill 662 regarding Mobile Homes. I would greatly appreciate the opportunity to present this legislation to the Committee on Regulated Industries as soon as possible.

This bill will help protect the rights of mobile home park residents by providing for educational programs for board members, revising the requirements of lot rental increases, and clarifying the statutes regarding board members and meetings.

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

Sincerely,



Jack Latvala
State Senator
District 20

Cc: Patrick Imhof, Staff Director; Lynn Koon, Administrative Assistant

REPLY TO:

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

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE

APPEARANCE RECORD

3/11/15

Meeting Date

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

SB 662

Bill Number (if applicable)

Topic mobile homes

Amendment Barcode (if applicable)

Name Nancy Stewart

Job Title

Address 1535 Killbuck Center Blvd Ste A-1A

Phone 850-385-7805

Street

Tallahassee

City

FL

State

32309

Zip

Email nancyblackstewart@earthlink.net

Speaking: For Against Information

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

Representing FMO - Federation of Manufactured Home Owners of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-11-15

Meeting Date

5662

Bill Number (if applicable)

Topic mobile homes

Amendment Barcode (if applicable)

Name Lori Killinger

Job Title _____

Address 315 S. Calhoun St. Sk 830

Phone 850 222 5702

Street

Tallahassee

City

FL

State

32301

Zip

Email lkillinge@llw.com

Speaking: For Against Information

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

Representing Florida Manufactured Housing Assn

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE
APPEARANCE RECORD

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

3-11-15

Meeting Date

602

Bill Number (if applicable)

Topic mobile Homes

Amendment Barcode (if applicable)

Name TRAVIS MOORE

Job Title _____

Address P.O. BOX 781

Phone 727.421.6902

Street

Largo

City

FL

State

33779

Zip

Email mooret@tampabay.fl.com

Speaking: For Against Information

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

Representing Bay Indies Homeowner Association

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

S-001 (10/14/14)

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: SB 932

INTRODUCER: Senator Stargel

SUBJECT: Timeshares

DATE: March 11, 2015 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Favorable
2.			JU	
3.			FP	

I. Summary:

SB 932 relates to the Florida Vacation Plan and Timesharing Act (act), which establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers. The act is enforced by the Division of Florida Land Sales, Condominiums, and Mobile Homes (division) within the Department of Business and Professional Regulation (department). The bill:

- Provides that an ownership interest in a condominium or cooperative unit or a beneficial interest in a timeshare trust is required for such interests to qualify as timeshare estates;
- Revises the definitions for nonspecific and specific multisite timeshare plans to provide that the plans may include interests other than timeshare licenses or personal property timeshare interests;
- Revises the required disclosures for public offering statements in multisite timeshare plans;
- Revises the requirements for amendments to timeshare instruments in regards to component sites;
- Expands the limitation on liability for developers who, in good faith attempt to and substantially comply with, all the provisions of the act;
- Requires the disclosure of lease terms in timeshare trusts;
- Repeals the requirement for judicial approval of transactions involving timeshare trust property;
- Creates a procedure of the extension or termination of timeshare plans;
- Creates a procedure for the transfer of the reservation system and owner data when a managing entity is discharged;
- Provides that only one annual fee is due from a managing entity;
- Requires all multisite timeshare plans to disclose the term of each component site plan and prominently disclose the term of component sites that are shorter than the term of the plan;
- Exclude component site common expenses and ad valorem expenses from the cap on annual increases in common expense assessments;

- Allows for substitute and replacement accommodations that are better than the existing accommodations; and
- Revises the limitations on substitute accommodations.

According to the department, the bill would reduce revenues by \$338,704 in FY 2015-16.

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

II. Present Situation:

Timeshares

A timeshare interest is a form of ownership of real and personal property.¹ According to a report prepared by the American Resort Development Association (ARDA), Florida had 23 percent of the estimated 1,540 timeshare resorts in the United States as of December 31, 2013.²

Part I of ch. 721, F.S., relates to vacation plans and timesharing. Part II of ch. 721, F.S., relates to multisite vacation and timeshare plans that are also known as vacation clubs.

In a timeshare, the real property is typically a condominium unit or a cooperative unit. A timeshare property is typically a resort in which multiple parties hold the right to use the property. Each owner of a timeshare interest is allotted a period of time (typically one week) in which they may use the property.

The Florida Vacation Plan and Timesharing Act, ch. 721, F.S., establishes requirements for the creation, sale, exchange, promotion, and operation of timeshare plans, including requirements for full and fair disclosure to purchasers and prospective purchasers.³ Chapter 721, F.S., applies to all timeshare plans consisting of more than seven timeshare periods over a period of at least three years in which the accommodations and facilities are located within this state or offered within this state.⁴

A timeshare unit is an accommodation of a timeshare plan which is divided into timeshare periods or a condominium unit in which timeshare estates have been created.⁵

A timeshare plan is any arrangement, plan, scheme, or similar device whereby a purchaser gives consideration for ownership rights in, or a right to use, any accommodations and facilities for less than a full year during any given year, but not necessarily for consecutive years.⁶

Section 721.05(34), F.S., defines a “timeshare estate” as “a right to occupy a timeshare unit, coupled with a freehold estate or an estate for years with a future interest in a timeshare property

¹ See s. 721.05(36), F.S.

² ARDA International Foundation, *Banner Year for Timeshare Industry*, a copy of the report is available at: <http://www.arda.org/news-information/default.aspx> (last visited March 9, 2015).

³ Section 721.02(2) and (3), F.S.

⁴ Section 721.03, F.S.

⁵ See ss. 721.05(41) and 718.103(26), F.S.

⁶ Section 721.05(39), F.S.

or a specified portion thereof.” The term also includes an interest in a condominium unit, a cooperative unit, or a trust. This definition does not specify whether the term includes both direct and indirect interests in trusts. An example of an indirect interest in a trust is a trust beneficiary’s spouse or other dependent.

Section 721.05(36), F.S., provides that a “timeshare interest” means a timeshare estate, a personal property timeshare interest, or a timeshare license.

Section 721.05(37), F.S., provides that a “timeshare license” is the “right to occupy a timeshare unit, which right is not a personal property timeshare interest or a timeshare estate.”

A timeshare plan under s. 721.05(39), F.S., is any “arrangement, plan, scheme, or similar device, other than an exchange program” where a purchaser, for consideration, “receives ownership rights in or a right to use accommodations, and facilities, if any, for a period of time less than a full year during any given year, but not necessarily for consecutive years.” The term includes both personal property timeshare and real property timeshare plans.⁷

Section 721.52(4), F.S., defines a “multisite timeshare plan” to mean:

any method, arrangement, or procedure with respect to which a purchaser obtains, by any means, a recurring right to use and occupy accommodations or facilities of more than one component site, only through use of a reservation system, whether or not the purchaser is able to elect to cease participating in the plan. However, the term “multisite timeshare plan” shall not include any method, arrangement, or procedure wherein:

- (a) The contractually specified maximum total financial obligation on the purchaser’s part is \$3,000 or less, during the entire term of the plan; or
- (b) The term is for a period of 3 years or less, regardless of the purchaser’s contractually specified maximum total financial obligation, if any. For purposes of determining the term of such use and occupancy rights, the period of any optional renewals which a purchaser, in his or her sole discretion, may elect to exercise, whether or not for additional consideration, shall not be included. For purposes of determining the term of such use and occupancy rights, the period of any automatic renewals shall be included unless a purchaser has the right to terminate the membership at any time and receive a pro rata refund or the purchaser receives a notice no less than 30 days and no more than 60 days prior to the date of renewal informing the purchaser of the right to terminate at any time prior to the date of automatic renewal.

Multisite timeshare plan does not mean an exchange program as defined in s. 721.05. Timeshare estates may only be offered in a multisite timeshare plan pursuant to s. 721.57.

⁷ A “personal property timeshare plan,” which means a timeshare plan in which the accommodations are comprised of personal property that is not permanently affixed to real property; and a “real property timeshare plan,” which means a timeshare plan in which the accommodations of the timeshare plan are comprised of or permanently affixed to real property.

Section 721.52(5), F.S., defines a “nonspecific multisite timeshare plan” to mean:

“a multisite timeshare plan *containing timeshare licenses or personal property timeshare interests*, with respect to which a purchaser receives a right to use all of the accommodations and facilities, if any, of the multisite timeshare plan through the reservation system, but no specific right to use any particular accommodations and facilities for the remaining term of the multisite timeshare plan in the event that the reservation system is terminated for any reason prior to the expiration of the term of the multisite timeshare plan.” [Emphasis added.]

Section 721.52(7), F.S., defines a “specific multisite timeshare plan” to mean:

“a multisite timeshare plan *containing timeshare licenses or personal property timeshare interests*, with respect to which a purchaser receives a specific right to use accommodations and facilities, if any, at one component site of a multisite timeshare plan, together with use rights in the other accommodations and facilities of the multisite timeshare plan created by or acquired through the reservation system.” [Emphasis added.]

According to the American Resort Development Association (ARDA),⁸ which represents the vacation ownership and resort development industries (timeshares), there has been a recent development in nonspecific timeshare *estate* plans in which the purchaser receives a timeshare estate in a trust and one in a specific component site and such may not be clearly consistent with definitions for specific and nonspecific multisite timeshare plans.

A timeshare plan developer must file a public offering statement and the required exhibits with the Division of Florida Condominiums, Timeshares, and Mobile Homes (division) within the Department of Business and Professional Regulation, prior to offering the timeshare plan to the public.⁹

For each timeshare plan, the developer must provide for a managing entity, which must be the developer, a separate manager or management firm, or an owners’ association.¹⁰ The public offering statement must include an estimated operating budget for the timeshare plan, and a schedule of the purchaser’s expenses to be paid to the timeshare plan and the managing entity.¹¹ A common expense to be paid to the managing entity is a reserve for deferred maintenance and capital expenditures.

A timeshare unit is an accommodation of a timeshare plan which is divided into timeshare periods¹² or a condominium unit in which timeshare estates have been created.¹³ A timeshare plan is any arrangement, plan, or similar device in which a purchaser gives consideration for

⁸ For more information about ARDA, see <http://www.arda.org/who-we-are/default.aspx> (last visited March 5, 2015).

⁹ Section 721.07, F.S.

¹⁰ Section 721.13(1)(a), F.S. The duties of a managing entity are detailed in s. 721.13(3), F.S.,

¹¹ Section 721.07(5)(t)3., F.S.

¹² Section 721.05(41), F.S.

¹³ Section 718.103(26), F.S.

ownership rights in, or a right to use, any accommodations and facilities for less than a full year during any given year, but not necessarily for consecutive years.¹⁴

Public Offering Statement

Prior to offering any timeshare plan, a developer must submit a public offering statement, which must include certain information and disclosures, to the division for approval.¹⁵ Any amendment to an approved offering statement must be filed with the division for approval before it may become effective.¹⁶

Sections 721.07(3) and 721.551(2), F.S., provide that public offering statements and amendments to timeshare instruments for component sites located in this state are not required to be provided to purchasers who do not receive a timeshare estate or an interest in a specific multisite timeshare plan in that component site.

Sections 721.07(5) and 721.55(5), F.S., limit liability for nonmaterial errors or omissions for any developer who, in good faith, attempts to comply with the requirements of ss. 721.07 or 721.55, F.S., related to public offering statements, if, in fact, he or she has substantially complied with the disclosure requirements of ch. 721, F.S.

Leasehold Accommodations in a Timeshare Trust

Sections 721.08(2)(c) and 721.53(1)(e) F.S., which regulate timeshare trusts, do not specify whether leasehold accommodations may be included in a timeshare trust and how they should be disclosed in a public offering statement or to interestholders.

Disposition of Timeshare Trust Property

Sections 721.08(2)(c) and 721.53(1)(e), F.S., require that any transfer or encumbrance of timeshare trust property approved by the voting interests of the timeshare plan must be approved by a court. Section 721.08(2)(c), F.S., relating to non-multisite timeshare plans, also provides that the division has standing to advise the court on its decision.

Transfer of Reservation System Following the Discharge of the Managing Entity

Section 721.14, F.S., provides for the discharge of management entity for a timeshare plan after it has been purchased. Section 714.14, F.S., does not provide for the disposition of the reservation system and the data in that system in the event the managing entity is discharged.

Section 721.56(5), F.S., provides that the reservation system of a nonspecific multisite timeshare plan is considered a facility of the timeshare plan. However, the reservation system is not a facility of any specific multisite timeshare plan, nor is it a facility of any multisite timeshare plan in which timeshare estates are offered pursuant to s. 721.57, F.S., relating to the offering of timeshare estates in multisite timeshare plans.

¹⁴ Section 721.05(39), F.S.

¹⁵ Sections 721.07 and 721.55, F.S.

¹⁶ Section 721.07(3)(a)1., F.S.

Section 721.56(5)(a), F.S., permits the manager or management firm and the purchasers or owners' association to agree that the manager or management firm own the reservation system and will continue to own the system in the event of a discharge of the management entity pursuant to s. 721.14, F.S. In regards to the data in the reservation system, s. 721.56(5)(b), F.S., provides the procedure and criteria for establishing a trust for the reservation system of a nonspecific multisite timeshare plan in the event the plan's managing entity is terminated.

Annual Managing Entity Fee

Section 721.27, F.S., requires each managing entity of a timeshare plan located in this state to pay an annual fee of \$2 for each 7 days of annual use availability that exists within the timeshare plan at that time. Section 721.27, F.S., limits the maximum amount of such filing fee to \$25,000 or the total filing fee due with respect to the timeshare units in the multisite timeshare plan that are located in this state pursuant to s. 721.07(4)(a), F.S.,¹⁷ whichever is greater.

Section 721.58, F.S., also provides that managing entities of multisite timeshare plans must pay the annual fee required by s. 721.27, F.S. According to ARDA, these provisions operate to require managing entities to pay annual fees twice if they have timeshare estates in both a single site plan and a multisite plan.

Term of Nonspecific Multisite Timeshare Plans and other Required Disclosures

Section 721.54, F.S., prohibits a person from representing to a purchaser of a nonspecific multisite timeshare plan that the term of the plan for that purchaser is longer than the shortest term of availability of any of the accommodations included in the plan at the time of purchase. However, for other specific multisite timeshare plans, s. 721.55(4)(a), F.S., requires that the term of each component site within the timeshare plan must be disclosed in the multisite timeshare plan public offering statement.

Section 721.55(4)(h), F.S., provides the disclosures that must be included in a multisite timeshare plan public offering statement. It requires that the offering statement must also include a description of the purchaser's liability for common expenses and specifies the information that must be included in that description.

Substitutions and Deletions for Multisite Timeshare Plans

Section 721.552(2), F.S., permits substitutions of accommodations and facilities for nonspecific multisite timeshare plans that are "substantially similar" to the existing accommodations and facilities. Substitutions are limited to no more than 25 percent of the available accommodations at a given component site per year. Before a substitution occurs, notice must be provided to all the purchasers of the timeshare plan. However, under limited circumstances, a managing entity may substitute all accommodations in a given year if a written plan of substitution has been

¹⁷ Section 721.07 (4)(a), F.S., provides a fee upon the filing of a filed public offering statement. The required filing fee is \$2 for each 7 days of annual use availability in each timeshare unit that may be offered as a part of the proposed timeshare plan pursuant to the filing.

provided to each purchaser of the timeshare plan and approved by a majority of purchasers and a majority of the board of administration.

III. Effect of Proposed Changes:

Definitions

The bill amends s. 721.05(34), F.S., to revise the definition of the term "timeshare estate" to provide that an ownership interest in a condominium or cooperative unit or a beneficial interest in a timeshare trust coupled with a right to occupy a timeshare unit is required for such interest to qualify as a timeshare estate. The bill also provides that a beneficial trust in a qualifying multisite timeshare trust is also a timeshare estate.

Public Offering Statement

The bill amends ss. 721.07(3), F.S., to provide that public offering amendments to timeshare instruments for component sites located in this state are only required to be delivered to purchasers who receive a specific interest in that component site. The bill provides a comparable amendment to s. 721.55(5)(b), F.S., relating to multisite vacation and timeshare plans. The bill amends ss. 721.07(5), F.S., to expand the limitation on liability for developers who have in good faith attempted to and substantially complied with all the provisions of ch. 721, F.S. Current law limits the good faith limitation on liability to violations of the disclosure requirements. The bill provides that any nonmaterial errors, omissions, or violations of ch. 721, F.S., for which a developer has limited liability under these section, are not considered violations of ch. 721, F.S., and do not give rise to any purchaser cancellation rights. The bill provides a comparable amendment to s. 721.55(5)(b), F.S., relating to multisite timeshare plans.

Leasehold Accommodations in a Timeshare Trust

The bill amends s. 721.08(2)(c) 4.a., F.S., to provide that if the accommodations or facilities of a single-site timeshare trust plan are subject to a lease, the unexpired term of the lease must be disclosed as the term of the timeshare plan. The bill provides a comparable amendment to s. 721.53(1)(e), F.S., relating to multisite timeshare plans.

Disposition of Timeshare Trust Property

The bill amends ss. ss. 721.08(2)(c) and 721.53(1)(e), F.S., to provide that, subject to the statutory provisions regulating changes to component site accommodations or facilities in s. 721.552, F.S., a vote of the voting interests of the timeshare plan is not required for substitution or automatic deletion of accommodations or facilities in timeshare trusts.

The bill also amends ss. ss. 721.08(2)(c) and 721.53(1)(e), F.S., to delete the requirement for judicial approval of any transfer or encumbrance of timeshare trust property after approval by the voting interests of the timeshare plan. The bill also amends s. 721.08(2)(c), F.S., to delete the provision granting the division standing to advise the court in a transfer related to non-multisite timeshare plans.

Extension or Termination of Timeshare Plans

The bill creates s. 721.125, F.S., to provide a process for timeshare instruments that have been in existence for at least 25 years and are silent as to how the plan terminates or is extended. The bill requires an affirmative vote or written consent from 60 percent of all the voting interests in the timeshare plan extend or terminate the term of a timeshare plan. If the term of a timeshare plan is extended, all rights, privileges, duties, and obligations created under applicable law or the timeshare instrument continue in full force. If a timeshare plan is terminated, the termination has immediate effect pursuant to applicable law and the timeshare instrument. A termination or extension vote or consent proposed for a component site of a multisite timeshare plan located in this state is effective only if the person authorized to make additions or substitutions approves.

Transfer of Reservation System Following the Discharge of the Managing Entity

The bill creates s. 721.14(4), F.S., to permit the owners' association and the manager or management firm to enter into a written agreement for the transition procedures and related time periods in the event the manager or management firm is discharged.

Section 721.14(4)(b), F.S., provides a procedure to be followed in the event there is no written agreement for the transfer of relevant owner data and reservation system information. It requires that the managing entity must transfer the information to the owners' association within 90 days of receiving notice of the termination vote. Within 10 days after the completed transfer of the data, the timeshare plan must reimburse the managing entity for all reasonable costs incurred in effecting the transfer of information.

The bill deletes the provisions in s. 721.56(5), F.S., related to the transfer of reservation system and owner data for multisite timeshare plans. The procedure in s. 721.14(4), F.S., apply to terminations of managing entities of single site or multisite timeshare plans.

Annual Managing Entity Fee

The bill amends s. 721.27, F.S., to provide that only one annual fee is due and payable for any 7 days of annual use availability that is included within both a single site and multisite timeshare plan.

The bill also amends s. s. 721.58, F.S., to delete the annual fee requirement for multisite timeshare plans.

Definitions – Multisite Timeshare Plans

The bill amends s. 721.52, F.S., to amend the definitions of the terms “nonspecific multisite timeshare plan” and “specific multisite timeshare plan” to delete the condition that such plans contain timeshare licenses or personal property timeshare interests.

Term of Nonspecific Multisite Timeshare Plans and other Required Disclosures

The bill amends ss. s. 721.54, F.S., and 721.55(4)(a), F.S., to delete the distinction between specific and nonspecific multisite timeshare plans in regards to the duty to disclose the term of

each component site within the timeshare plans. The bill requires that both specific and nonspecific multisite timeshare plans disclose the term of each component site within the timeshare plan and disclose, in conspicuous type, the term of each component site that is shorter than the term of the timeshare plan.

Current law, s. 721.55(4)(h), F.S., caps the annual increase in common expense assessments for multisite timeshare plans in a given year at 125 percent of the previous year. There are currently no exceptions to the cap.

The bill also amends s. 721.55(4)(h), F.S., to require that the multisite timeshare plan public offering statement that the component site common expenses and ad valorem taxes may not be included in calculating the total common expense assessment for the multisite plan in any given year.

Multisite Timeshare Estates

The bill amends s. 721.55(5)(7), F.S., relating to the required disclosures in the public offering statement, s. 721.551(2), F.S., relating to the delivery of the public offering statement, and 721.552(2), F.S., relating to amendments to multisite timeshare plans, to delete references to plans offering timeshare estate pursuant to s. 721.57, F.S.

The bill also amends s. 721.57(2), F.S., to delete the reference to a timeshare trust in the context of a specific multisite timeshare plan.

Substitutions and Deletions for Multisite Timeshare Plans

The bill amends s. 721.552(2), F.S., to provide for the substitution of accommodations. It modifies the notice required before a substitution will occur to include a statement that purchasers have the right to object to the proposed substitution. The 25 percent limitation on substitutions is repealed and replaced with the following provisions:

- If the developer is authorized to make substitutions, the developer is annually limited to substitution of 10 percent of the annual use availability in the multisite timeshare plan;
- If the managing entity is authorized to make substitutions, and the managing entity is under common ownership or control with the developer, the managing entity is annually limited to substitution of 10 percent of the annual use availability in the multisite timeshare plan;
- If the managing entity is authorized to make substitutions, and the managing entity is not under common ownership or control with the developer, the managing entity is annually limited to substitution of 25 percent of the annual use availability in the multisite timeshare plan; and
- If at least 10 percent of purchasers in the timeshare plan object to a proposed substitution, a meeting of the purchasers must be held. Unless the substitution is rejected by a majority of purchasers voting, it is deemed approved.

The bill deletes the provision in s. 721.552(2), F.S., which permits a managing entity to substitute all accommodations pursuant to a plan approved by a majority of purchasers and a majority of the board. The bill amends this provision to permit substitutions by purchasers

without limit if the proposed substitution is approved in advance by a majority of voting purchasers, provided at least 25 percent of the total number of purchasers cast votes.

The bill creates s. 721.552(2)(g), F.S., to provide that the trustee of a timeshare trust may convey title to any accommodation and facility that has been designated or approved for substitution when directed by the authorized person without any further vote or other authorization from the purchasers of the multisite timeshare plan.

Currently, s. 721.552(3), F.S., allows for the automatic deletion of component sites only if a sufficient number of purchasers of the plan will also be deleted to maintain a one-to-one right to use ratio. The bill amends this provision to also allow for automatic deletions if replacement accommodations that are substantially similar to or better than the deleted accommodations are provided.

Effective Date

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill eliminates duplicate payment of managing entity annual fees by managing entities that manage both single site and multisite timeshare plans. According to the department, the amount of savings to these managing entities for FY 2015-16 is estimated to be \$338,704.

C. Government Sector Impact:

The bill eliminates duplicate payment of managing entity annual fees by managing entities that manage both single site and multisite timeshare plans. The department

estimates that this will reduce revenue by \$338,704 for FY 2015-16, \$370,000 for FY 2016-17, and \$400,000) for FY 2017-18.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 721.05, 721.07, 721.08, 721.125, 721.14, 721.27, 721.52, 721.53, 721.54, 721.55, 721.551, 721.552, 721.56, 721.57, and 721.58.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

By Senator Stargel

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1 A bill to be entitled
 2 An act relating to timeshares; amending s. 721.05,
 3 F.S.; revising the term "timeshare estate"; amending
 4 s. 721.07, F.S.; revising provisions pertaining to
 5 multisite timeshare plans and clarifying single-site
 6 timeshare plan developer liability for nonmaterial
 7 errors or omissions; amending s. 721.08, F.S.;
 8 providing that leasehold accommodations or facilities
 9 may be added to a timeshare trust; providing that a
 10 vote of the voting interests of a timeshare plan is
 11 not required for substitution or automatic deletion of
 12 multisite timeshare trust property; removing the
 13 requirement for court approval of trustee dispositions
 14 of timeshare trust property; creating s. 721.125,
 15 F.S.; providing for extension or termination of
 16 timeshare plans; amending s. 721.14, F.S.; providing
 17 for the transfer of reservation system data upon
 18 termination of managing entity; amending s. 721.27,
 19 F.S.; clarifying the annual fees due from managing
 20 entities of all timeshare plans; amending s. 721.52,
 21 F.S.; revising the definitions of the terms
 22 "nonspecific multisite timeshare plan" and "specific
 23 multisite timeshare plan"; amending s. 721.53, F.S.;
 24 providing that leasehold accommodations or facilities
 25 may be added to a multisite timeshare trust; providing
 26 that a vote of the voting interests of a multisite
 27 timeshare plan is not required for substitution or
 28 automatic deletion of multisite timeshare trust
 29 property; removing the requirement for court approval

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30 of trustee dispositions of multisite timeshare trust
 31 property; amending s. 721.54, F.S.; eliminating the
 32 term restrictions for nonspecific multisite timeshare
 33 plans; amending s. 721.55, F.S.; requiring the
 34 conspicuous disclosure of the term of each component
 35 site in a multisite timeshare plan; modifying the cap
 36 on common expense assessment increases for multisite
 37 timeshare; clarifying multisite timeshare plan
 38 developer liability for nonmaterial errors or
 39 omissions; amending s. 721.551, F.S.; clarifying the
 40 obligation to deliver component site documents to
 41 purchasers; amending s. 721.552, F.S.; providing
 42 procedures for substitutions and automatic deletions
 43 of multisite timeshare plan accommodations and
 44 facilities; amending s. 721.56, F.S.; relocating data
 45 transfer obligations upon termination of managing
 46 entity to s. 721.14, F.S.; amending s. 721.57, F.S.;
 47 providing for the offering of timeshare estates in a
 48 specific multistate timeshare plan; amending s.
 49 721.58, F.S.; transferring the requirement to pay
 50 annual fees by managing entities of multisite
 51 timeshare plans to s. 721.27; providing an effective
 52 date.

53
 54 Be It Enacted by the Legislature of the State of Florida:

55
 56 Section 1. Subsection (34) of section 721.05, Florida
 57 Statutes, is amended to read:

58 721.05 Definitions.—As used in this chapter, the term:

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59 (34) "Timeshare estate" means a right to occupy a timeshare
 60 unit, coupled with a freehold estate or an estate for years with
 61 a future interest in a timeshare property or a specified portion
 62 thereof, ~~or coupled with. The term includes an~~ ownership
 63 interest in a condominium unit pursuant to s. 718.103, an
 64 ownership interest in a cooperative unit pursuant to s. 719.103,
 65 or a direct or indirect beneficial interest in a trust that
 66 complies in all respects with ~~the provisions of s.~~
 67 721.08(2)(c)4. or s. 721.53(1)(e), provided that the trust does
 68 not contain any personal property timeshare interests. A
 69 timeshare estate is a parcel of real property under the laws of
 70 this state.

71 Section 2. Paragraph (a) of subsection (3) and paragraph
 72 (gg) of subsection (5) of section 721.07, Florida Statutes, are
 73 amended to read:

74 721.07 Public offering statement.—Prior to offering any
 75 timeshare plan, the developer must submit a filed public
 76 offering statement to the division for approval as prescribed by
 77 s. 721.03, s. 721.55, or this section. Until the division
 78 approves such filing, any contract regarding the sale of that
 79 timeshare plan is subject to cancellation by the purchaser
 80 pursuant to s. 721.10.

81 (3)(a)1. Any change to an approved public offering
 82 statement filing must ~~shall~~ be filed with the division for
 83 approval as an amendment prior to becoming effective. The
 84 division shall have 20 days after receipt of a proposed
 85 amendment to approve or cite deficiencies in the proposed
 86 amendment. If the division fails to act within 20 days, the
 87 amendment will be deemed approved. If the proposed amendment

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88 adds a new component site to an approved multisite timeshare
 89 plan, the division's initial period in which to approve or cite
 90 deficiencies is 45 days. If the developer fails to adequately
 91 respond to any deficiency notice within 30 days, the division
 92 may reject the amendment. Subsequent to such rejection, a new
 93 filing fee pursuant to subsection (4) and a new division initial
 94 review period pursuant to this paragraph ~~shall~~ apply to any
 95 refiling or further review of the rejected amendment.

96 2. For filings only subject to this part, each approved
 97 amendment to the approved purchaser public offering statement,
 98 other than an amendment made only for the purpose of the
 99 addition of a phase or phases to the timeshare plan in the
 100 manner described in the timeshare instrument or any amendment
 101 that does not materially alter or modify the offering in a
 102 manner that is adverse to a purchaser, shall be delivered to a
 103 purchaser no later than 10 days prior to closing. For filings
 104 made under part II, each approved amendment to the multisite
 105 timeshare plan purchaser public offering statement, other than
 106 an amendment made only for the purpose of the addition,
 107 substitution, or deletion of a component site pursuant to part
 108 II or the addition of a phase or phases to a component site of a
 109 multisite timeshare plan in the manner described in the
 110 timeshare instrument or any amendment that does not materially
 111 alter or modify the offering in a manner that is adverse to a
 112 purchaser, shall be delivered to a purchaser no later than 10
 113 days prior to closing.

114 3. For filing only subject to part II, amendments made to a
 115 timeshare instrument for a component site located in this state
 116 are only ~~not~~ required to be delivered to purchasers who ~~do not~~

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117 receive ~~a timeshare estate or~~ an interest in a specific
 118 multisite timeshare plan in that component site. Amendments made
 119 to a timeshare instrument for a component site not located in
 120 this state are not required to be delivered to purchasers.

121 (5) Every filed public offering statement for a timeshare
 122 plan which is not a multisite timeshare plan shall contain the
 123 information required by this subsection. The division is
 124 authorized to provide by rule the method by which a developer
 125 must provide such information to the division.

126 (gg) 1. Such other information as is necessary to fairly,
 127 meaningfully, and effectively disclose all aspects of the
 128 timeshare plan, including, but not limited to, any disclosures
 129 made necessary by the operation of s. 721.03(8). ~~However,~~

130 2. If a developer has, in good faith, attempted to comply
 131 with the requirements of this ~~chapter section,~~ and if the
 132 developer, ~~in fact, he or she~~ has substantially complied with
 133 the ~~disclosure~~ requirements of this chapter, nonmaterial errors
 134 or omissions ~~are shall not be~~ actionable, are not violations of
 135 this chapter, and do not give rise to any purchaser cancellation
 136 right.

137 Section 3. Paragraph (c) of subsection (2) of section
 138 721.08, Florida Statutes, is amended to read:

139 721.08 Escrow accounts; nondisturbance instruments;
 140 alternate security arrangements; transfer of legal title.—

141 (2) One hundred percent of all funds or other property
 142 which is received from or on behalf of purchasers of the
 143 timeshare plan or timeshare interest prior to the occurrence of
 144 events required in this subsection shall be deposited pursuant
 145 to an escrow agreement approved by the division. The funds or

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146 other property may be released from escrow only as follows:

147 (c) *Compliance with conditions.*—

148 1. Timeshare licenses.—If the timeshare plan is one in
 149 which timeshare licenses are to be sold and no cancellation or
 150 default has occurred, the escrow agent may release the escrowed
 151 funds or other property to or on the order of the developer upon
 152 presentation of:

153 a. An affidavit by the developer that all of the following
 154 conditions have been met:

155 (I) Expiration of the cancellation period.

156 (II) Completion of construction.

157 (III) Closing.

158 (IV) Either:

159 (A) Execution, delivery, and recordation by each
 160 interestholder of the nondisturbance and notice to creditors
 161 instrument, as described in this section; or

162 (B) Transfer by the developer of legal title to the subject
 163 accommodations and facilities, or all use rights therein, into a
 164 trust satisfying the requirements of subparagraph 4. and the
 165 execution, delivery, and recordation by each other
 166 interestholder of the nondisturbance and notice to creditors
 167 instrument, as described in this section.

168 b. A certified copy of each recorded nondisturbance and
 169 notice to creditors instrument.

170 c. One of the following:

171 (I) A copy of a memorandum of agreement, as defined in s.
 172 721.05, together with satisfactory evidence that the original
 173 memorandum of agreement has been irretrievably delivered for
 174 recording to the appropriate official responsible for

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175 maintaining the public records in the county in which the
 176 subject accommodations and facilities are located. The original
 177 memorandum of agreement must be recorded within 180 days after
 178 the date on which the purchaser executed her or his purchase
 179 agreement.

180 (II) A notice delivered for recording to the appropriate
 181 official responsible for maintaining the public records in each
 182 county in which the subject accommodations and facilities are
 183 located notifying all persons of the identity of an independent
 184 escrow agent or trustee satisfying the requirements of
 185 subparagraph 4. that shall maintain separate books and records,
 186 in accordance with good accounting practices, for the timeshare
 187 plan in which timeshare licenses are to be sold. The books and
 188 records shall indicate each accommodation and facility that is
 189 subject to such a timeshare plan and each purchaser of a
 190 timeshare license in the timeshare plan.

191 2. Timeshare estates.—If the timeshare plan is one in which
 192 timeshare estates are to be sold and no cancellation or default
 193 has occurred, the escrow agent may release the escrowed funds or
 194 other property to or on the order of the developer upon
 195 presentation of:

196 a. An affidavit by the developer that all of the following
 197 conditions have been met:

198 (I) Expiration of the cancellation period.

199 (II) Completion of construction.

200 (III) Closing.

201 b. If the timeshare estate is sold by agreement for deed, a
 202 certified copy of the recorded nondisturbance and notice to
 203 creditors instrument, as described in this section.

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204 c. Evidence that each accommodation and facility:

205 (I) Is free and clear of the claims of any interestholders,
 206 other than the claims of interestholders that, through a
 207 recorded instrument, are irrevocably made subject to the
 208 timeshare instrument and the use rights of purchasers made
 209 available through the timeshare instrument;

210 (II) Is the subject of a recorded nondisturbance and notice
 211 to creditors instrument that complies with subsection (3) and s.
 212 721.17; or

213 (III) Has been transferred into a trust satisfying the
 214 requirements of subparagraph 4.

215 d. Evidence that the timeshare estate:

216 (I) Is free and clear of the claims of any interestholders,
 217 other than the claims of interestholders that, through a
 218 recorded instrument, are irrevocably made subject to the
 219 timeshare instrument and the use rights of purchasers made
 220 available through the timeshare instrument; or

221 (II) Is the subject of a recorded nondisturbance and notice
 222 to creditors instrument that complies with subsection (3) and s.
 223 721.17.

224 3. Personal property timeshare interests.—If the timeshare
 225 plan is one in which personal property timeshare interests are
 226 to be sold and no cancellation or default has occurred, the
 227 escrow agent may release the escrowed funds or other property to
 228 or on the order of the developer upon presentation of:

229 a. An affidavit by the developer that all of the following
 230 conditions have been met:

231 (I) Expiration of the cancellation period.

232 (II) Completion of construction.

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233 (III) Closing.

234 b. If the personal property timeshare interest is sold by
235 agreement for transfer, evidence that the agreement for transfer
236 complies fully with s. 721.06 and this section.

237 c. Evidence that one of the following has occurred:

238 (I) Transfer by the owner of the underlying personal
239 property of legal title to the subject accommodations and
240 facilities or all use rights therein into a trust satisfying the
241 requirements of subparagraph 4.; or

242 (II) Transfer by the owner of the underlying personal
243 property of legal title to the subject accommodations and
244 facilities or all use rights therein into an owners' association
245 satisfying the requirements of subparagraph 5.

246 d. Evidence of compliance with ~~the provisions of~~
247 subparagraph 6., if required.

248 e. If a personal property timeshare plan is created with
249 respect to accommodations and facilities that are located on or
250 in an oceangoing vessel, including a "documented vessel" or a
251 "foreign vessel," as defined and governed by 46 U.S.C., chapter
252 301:

253 (I) In making the transfer required in sub-subparagraph c.,
254 the developer shall use as its transfer instrument a document
255 that establishes and protects the continuance of the use rights
256 in the subject accommodations and facilities in a manner that is
257 enforceable by the trust or owners' association.

258 (II) The transfer instrument must ~~shall~~ comply fully with
259 ~~the provisions of~~ this chapter, must ~~shall~~ be part of the
260 timeshare instrument, and must ~~shall~~ contain specific provisions
261 that:

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262 (A) Prohibit the vessel owner, the developer, any manager
263 or operator of the vessel, the owners' association or the
264 trustee, the managing entity, or any other person from incurring
265 any liens against the vessel except for liens that are required
266 for the operation and upkeep of the vessel, including liens for
267 fuel expenditures, repairs, crews' wages, and salvage, and
268 except as provided in sub-sub-subparagraphs 4.b.(III) and
269 5.b.(III). All expenses, fees, and taxes properly incurred in
270 connection with the creation, satisfaction, and discharge of any
271 such permitted lien, or a prorated portion thereof if less than
272 all of the accommodations on the vessel are subject to the
273 timeshare plan, shall be common expenses of the timeshare plan.

274 (B) Grant a lien against the vessel in favor of the owners'
275 association or trustee to secure the full and faithful
276 performance of the vessel owner and developer of all of their
277 obligations to the purchasers.

278 (C) Establish governing law in a jurisdiction that
279 recognizes and will enforce the timeshare instrument and the
280 laws of the jurisdiction of registry of the vessel.

281 (D) Require that a description of the use rights of
282 purchasers be posted and displayed on the vessel in a manner
283 that will give notice of such rights to any party examining the
284 vessel. This notice must identify the owners' association or
285 trustee and include a statement disclosing the limitation on
286 incurring liens against the vessel described in sub-sub-sub-
287 subparagraph (A).

288 (E) Include the nondisturbance and notice to creditors
289 instrument for the vessel owner and any other interestholders.

290 (F) The owners' association created under subparagraph 5.

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291 or trustee created under subparagraph 4. shall have access to
 292 any certificates of classification in accordance with the
 293 timeshare instrument.

294 (III) If the vessel is a foreign vessel, the vessel must be
 295 registered in a jurisdiction that permits a filing evidencing
 296 the use rights of purchasers in the subject accommodations and
 297 facilities, offers protection for such use rights against
 298 unfiled and inferior claims, and recognizes the document or
 299 instrument creating such use rights as a lien against the
 300 vessel.

301 (IV) In addition to the disclosures required by s.
 302 721.07(5), the public offering statement and purchase contract
 303 must contain a disclosure in conspicuous type in substantially
 304 the following form:

305
 306 *The laws of the State of Florida govern the offering of this*
 307 *timeshare plan in this state. There are inherent risks in*
 308 *purchasing a timeshare interest in this timeshare plan because*
 309 *the accommodations and facilities of the timeshare plan are*
 310 *located on a vessel that will sail into international waters and*
 311 *into waters governed by many different jurisdictions. Therefore,*
 312 *the laws of the State of Florida cannot fully protect your*
 313 *purchase of an interest in this timeshare plan. Specifically,*
 314 *management and operational issues may need to be addressed in*
 315 *the jurisdiction in which the vessel is registered, which is*
 316 *(insert jurisdiction in which vessel is registered) . Concerns*
 317 *of purchasers may be sent to (insert name of applicable*
 318 *regulatory agency and address) .*
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320 4. Trust.-

321 a. If the subject accommodations or facilities, or all use
 322 rights therein, are to be transferred into a trust in order to
 323 comply with this paragraph, ~~the such transfer must shall~~ take
 324 place pursuant to this subparagraph. If the accommodations or
 325 facilities included in such transfer are subject to a lease, the
 326 unexpired term of the lease must be disclosed as the term of the
 327 timeshare plan pursuant to s. 721.07(5)(f)4.

328 b. Before ~~Prior to~~ the transfer ~~by each interestholder~~ of
 329 the subject accommodations and facilities, or all use rights
 330 therein, to a trust, any lien or other encumbrance against such
 331 accommodations and facilities, or use rights therein, ~~must shall~~
 332 be made subject to a nondisturbance and notice to creditors
 333 instrument pursuant to subsection (3). ~~A No~~ transfer pursuant to
 334 this subparagraph ~~does not shall~~ become effective until the
 335 trustee accepts ~~the such~~ transfer and the responsibilities set
 336 forth herein. A trust established pursuant to this subparagraph
 337 ~~must shall~~ comply with the following provisions:

338 (I) The trustee ~~must shall~~ be an individual or a business
 339 entity authorized and qualified to conduct trust business in
 340 this state. Any corporation authorized to do business in this
 341 state may act as trustee in connection with a timeshare plan
 342 pursuant to this chapter. The trustee must be independent from
 343 any developer or managing entity of the timeshare plan or any
 344 interestholder of any accommodation or facility of such plan.

345 (II) The trust ~~must shall~~ be irrevocable so long as any
 346 purchaser has a right to occupy any portion of the timeshare
 347 property pursuant to the timeshare plan.

348 (III) The trustee ~~may shall~~ not convey, hypothecate,

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349 mortgage, assign, lease, or otherwise transfer or encumber in
 350 any fashion any interest in or portion of the timeshare property
 351 with respect to which any purchaser has a right of use or
 352 occupancy unless the timeshare plan is terminated pursuant to
 353 the timeshare instrument, or such conveyance, hypothecation,
 354 mortgage, assignment, lease, transfer, or encumbrance is
 355 approved by a vote of two-thirds of all voting interests of the
 356 timeshare plan. Subject to s. 721.552, a vote of the voting
 357 interests of the timeshare plan is not required for substitution
 358 or for automatic deletion of accommodations or facilities and
 359 such decision is declared by a court of competent jurisdiction
 360 to be in the best interests of the purchasers of the timeshare
 361 plan. The trustee shall notify the division in writing within 10
 362 days after receiving notice of the filing of any petition
 363 relating to obtaining such a court order. The division shall
 364 have standing to advise the court of the division's
 365 interpretation of the statute as it relates to the petition.
 366 (IV) All purchasers of the timeshare plan or the owners'
 367 association of the timeshare plan must shall be the express
 368 beneficiaries of the trust. The trustee must shall act as a
 369 fiduciary to the beneficiaries of the trust. The personal
 370 liability of the trustee must shall be governed by ss.
 371 736.08125, 736.08163, 736.1013, and 736.1015. The agreement
 372 establishing the trust must shall set forth the duties of the
 373 trustee. The trustee must shall be required to furnish promptly
 374 to the division upon request a copy of the complete list of the
 375 names and addresses of the owners in the timeshare plan and a
 376 copy of any other books and records of the timeshare plan
 377 required to be maintained pursuant to s. 721.13 that are in the

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378 possession, custody, or control of the trustee. All expenses
 379 reasonably incurred by the trustee in the performance of its
 380 duties, together with any reasonable compensation of the
 381 trustee, ~~must shall~~ be common expenses of the timeshare plan.
 382 (V) The trustee ~~may shall~~ not resign upon less than 90
 383 days' prior written notice to the managing entity and the
 384 division. A ~~Ne~~ resignation does not shall become effective until
 385 a substitute trustee, approved by the division, is appointed by
 386 the managing entity and accepts the appointment.
 387 (VI) The documents establishing the trust arrangement must
 388 shall constitute a part of the timeshare instrument.
 389 (VII) For trusts holding property in a timeshare plan
 390 located outside this state, the trust and trustee holding such
 391 property are shall be deemed in compliance with the requirements
 392 of this subparagraph if the ~~such~~ trust and trustee are
 393 authorized and qualified to conduct trust business under the
 394 laws of the ~~such~~ jurisdiction and the agreement or law governing
 395 the ~~such~~ trust arrangement provides substantially similar
 396 protections for the purchaser as are required in this
 397 subparagraph for trusts holding property in a timeshare plan in
 398 this state.
 399 (VIII) The trustee must shall have appointed a registered
 400 agent in this state for service of process. In the event such a
 401 registered agent is not appointed, service of process may be
 402 served pursuant to s. 721.265.
 403 5. Owners' association.—
 404 a. If the subject accommodations or facilities, or all use
 405 rights therein, are to be transferred into an owners'
 406 association in order to comply with this paragraph, such

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407 transfer ~~must shall~~ take place pursuant to this subparagraph.

408 b. Prior to the transfer ~~by each interestholder~~ of the
409 subject accommodations and facilities, or all use rights
410 therein, to an owners' association, any lien or other
411 encumbrance against such accommodations and facilities, or use
412 rights therein, ~~must shall~~ be made subject to a nondisturbance
413 and notice to creditors instrument pursuant to subsection (3). A
414 ~~Ne~~ transfer pursuant to this subparagraph ~~does not shall~~ become
415 effective until the owners' association accepts the such
416 transfer and the responsibilities set forth herein. An owners'
417 association established pursuant to this subparagraph ~~must shall~~
418 comply with the following provisions:

419 (I) The owners' association ~~must shall~~ be a business entity
420 authorized and qualified to conduct business in this state.
421 Control of the board of directors of the owners' association
422 must be independent from any developer or managing entity of the
423 timeshare plan or any interestholder.

424 (II) The bylaws of the owners' association ~~must shall~~
425 provide that the corporation may not be voluntarily dissolved
426 without the unanimous vote of all owners of personal property
427 timeshare interests so long as any purchaser has a right to
428 occupy any portion of the timeshare property pursuant to the
429 timeshare plan.

430 (III) The owners' association ~~may shall~~ not convey,
431 hypothecate, mortgage, assign, lease, or otherwise transfer or
432 encumber in any fashion any interest in or portion of the
433 timeshare property with respect to which any purchaser has a
434 right of use or occupancy, unless the timeshare plan is
435 terminated pursuant to the timeshare instrument, or unless such

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436 conveyance, hypothecation, mortgage, assignment, lease,
437 transfer, or encumbrance is approved by a vote of two-thirds of
438 all voting interests of the association and the such decision is
439 declared by a court of competent jurisdiction to be in the best
440 interests of the purchasers of the timeshare plan. The owners'
441 association ~~must shall~~ notify the division in writing within 10
442 days after receiving notice of the filing of any petition
443 relating to obtaining such a court order. The division has shall
444 ~~have~~ standing to advise the court of the division's
445 interpretation of the statute as it relates to the petition.

446 (IV) All purchasers of the timeshare plan ~~must shall~~ be
447 members of the owners' association and ~~must shall~~ be entitled to
448 vote on matters requiring a vote of the owners' association as
449 provided in this chapter or the timeshare instrument. The
450 owners' association ~~must shall~~ act as a fiduciary to the
451 purchasers of the timeshare plan. The articles of incorporation
452 establishing the owners' association ~~must shall~~ set forth the
453 duties of the owners' association. All expenses reasonably
454 incurred by the owners' association in the performance of its
455 duties, together with any reasonable compensation of the
456 officers or directors of the owners' association, ~~must shall~~ be
457 common expenses of the timeshare plan.

458 (V) The documents establishing the owners' association ~~must~~
459 ~~shall~~ constitute a part of the timeshare instrument.

460 (VI) For owners' associations holding property in a
461 timeshare plan located outside this state, the owners'
462 association holding the such property ~~is shall be~~ deemed in
463 compliance with the requirements of this subparagraph if such
464 owners' association is authorized and qualified to conduct

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465 owners' association business under the laws of such jurisdiction
466 and the agreement or law governing such arrangement provides
467 substantially similar protections for the purchaser as are
468 required in this subparagraph for owners' associations holding
469 property in a timeshare plan in this state.

470 (VII) The owners' association ~~must shall~~ have appointed a
471 registered agent in this state for service of process. In the
472 event such a registered agent cannot be located, service of
473 process may be made pursuant to s. 721.265.

474 6. Personal property subject to certificate of title.—If
475 any personal property that is an accommodation or facility of a
476 timeshare plan is subject to a certificate of title in this
477 state pursuant to chapter 319 or chapter 328, the following
478 notation must be made on such certificate of title pursuant to
479 s. 319.27(1) or s. 328.15(1):

480
481 *The further transfer or encumbrance of the property subject to*
482 *this certificate of title, or any lien or encumbrance thereon,*
483 *is subject to the requirements of section 721.17, Florida*
484 *Statutes, and the transferee or lienor agrees to be bound by all*
485 *of the obligations set forth therein.*

486
487 7. Certified document copies.—If the developer has
488 previously provided a certified copy of any document required by
489 this paragraph, she or he may for all subsequent disbursements
490 substitute a true and correct copy of the certified copy,
491 provided no changes to the document have been made or are
492 required to be made.

493 8. Rights transferred into trust or owners' association.—In

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494 the event that use rights relating to an accommodation or
495 facility are transferred into a trust pursuant to subparagraph
496 4. or into an owners' association pursuant to subparagraph 5.,
497 all other interestholders, including the owner of the underlying
498 fee or underlying personal property, must execute a
499 nondisturbance and notice to creditors instrument pursuant to
500 subsection (3).

501 Section 4. Section 721.125, Florida Statutes, is created to
502 read:

503 721.125 Extension or termination of timeshare plans.—

504 (1) Unless the timeshare instrument provides otherwise, the
505 vote or written consent, or both, of at least 60 percent of all
506 of the voting interests in the timeshare plan may extend or
507 terminate the term of a timeshare plan at any time. If the term
508 of a timeshare plan is extended pursuant to this section, all
509 rights, privileges, duties, and obligations created under
510 applicable law or the timeshare instrument continue in full
511 force to the same extent as if the extended termination date of
512 the timeshare plan were the original termination date of the
513 timeshare plan. If a timeshare plan terminates pursuant to this
514 section, the termination has immediate effect pursuant to
515 applicable law and the timeshare instrument as if the effective
516 date of the termination were the original date of termination.

517 (2) If a termination or extension vote or consent pursuant
518 to subsection (1) is proposed for a component site of a
519 multisite timeshare plan located in this state, the proposed
520 termination or extension is effective only if the person
521 authorized to make additions or substitutions of accommodations
522 and facilities pursuant to the timeshare instrument also

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523 approves the termination or extension.

524 (3) This section applies only to a timeshare plan that has
 525 been in existence for at least 25 years as of the effective date
 526 of the termination or extension vote or consent required by
 527 subsection (1).

528 Section 5. Subsection (4) of section 721.14, Florida
 529 Statutes, is amended to read:

530 721.14 Discharge of managing entity.-

531 (4)(a) An owners' association and a manager or management
 532 firm may, in the management contract or other written document,
 533 agree to the transition procedures and related time periods to
 534 be followed in the event the manager or management firm is
 535 discharged pursuant to this section. If there is no written
 536 agreement between the parties which covers the matters set forth
 537 in paragraphs (b) and (c), the provisions of paragraphs (b) and
 538 (c) shall apply.

539 (b) Within 90 days after the date on which the manager or
 540 management firm is notified by the owners' association of the
 541 successful termination vote pursuant to subsection (1), the
 542 terminated managing entity shall transfer to the owners'
 543 association or the new manager or management firm all relevant
 544 data held by the managing entity and related to any reservation
 545 system for the timeshare plan, including, but not limited to:

546 1. The names, addresses, and reservation status of all
 547 accommodations.

548 2. The names and addresses of all purchasers of timeshare
 549 interests.

550 3. All outstanding confirmed reservations and reservation
 551 requests.

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552 4. Such other records and information as are necessary to
 553 permit the uninterrupted operation and administration of the
 554 timeshare plan. However, the information required to be
 555 transferred does not include private information of the
 556 terminated managing entity which is not directly related to
 557 operation and management of the timeshare plan.

558 (c) All reasonable costs incurred by the terminated
 559 managing entity in carrying out the transfer of information
 560 required by this subsection shall be reimbursed to the
 561 terminated managing entity as a common expense of the timeshare
 562 plan within 10 days after the completed transfer of the data
 563 described in paragraph (b). This section shall not apply to
 564 personal property timeshare plans.

565 Section 6. Section 721.27, Florida Statutes, is amended to
 566 read:

567 721.27 Annual managing entity fee for each timeshare unit
 568 in plan.-For each timeshare unit ~~On January 1 of each year, each~~
 569 managing entity of a timeshare plan located in this state, the
 570 managing entity must ~~shall~~ collect as a common expense and pay
 571 to the division on January 1 of each year an annual fee of \$2
 572 for each 7 days of annual use availability that exist within the
 573 timeshare plan at that time. Only one fee is due and payable for
 574 any 7 days of annual use availability that is included within
 575 both a single-site timeshare plan under this part and a
 576 multisite timeshare plan under part II, ~~subject to any~~
 577 limitations on the amount of such annual fee pursuant to s.
 578 ~~721.58.~~ If any portion of the annual fee is not paid by March 1,
 579 the managing entity may be assessed a penalty pursuant to s.
 580 721.26.

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581 Section 7. Subsections (5) and (7) of section 721.52,
582 Florida Statutes, are amended to read:

583 721.52 Definitions.—As used in this chapter, the term:

584 (5) "Nonspecific multisite timeshare plan" means a
585 multisite timeshare plan ~~containing timeshare licenses or~~
586 ~~personal property timeshare interests~~, with respect to which a
587 purchaser receives a right to use all of the accommodations and
588 facilities, if any, of the multisite timeshare plan through the
589 reservation system, but no specific right to use any particular
590 accommodations and facilities for the remaining term of the
591 multisite timeshare plan in the event that the reservation
592 system is terminated for any reason prior to the expiration of
593 the term of the multisite timeshare plan.

594 (7) "Specific multisite timeshare plan" means a multisite
595 timeshare plan ~~containing timeshare licenses or personal~~
596 ~~property timeshare interests~~, with respect to which a purchaser
597 receives a specific right to use accommodations and facilities,
598 if any, at one component site of a multisite timeshare plan,
599 together with use rights in the other accommodations and
600 facilities of the multisite timeshare plan created by or
601 acquired through the reservation system.

602 Section 8. Paragraph (e) of subsection (1) of section
603 721.53, Florida Statutes, is amended to read:

604 721.53 Subordination instruments; alternate security
605 arrangements.—

606 (1) With respect to each accommodation or facility of a
607 multisite timeshare plan, the developer shall provide the
608 division with satisfactory evidence that one of the following
609 has occurred with respect to each interestholder prior to

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610 offering the accommodation or facility as a part of the
611 multisite timeshare plan:

612 (e) The interestholder has transferred the subject
613 accommodation or facility or all use rights therein to a trust
614 that complies with this paragraph. If the accommodation or
615 facility included in such transfer is subject to a lease, the
616 unexpired term of the lease must be disclosed as the term of
617 that component site pursuant to s. 721.55(4)(a). Prior to the
618 ~~such~~ transfer, any lien or other encumbrance against the such
619 accommodation or facility must shall be made subject to a
620 nondisturbance and notice to creditors instrument pursuant to
621 paragraph (a) or a subordination and notice to creditors
622 instrument pursuant to paragraph (b). A No transfer pursuant to
623 this paragraph does not shall become effective until the trust
624 accepts the such transfer and the responsibilities set forth
625 herein. A trust established pursuant to this paragraph must
626 ~~shall~~ comply with the following provisions:

627 1. The trustee must shall be an individual or a business
628 entity authorized and qualified to conduct trust business in
629 this state. Any corporation authorized to do business in this
630 state may act as trustee in connection with a timeshare plan
631 pursuant to this chapter. The trustee must be independent from
632 any developer or managing entity of the timeshare plan or any
633 interestholder of any accommodation or facility of such plan.
634 The same trustee may hold the accommodations and facilities, or
635 use rights therein, for one or more of the component sites of
636 the timeshare plan.

637 2. The trust must shall be irrevocable so long as any
638 purchaser has a right to occupy any portion of the timeshare

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639 property pursuant to the timeshare plan.

640 3. The trustee ~~may shall~~ not convey, hypothecate, mortgage,
641 assign, lease, or otherwise transfer or encumber in any fashion
642 any interests in or portion of the timeshare property with
643 respect to which any purchaser has a right of use or occupancy
644 unless the timeshare plan is terminated pursuant to the
645 timeshare instrument, or the timeshare property held in trust is
646 deleted from a multisite timeshare plan pursuant to s.
647 721.552(3), or such conveyance, hypothecation, mortgage,
648 assignment, lease, transfer, or encumbrance is approved by vote
649 of two-thirds of all voting interests of the timeshare plan.
650 Subject to s. 721.552, a vote of the voting interests of the
651 timeshare plan is not required for substitution or for automatic
652 deletion of accommodations or facilities and such decision is
653 declared by a court of competent jurisdiction to be in the best
654 interests of the purchasers of the timeshare plan.

655 4. All purchasers of the timeshare plan or the owners'
656 association of the timeshare plan must shall be express
657 beneficiaries of the trust. The trustee must shall act as a
658 fiduciary to the beneficiaries of the trust. The personal
659 liability of the trustee must shall be governed by ss.
660 736.08125, 736.08163, 736.1013, and 736.1015. The agreement
661 establishing the trust must shall set forth the duties of the
662 trustee. The trustee must shall be required to furnish promptly
663 to the division upon request a copy of the complete list of the
664 names and addresses of the owners in the timeshare plan and a
665 copy of any other books and records of the timeshare plan
666 required to be maintained pursuant to s. 721.13 which that are
667 in the possession of the trustee. All expenses reasonably

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668 incurred by the trustee in the performance of its duties,
669 together with any reasonable compensation of the trustee, must
670 ~~shall~~ be common expenses of the timeshare plan.

671 5. The trustee ~~may shall~~ not resign upon less than 90 days'
672 prior written notice to the managing entity and the division. A
673 ~~No~~ resignation is not shall become effective until a substitute
674 trustee, approved by the division, is appointed by the managing
675 entity and accepts the appointment.

676 6. The documents establishing the trust arrangement must
677 ~~shall~~ constitute a part of the timeshare instrument.

678 7. For trusts holding property in component sites located
679 outside this state, the trust holding such property is shall be
680 deemed in compliance with the requirements of this paragraph, if
681 the such trust is authorized and qualified to conduct trust
682 business under the laws of the such jurisdiction and the
683 agreement or law governing the such trust arrangement provides
684 substantially similar protections for the purchaser as are
685 required in this paragraph for trusts holding property in a
686 component site located in this state.

687 8. The trustee must appoint shall have appointed a
688 registered agent in this state for service of process. In the
689 event ~~such~~ a registered agent is not appointed, service of
690 process may be served pursuant to s. 721.265.

691 Section 9. Section 721.54, Florida Statutes, is amended to
692 read:

693 ~~721.54 Term of nonspecific multisite timeshare plans.—It~~
694 ~~shall be a violation of this part to represent to a purchaser of~~
695 ~~a nonspecific multisite timeshare plan as defined in s.~~
696 ~~721.52(5) that the term of the plan for that purchaser is longer~~

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697 ~~than the shortest term of availability of any of the~~
 698 ~~accommodations included within the plan at the time of purchase.~~

699 Section 10. Paragraphs (a) and (h) of subsection (4),
 700 subsection (5), and paragraph (1) of subsection (7) of section
 701 721.55, Florida Statutes, are amended to read:

702 721.55 Multisite timeshare plan public offering statement.—
 703 Each filed public offering statement for a multisite timeshare
 704 plan shall contain the information required by this section and
 705 shall comply with the provisions of s. 721.07, except as
 706 otherwise provided therein. The division is authorized to
 707 provide by rule the method by which a developer must provide
 708 such information to the division. Each multisite timeshare plan
 709 filed public offering statement shall contain the following
 710 information and disclosures:

711 (4) A text, which shall include, where applicable, the
 712 information and disclosures set forth in paragraphs (a)-(1).

713 (a) A description of the multisite timeshare plan,
 714 including its term, legal structure, ~~and~~ form of ownership, ~~and-~~
 715 ~~For multisite timeshare plans in which the purchaser will~~
 716 ~~receive a timeshare estate pursuant to s. 721.57 and for~~
 717 ~~specific multisite timeshare plans, the description must also~~
 718 ~~include~~ the term of each component site within the multisite
 719 timeshare plan. The term of each component site which is shorter
 720 than the term of the multisite timeshare plan must be disclosed
 721 in conspicuous type.

722 (h) A description of the purchaser's liability for common
 723 expenses of the multisite timeshare plan, including the
 724 following:

725 1. A description of the common expenses of the plan,

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726 including the method of allocation and assessment of such common
 727 expenses, whether component site common expenses and real estate
 728 taxes are included within the total common expense assessment of
 729 the multisite timeshare plan, and, if not, the manner in which
 730 timely payment of component site common expenses and real estate
 731 taxes will ~~shall~~ be accomplished.

732 2. A description of any cap imposed upon the level of
 733 common expenses payable by the purchaser.

734 ~~a. In no event shall~~ The total common expense assessment
 735 for the multisite timeshare plan in a given calendar year may
 736 not exceed 125 percent of the total common expense assessment
 737 for the plan in the previous calendar year.

738 b. Component site common expenses and ad valorem taxes may
 739 not be included in calculating the total common expense
 740 assessment under sub-subparagraph a.

741 3. A description of the entity responsible for the
 742 determination of the common expenses of the multisite timeshare
 743 plan, as well as any entity which may increase the level of
 744 common expenses assessed against the purchaser at the multisite
 745 timeshare plan level.

746 4. A description of the method used to collect common
 747 expenses, including the entity responsible for such collections,
 748 and the lien rights of any entity for nonpayment of common
 749 expenses. If the common expenses of any component site are
 750 collected by the managing entity of the multisite timeshare
 751 plan, a statement to that effect together with the identity and
 752 address of the escrow agent required by s. 721.56(3).

753 5. If the purchaser will receive an interest in a
 754 nonspecific multisite timeshare plan, a statement that a

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755 multisite timeshare plan budget is attached to the public
 756 offering statement as an exhibit pursuant to paragraph (7) (c).
 757 The multisite timeshare plan budget must ~~shall~~ comply with the
 758 ~~provisions of~~ s. 721.07(5) (t).

759 6. If the developer intends to guarantee the level of
 760 assessments for the multisite timeshare plan, ~~the such~~ guarantee
 761 must be based upon a good faith estimate of the revenues and
 762 expenses of the multisite timeshare plan. The guarantee must
 763 include a description of the following:

764 a. The specific time period, measured in one or more
 765 calendar or fiscal years, during which the guarantee will be in
 766 effect.

767 b. A statement that the developer will pay all common
 768 expenses incurred in excess of the total revenues of the
 769 multisite timeshare plan, if the developer is to be excused from
 770 the payment of assessments during the guarantee period.

771 c. The level, expressed in total dollars, at which the
 772 developer guarantees the assessments. If the developer has
 773 reserved the right to extend or increase the guarantee level, a
 774 disclosure must be included to that effect.

775 7. If required under applicable law, the developer must
 776 ~~shall~~ also disclose the following matters for each component
 777 site:

778 a. Any limitation upon annual increases in common expenses;

779 b. The existence of any bad debt or working capital
 780 reserve; and

781 c. The existence of any replacement or deferred maintenance
 782 reserve.

783 (5) (a) ~~Such~~ Other information as the division determines is

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784 necessary to fairly, meaningfully, and effectively disclose all
 785 aspects of the multisite timeshare plan, including, but not
 786 limited to, any disclosures made necessary by the operation of
 787 s. 721.03(8).

788 ~~(b) However,~~ If a developer has, in good faith, attempted
 789 to comply with the requirements of this chapter section, and if,
 790 ~~in fact,~~ the developer has substantially complied with the
 791 ~~disclosure~~ requirements of this chapter, nonmaterial errors or
 792 omissions are shall not be actionable, are not violations of
 793 this chapter, and do not give rise to any purchaser cancellation
 794 right.

795 (7) The following documents must shall be included as
 796 exhibits to the filed public offering statement, if applicable:

797 (1)1. If the multisite timeshare plan contains any
 798 component sites located in this state, the information required
 799 by s. 721.07(5) pertaining to each such component site unless
 800 exempt pursuant to s. 721.03.

801 2. If the purchaser receives ~~will receive a timeshare~~
 802 ~~estate pursuant to s. 721.57,~~ or an interest in a specific
 803 multisite timeshare plan, ~~in a~~ component site that is located
 804 outside ~~of~~ this state but that which is offered in this state,
 805 the information required by s. 721.07(5) pertaining to that
 806 component site, provided, however, that ~~the provisions of~~ s.
 807 721.07(5) (t) must shall only require disclosure of information
 808 related to the estimated budget for the timeshare plan and
 809 purchaser's expenses as required by the jurisdiction in which
 810 the component site is located.

811 Section 11. Paragraph (c) of subsection (2) of section
 812 721.551, Florida Statutes, is amended to read:

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813 721.551 Delivery of multisite timeshare plan purchaser
814 public offering statement.—

815 (2) The developer shall furnish each purchaser with the
816 following:

817 (c) If the purchaser receives ~~will receive a timeshare~~
818 ~~estate pursuant to s. 721.57, or~~ an interest in a specific
819 multisite timeshare plan, ~~in a~~ component site located in this
820 state, the developer must ~~shall~~ also furnish the purchaser with
821 the information required to be delivered pursuant to s.
822 721.07(6) (a) and (b) for that ~~the~~ component site ~~in which the~~
823 ~~purchaser will receive an estate or interest in a specific~~
824 ~~multisite timeshare plan.~~

825 Section 12. Subsection (2) and paragraph (c) of subsection
826 (3) of section 721.552, Florida Statutes, are amended to read:
827 721.552 Additions, substitutions, or deletions of component
828 site accommodations or facilities; purchaser remedies for
829 violations.—Additions, substitutions, or deletions of component
830 site accommodations or facilities may be made only in accordance
831 with the following:

832 (2) SUBSTITUTIONS.—

833 (a) Substitutions are available only for nonspecific
834 multisite timeshare plans. Specific multisite timeshare plans ~~or~~
835 ~~plans offering timeshare estates pursuant to s. 721.57~~ may not
836 contain an accommodation substitution right.

837 (b) The timeshare instrument must ~~shall~~ provide for the
838 following:

839 1. The basis upon which new accommodations and facilities
840 may be substituted for existing accommodations and facilities of
841 the multisite timeshare plan; by whom substitutions may be made;

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842 and the basis upon which the determination may be made to cause
843 the ~~such~~ substitutions to occur.

844 2. The replacement accommodations and facilities must
845 provide purchasers with an opportunity to enjoy a substantially
846 similar or improved vacation experience as compared to the
847 experience ~~as was~~ available at ~~with~~ the replaced accommodation
848 or facility. In determining whether the replacement
849 accommodations and facilities will provide a substantially
850 similar or improved vacation experience, all relevant factors
851 must be considered, including, but not limited to, some or all
852 of the following: size, capacity, furnishings, maintenance,
853 location (geographic, topographic, and scenic), demand, and
854 availability for purchaser use, and recreational capabilities.

855 3. The extent, if any, to which purchasers will have the
856 right to consent to any proposed substitutions.

857 (c) ~~No~~ Substitutions may not be made during the first year
858 after the developer begins to offer the multisite timeshare
859 plan.

860 (d) 1. If the timeshare instrument provides that the
861 developer, acting unilaterally, is the person authorized to make
862 substitutions, the developer may not substitute ~~No more than 25~~
863 ~~percent of the~~ available accommodations in the multisite
864 timeshare plan at a given component site may undergo
865 substitution in a given calendar year pursuant to paragraph (e)
866 if the number of such substituted accommodations provides more
867 than 10 percent of the total annual use availability in the
868 multisite timeshare plan calculated in 7-day increments in which
869 substitution is permitted. This paragraph shall be interpreted
870 to permit the substitution of an entire component site over a 4-

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871 ~~year period.~~

872 2. If the timeshare instrument provides that the managing
 873 entity is the person authorized to make substitutions and if the
 874 managing entity is under common ownership or control with the
 875 developer, the managing entity may not substitute available
 876 accommodations in the multisite timeshare plan in a given
 877 calendar year pursuant to paragraph (e) if the number of the
 878 substituted accommodations provides more than 10 percent of the
 879 total annual use availability in the multisite timeshare plan
 880 calculated in 7-day increments.

881 3. If the timeshare instrument provides that the managing
 882 entity is the person authorized to make substitutions and if the
 883 managing entity is not under common ownership or control with
 884 the developer, the managing entity may not substitute available
 885 accommodations in the multisite timeshare plan in a given
 886 calendar year pursuant to paragraph (e) if the number of the
 887 substituted accommodations provides more than 25 percent of the
 888 total annual use availability in the multisite timeshare plan
 889 calculated in 7-day increments.

890 4. If the person authorized to make substitutions receives,
 891 within 21 days after the date of the notice of substitution
 892 required by paragraph (e), a written objection to the proposed
 893 substitution from at least 10 percent of all purchasers in the
 894 multisite timeshare plan, the managing entity must conduct a
 895 meeting of the purchasers within 30 days after the end of the
 896 21-day period. The proposed substitution is deemed ratified
 897 unless a majority of purchasers voting in person or by proxy at
 898 the meeting reject the proposed substitution, provided that at
 899 least 25 percent of all purchasers cast votes. This subparagraph

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900 does not apply if the timeshare instrument provides that
 901 purchasers will have no right to consent to any proposed
 902 substitution.

903 5. This paragraph does not apply if the proposed
 904 substitution has been approved in advance pursuant to paragraph
 905 (f).

906 (e) The person authorized to make substitutions ~~must shall~~
 907 notify all purchasers of the multisite timeshare plan in writing
 908 of her or his intention to delete accommodations or facilities
 909 ~~at a given component site~~ and to substitute them with other
 910 specified accommodations or facilities pursuant to this
 911 subsection. This notice must be given at least 6 months in
 912 advance of the date that the proposed substitution will occur;
 913 must state the last day after the end of the 6-month period on
 914 which reservations will be accepted from purchasers for use of
 915 the accommodations to be deleted; and must state that purchasers
 916 shall have 21 days after the date of the notice of substitution
 917 to file a written objection with the person authorized to make
 918 substitutions., and the notice must inform the purchasers that
 919 ~~they may reserve the use of the accommodations to be deleted~~
 920 ~~during this 6-month period. At the end of the 6-month period,~~
 921 The person authorized to make substitutions may delete
 922 accommodations for substitution only after there are no longer
 923 any pending purchaser reservations for those accommodations only
 924 ~~to the extent that they were not reserved during the 6-month~~
 925 ~~period.~~

926 (f) The person authorized to make substitutions may make
 927 unlimited substitutions ~~If the managing entity of a multisite~~
 928 ~~timeshare plan includes an owners' association composed of all~~

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929 ~~purchasers or a corporation which owns or controls the~~
 930 ~~accommodations and facilities of the plan, the board of~~
 931 ~~administration of either of which is comprised of a majority of~~
 932 ~~board members elected by purchasers other than the developer,~~
 933 ~~and if such managing entity has the right to make substitutions~~
 934 ~~pursuant to the timeshare instrument, all of the available~~
 935 ~~accommodations at a given component site may undergo~~
 936 ~~substitution in a given year without compliance with paragraphs~~
 937 ~~(d) and (e) if a proposed written plan of substitution is~~
 938 ~~provided to each purchaser has been approved in advance by a~~
 939 ~~majority of the purchasers of the multisite timeshare plan~~
 940 ~~voting in person or by proxy at a meeting called for that~~
 941 ~~purpose, provided that at least 25 percent of the total number~~
 942 ~~of purchasers cast votes the board of administration and by a~~
 943 ~~majority of all purchasers in the plan. The plan of substitution~~
 944 ~~must:~~

- 945 1. ~~Specifically identify the component site being replaced~~
 946 ~~and the proposed substitute component site.~~
- 947 2. ~~Contain information regarding prior demand for purchaser~~
 948 ~~use of the component site being replaced.~~
- 949 3. ~~Provide the results of a survey of purchaser attitudes~~
 950 ~~regarding the component site being replaced and the proposed~~
 951 ~~substitute component site.~~
- 952 4. ~~Explain the practical and business reasons for effecting~~
 953 ~~a total substitution within the given calendar year.~~
- 954 5. ~~Provide a plan for handling reservation requests during~~
 955 ~~the substitution period for both the component site being~~
 956 ~~replaced and the proposed substitute component site.~~

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958 Substitutions made pursuant to this paragraph are shall not be
 959 subject to the provisions of subparagraph (b)2.

960 (g) If the person authorized to make substitutions has
 961 complied with this subsection and the timeshare instrument, the
 962 trustee of a timeshare trust qualified under s. 721.53(1)(e) may
 963 convey title to any accommodation and facility that has been
 964 designated or approved for substitution when directed by the
 965 person authorized to make substitutions without any further vote
 966 or other authorization of the purchasers of the multisite
 967 timeshare plan.

968 (h) The person who is authorized by the timeshare
 969 instrument to make substitutions to the multisite timeshare plan
 970 pursuant to this subsection must shall act as a fiduciary ~~in~~
 971 ~~such capacity~~ in the best interests of the purchasers of the
 972 plan as a whole and must shall adhere to the demand balancing
 973 standard set forth in s. 721.56(6) in connection with the such
 974 substitutions. Substitutions that are otherwise permitted may be
 975 made only so long as a one-to-one use right to use night
 976 requirement ratio is maintained at all times.

977 (3) DELETIONS.—

978 (c) *Automatic deletion.*—The timeshare instrument may
 979 provide that a component site will be automatically deleted upon
 980 the expiration of its term ~~in a timeshare plan other than a~~
 981 ~~nonspecific multisite timeshare plan~~ or as otherwise provided in
 982 the timeshare instrument. However, the timeshare instrument must
 983 also provide that in the event a component site is deleted from
 984 the plan in this manner, either a sufficient number of
 985 purchasers of the plan will also be deleted, or a sufficient
 986 number of replacement accommodations and facilities that comply

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987 with subparagraph (2)(b)2. will be substituted for the deleted
 988 accommodations and facilities, so as to maintain no greater than
 989 a one-to-one use right to use night requirement ratio.

990 Section 13. Subsection (5) of section 721.56, Florida
 991 Statutes, is amended to read:

992 721.56 Management of multisite timeshare plans; reservation
 993 systems; demand balancing.—

994 ~~(5)(a)1. The reservation system is a facility of any~~
 995 ~~nonspecific multisite timeshare plan. The reservation system is~~
 996 ~~not a facility of any specific multisite timeshare plan, nor is~~
 997 ~~it a facility of any multisite timeshare plan in which timeshare~~
 998 ~~estates are offered pursuant to s. 721.57.~~

999 2. The reservation system of any multisite timeshare plan
 1000 shall include any computer software and hardware employed for
 1001 the purpose of enabling or facilitating the operation of the
 1002 reservation system. Nothing contained in this part precludes
 1003 shall preclude a manager or management firm that is serving as
 1004 managing entity of a multisite timeshare plan from providing in
 1005 its contract with the purchasers or owners' association of the
 1006 multisite timeshare plan or in the timeshare instrument that the
 1007 manager or management firm owns the reservation system and that
 1008 the managing entity will ~~shall~~ continue to own the reservation
 1009 system in the event the purchasers discharge the managing entity
 1010 pursuant to s. 721.14.

1011 ~~(b) In the event of a termination of a managing entity of a~~
 1012 ~~nonspecific multisite timeshare plan, which managing entity owns~~
 1013 ~~the reservation system, irrespective of whether the termination~~
 1014 ~~is voluntary or involuntary and irrespective of the cause of~~
 1015 ~~such termination, in addition to any other remedies available to~~

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1016 ~~purchasers in this part, the terminated managing entity shall,~~
 1017 ~~prior to such termination, establish a trust meeting the~~
 1018 ~~criteria set forth in this paragraph. It is the intent of the~~
 1019 ~~Legislature that this trust arrangement provide for an adequate~~
 1020 ~~period of continued operation of the reservation system of the~~
 1021 ~~multisite timeshare plan, during which period the new managing~~
 1022 ~~entity shall make provision for the acquisition of a substitute~~
 1023 ~~reservation system.~~

1024 ~~1. The trust shall be established with an independent~~
 1025 ~~trustee. Both the terminated managing entity and the new~~
 1026 ~~managing entity shall attempt to agree on an acceptable trustee.~~
 1027 ~~In the event they cannot agree on an acceptable trustee, they~~
 1028 ~~shall each designate a nominee, and the two nominees shall~~
 1029 ~~select the trustee.~~

1030 ~~2. The terminated managing entity shall take all steps~~
 1031 ~~necessary to enable the trustee or the trustee's designee to~~
 1032 ~~operate the reservation system in the same manner as provided in~~
 1033 ~~the timeshare instrument and the public offering statement. The~~
 1034 ~~trustee may, but shall not be required to, contract with the~~
 1035 ~~terminated managing entity for the continued operation of the~~
 1036 ~~reservation system. In the event the trustee elects to contract~~
 1037 ~~with the terminated managing entity, that managing entity shall~~
 1038 ~~be required to operate the reservation system and shall be~~
 1039 ~~entitled to payment for that service. The payment shall in no~~
 1040 ~~event exceed the amount previously paid to the terminated~~
 1041 ~~managing entity for operation of the reservation system.~~

1042 ~~3. The trust shall remain in effect for a period of no~~
 1043 ~~longer than 1 year following the date of termination of the~~
 1044 ~~managing entity.~~

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1045 4. ~~Nothing contained in this subsection shall abrogate or~~
 1046 ~~otherwise interfere with any proprietary rights in the~~
 1047 ~~reservation system that have been reserved by the discharged~~
 1048 ~~managing entity, in its management contract or otherwise, so~~
 1049 ~~long as such proprietary rights are not asserted in a manner~~
 1050 ~~that would prevent the continued operation of the reservation~~
 1051 ~~system as contemplated in this subsection.~~

1052 ~~(c) In the event of a termination of a managing entity of a~~
 1053 ~~timeshare estate or specific multisite timeshare plan, which~~
 1054 ~~managing entity owns the reservation system, irrespective of~~
 1055 ~~whether the termination is voluntary or involuntary and~~
 1056 ~~irrespective of the cause of such termination, in addition to~~
 1057 ~~any other remedies available to purchasers in this part, the~~
 1058 ~~terminated managing entity shall, prior to such termination,~~
 1059 ~~promptly transfer to each component site managing entity all~~
 1060 ~~relevant data contained in the reservation system with respect~~
 1061 ~~to that component site, including, but not limited to:~~

1062 1. ~~The names, addresses, and reservation status of~~
 1063 ~~component site accommodations.~~

1064 2. ~~The names and addresses of all purchasers of timeshare~~
 1065 ~~interests at that component site.~~

1066 3. ~~All outstanding confirmed reservations and reservation~~
 1067 ~~requests for that component site.~~

1068 4. ~~Such other component site records and information as are~~
 1069 ~~necessary, in the reasonable discretion of the component site~~
 1070 ~~managing entity, to permit the uninterrupted operation and~~
 1071 ~~administration of the component site, provided that a given~~
 1072 ~~component site managing entity shall not be entitled to any~~
 1073 ~~information regarding other component sites or regarding the~~

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1074 ~~terminated multisite timeshare plan managing entity.~~

1075
 1076 ~~All reasonable costs incurred by the terminated managing entity~~
 1077 ~~in effecting the transfer of information required by this~~
 1078 ~~paragraph shall be reimbursed to the terminated managing entity~~
 1079 ~~on a pro rata basis by each component site, and the amount of~~
 1080 ~~such reimbursement shall constitute a common expense of each~~
 1081 ~~component site.~~

1082 Section 14. Section 721.57, Florida Statutes, is amended to
 1083 read:

1084 721.57 Offering of timeshare estates in specific multisite
 1085 timeshare plans; required provisions in the timeshare
 1086 instrument.—

1087 (1) In addition to meeting all the requirements of part I,
 1088 timeshare estates offered in a specific multisite timeshare plan
 1089 must meet the requirements of subsection (2). Any offering of
 1090 timeshare estates in a specific multisite timeshare plan that
 1091 does not comply with these requirements shall be deemed to be an
 1092 offering of a timeshare license.

1093 (2) The timeshare instrument of a specific multisite
 1094 timeshare plan in which timeshare estates are offered, ~~other~~
 1095 ~~than a trust meeting the requirements of s. 721.08,~~ must contain
 1096 or provide for all of the following matters:

1097 (a) The purchaser will receive a timeshare estate as
 1098 defined in s. 721.05 in one of the component sites of the
 1099 specific multisite timeshare plan. The use rights in the other
 1100 component sites of the multisite timeshare plan must ~~shall~~ be
 1101 made available to the purchaser through the reservation system
 1102 pursuant to the timeshare instrument.

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1103 (b) In the event that the reservation system is terminated
 1104 or otherwise becomes unavailable for any reason prior to the
 1105 expiration of the term of the specific multisite timeshare plan:

1106 1. The purchaser will be able to continue to use the
 1107 accommodations and facilities of the component site in which she
 1108 or he has been conveyed a timeshare estate in the manner
 1109 described in the timeshare instrument for that component site
 1110 for the remaining term of the timeshare estate; and

1111 2. Any use rights in that component site which had
 1112 previously been made available through the reservation system to
 1113 purchasers of the specific multisite timeshare plan who were not
 1114 offered a timeshare estate at that component site will terminate
 1115 when the reservation system is terminated or otherwise becomes
 1116 unavailable for any reason.

1117 Section 15. Section 721.58, Florida Statutes, is amended to
 1118 read:

1119 721.58 Filing fee; ~~annual fee.~~

1120 ~~(1)~~ The developer of the multisite timeshare plan must
 1121 ~~shall~~ pay the filing fee required by s. 721.07(4)(a); however,
 1122 the maximum amount of such filing fee is ~~shall be~~ \$25,000 or the
 1123 total filing fee due with respect to the timeshare units in the
 1124 multisite timeshare plan that are located in this state pursuant
 1125 to s. 721.07(4)(a), whichever is greater.

1126 ~~(2) The managing entity of the multisite timeshare plan~~
 1127 ~~shall pay the annual fee required by s. 721.27; provided,~~
 1128 ~~however, that the maximum amount of such annual fee shall be~~
 1129 ~~\$25,000 or the total annual fee due with respect to the~~
 1130 ~~timeshare units in the multisite timeshare plan that are located~~
 1131 ~~in this state calculated pursuant to s. 721.07(4)(a), whichever~~

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

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1132 ~~is greater.~~

1133 Section 16. This act shall take effect July 1, 2015.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

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

JOINT COMMITTEE:
Joint Committee on Public Counsel Oversight

SENATOR KELLI STARGEL
15th District

February 27, 2015

The Honorable Rob Bradley
Senate Regulated Industries Committee, Chair
208 Senate Office Building
404 S. Monroe Street
Tallahassee, FL 32399

Dear Chair Bradley:

I am respectfully requesting that SB 932, related to *Timeshares*, be placed on the committee agenda at your earliest convenience.

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

Sincerely,

A handwritten signature in black ink that reads "Kelli Stargel".

Kelli Stargel
State Senator, District 15

Cc: Booter Imhof/ Staff Director
Lynn Koon/ AA

REPLY TO:

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

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/15
Meeting Date

932
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Gary Hunter

Job Title Attorney

Address 119 S Monroe St Suite 300
Street

Phone 850-222-7500

Tallahassee FL 32301
City State Zip

Email garyh@hgsllaw.com

Speaking: For Against Information

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

Representing American Resort Development Assoc.

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Regulated Industries

BILL: CS/SB 596

INTRODUCER: Regulated Industries Committee and Senator Hays

SUBJECT: Craft Distilleries

DATE: March 11, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	Fav/CS
2.			CM	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 596 increases the number of factory sealed containers of distilled spirits that a craft distillery may sell directly to consumers by providing that a craft distillery may sell no more than two of each branded product or up to four individual containers, whichever is greater, in face-to-face transactions with a consumer per calendar year. For example, if a craft distillery has five different "branded products" that are distilled on the premises, then that distillery could sell a maximum of 10 factory-sealed containers (two containers for each branded product) to each customer per calendar year. However, if the craft distillery has one brand product, the craft distillery could sell four containers to each customer per calendar year. Under current law the distillery is limited to the sale of no more than two containers of distilled spirits to each customer per calendar year.

The bill defines the term "branded product" to mean the distilled spirit product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administrative Act or regulations.

The bill also limits direct-to-consumer sales of distilled spirits to craft distilleries. A licensed distillery that produces more than 75,000 gallons of distilled spirits on its licensed premises per calendar year could not sell distilled spirits in its souvenir gift shop for off premises consumption.

The bill provides that craft distilleries may only sell and deliver distilled spirits to consumers within the state in a face-to-face transaction at the distillery property.

The bill provides that a craft distilleries may be affiliated with another distillery that produces 75,000 gallons or fewer on each of its premises in this state or in another state, territory, or country.

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

II. Present Situation:

In Florida, alcoholic beverages are regulated by the Beverage Law.¹ These provisions regulate the manufacture, distribution, and sale of wine, beer, and liquor through manufacturers, distributors, and vendors.² The Division of Alcoholic Beverage and Tobacco (division) within the Department of Business and Professional Regulation is the agency authorized to administer and enforce the Beverage Law.³

Section 565.01, F.S., defines the terms “liquor,” “distilled spirits,” “spirituous liquors,” “spirituous beverages,” or “distilled spirituous liquors” to mean:

that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced.

Distilleries licensed to distill, rectify, or blend distilled spirits to pay a state license tax of \$4,000 for each plant or branch operating in the state.⁴

Section 565.03(1)(b), F.S., to define the term “distillery” to mean a manufacturer of distilled spirits.

Section 565.03(1)(a), F.S., defines the term “craft distillery” to mean a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises. The distillery must have also notified the division in writing of its status as a craft distillery.

Licensed liquor manufacturers may also rectify and blend spirituous liquors in addition to distilling liquors without paying an additional license tax.⁵

According to the Florida Craft Distillers Guild, there are 15 distilleries that are located in Florida and are members of the guild.⁶

¹ The Beverage Law means chs. 561, 562, 563, 564, 565, 567, and 568, F.S. *See* s. 561.01(6), F.S.

² *See* s. 561.14, F.S.

³ Section 561.02, F.S.

⁴ Section 565.03(2), F.S.,

⁵ Section 565.03(1)(b), F.S.

⁶ *See* Florida Craft Distillers Guild at <http://floridadistillers.org/members> (last visited March 6, 2015).

The labels of distilled spirits containers must be approved by the Alcohol and Tobacco Tax and Trade Bureau⁷ within the U.S. Department of Treasury pursuant to the Federal Alcohol Administration Act.⁸

Three Tier System

In the United States, the regulation of alcohol, since the repeal of Prohibition, has traditionally been through what is termed the “three-tier system.” The system requires that the manufacture, distribution, and sale of alcoholic beverages be separated. Retailers (vendors) must buy their products from distributors who in turn buy their products from the manufacturers. Manufacturers cannot sell directly to retailers or directly to consumers. The system is deeply rooted in the perceived evils of the “tied house” in which a bar is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.⁹

In the three-tier system, each license classification has clearly delineated functions. For example, in Florida, distributors are licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages at retail.¹⁰ Only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail.¹¹ Vendors are limited to purchasing their alcoholic beverage inventory from licensed distributors, manufacturers, or bottlers.¹² Licensed manufacturers, distributors, and registered exporters are prohibited from being licensed as vendors.¹³ In addition from being prohibited from having an interest in a vendor, manufacturers are also prohibited from distributing directly to a vendor other than to a vendor licensed under s. 561.221(2), F.S.¹⁴ However, a manufacturer of wine may be licensed as a distributor.¹⁵

There are some exceptions to this regulatory system. The exceptions include allowing beer brew pubs to manufacture malt beverages and to sell them to consumers,¹⁶ allowing individuals to bring small quantities of alcohol back from trips out-of-state,¹⁷ and allowing in-state wineries to manufacture and sell directly to consumers.¹⁸

⁷ For information about the Alcohol and Tobacco Tax and Trade Bureau, *see* <http://www.ttb.gov/index.shtml> (last visited March 6, 2015).

⁸ 27 U.S.C. 201 et seq. See 27 C.F.R. Part 5 for the labeling and advertising regulations for distilled spirits.

⁹ Erik D. Price, *Time to Untie the House? Revisiting the Historical Justifications of Washington’s Three-Tier System Challenged by Costco v. Washington State Liquor Control Board*, a copy can be found at: http://www.lanepowell.com/wp-content/uploads/2009/04/pricce_001.pdf (last visited March 6, 2015).

¹⁰ Section 561.14(2), F.S.

¹¹ Section 561.14(3), F.S.

¹² Section 561.14(3), F.S. Vendors may buy from vendors in a pool buying group if the initial purchase was by a single purchase by a pool buying agent.

¹³ Section 561.22, F.S.

¹⁴ Section 563.022(14), F.S.

¹⁵ Section 561.221(1)(a), F.S.

¹⁶ *See* s. 561.221(2), F.S., which permits the limited manufacture of beer by vendors (brew pubs).

¹⁷ *See* s. 562.16, F.S., which permits the possession of less than one gallon of untaxed alcoholic beverages when purchased by the possessor out-of-state in accordance with the laws of the state where purchased and brought into the state by the possessor.

¹⁸ *See* s. 561.221, F.S.

Vendor Licenses

Section 561.20, F.S., limits the number of alcoholic beverage licenses that permit the sale of liquor along with beer and wine that may be issued per county. The number of licenses is limited to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as “quota” licenses. New quota licenses are created and issued when there is an increase in the population of a county. The licenses can also be issued when a county initially changes from a county which does not permit the sale of intoxicating liquors to one that does permit their sale. The quota license is the only type of alcoholic beverage license that is limited in number.

Section 565.02(1)(a)-(f), F.S., prescribes the license taxes for vendors who are permitted to sell any alcoholic beverages, including beer, wine and distilled spirits, regardless of alcoholic content.

Exception for Vender-Licensed Distilleries

Section 565.03(2), F.S., permits craft distilleries and all other licensed distilleries to sell the distilled spirits it produces on their manufacturing premises to consumers for off premises consumption. The sales must occur at the distillery’s souvenir gift shop that is located on private property contiguous to the licensed distillery premises, and included on the sketch submitted with the license application.¹⁹ The division must approve any subsequent revisions to a craft distillery’s sketch to verify that the retail location operated by the craft distillery is “owned or leased by the craft distillery and on property contiguous to the craft distillery’s production building.”

Section 565.03(2)(c), F.S., prohibits craft distilleries and licensed distilleries from selling distilled spirits except in face-to-face transactions with consumers making the purchases for personal use and not for resale.

The distillery may sell no more than two individual containers to the consumer. The container must comply with the container limits in s. 565.10, F.S.²⁰

Section 565.03(2)(c)2., F.S., provides that a craft distillery may ship, arrange to ship, or deliver distilled spirits to manufacturers of distilled spirits, wholesale distributors, bonded warehouses, and exporters.

Section 565.03(2)(c)1., F.S., requires the craft distillery to report to the division within five business days after it has reached the 75,000 gallon production limitation. The craft distillery must cease making sales to consumers on the day after it reaches the production limit. The distillery must submit any beverage excise taxes under the Beverage Law in its monthly report to the division with any tax payments due to the state.

¹⁹ See s. 561.01(11), F.S., which defines the term “licensed premises” to include the area embraced within the sketch that appears on, or is attached to, the application for the license.

²⁰ Section 565.10, F.S, prohibits the sale and distribution of distilled spirits in any size container in excess of 1.75 liters or 59.18 ounces.

Section 565.03(2)(c)3., F.S., prohibits the transfer of a craft distillery license, including the transfer of an ownership interest in the license, to any individual or entity with a direct or indirect interest in another distillery.

Section 565.03(2)(c)4., F.S., permits a craft distillery to have its ownership interest affiliated with another distiller if the other distiller produces 75,000 gallons or fewer of distilled spirits on its licensed premises per calendar year.

III. Effect of Proposed Changes:

The bill creates s. 565.03(1)(a), F.S., to define the term "branded product" to mean any distilled spirit product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administrative Act or regulations.

The bill amends s. 565.03(2)(c), F.S., to increase the number of factory sealed containers of distilled spirits that a craft distillery may sell directly to consumers by providing that a craft distillery may sell no more than two of each branded product or up to four individual containers, whichever is greater, in face-to-face transactions with a consumer per calendar year. For example, if a craft distillery has five different "branded products" that are distilled on the premises, then that distillery could sell a maximum of 10 factory-sealed containers (two containers for each branded product) to each customer per calendar year. Under current law the distillery is limited to the sale of no more than two containers of distilled spirits per calendar year.

The bill also amends s. 565.03(2)(c), F.S., to limit direct-to-consumer sales of distilled spirits to craft distilleries. A licensed distillery that produces more than 75,000 gallons of distilled spirits on its licensed premises per calendar year could not sell distilled spirits in its souvenir gift shop for off premises consumption.

The bill amends s. 565.03(2)(c)2., F.S., to provide that craft distilleries may only sell and deliver distilled spirits to consumers within the state in a face-to-face transaction at the distillery property.

The bill amends s. 565.03(2)(c)4., F.S., to provide that a craft distilleries may be affiliated with another distillery that produces 75,000 gallons or fewer on each of its premises in this state or in another state, territory, or country.

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

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. **Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There may be an increase in tax revenue generated through the increased sales of distilled spirits products at the craft distilleries.

C. Government Sector Impact:

There may be an increase in tax revenue generated through the increased sales of distilled spirits products at the craft distilleries.

VI. **Technical Deficiencies:**

None.

VII. **Related Issues:**

None.

VIII. **Statutes Affected:**

This bill substantially amends section 565.03 of the Florida Statutes.

IX. **Additional Information:**

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Regulated Industries on March 11, 2015:

The committee substitute (CS) amends s. 565.03(2)(c), F.S., to permit craft distilleries to sell no more than two of each branded product or up to four individual containers, whichever is greater, in face-to-face transactions with a consumer per calendar year.

The CS amends s. 565.03(2)(c)2., F.S., to provide that craft distilleries may only sell and deliver distilled spirits to consumers within the state in a face-to-face transaction at the distillery property.

The CS amends s. 565.03(2)(c)4., F.S., to provide that a craft distilleries may be affiliated with another distillery that produces 75,000 gallons or fewer on each of its premises in this state or in another state, territory, or country.

B. Amendments:

None.

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



307010

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/12/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete line 41

and insert:

four ~~two~~ or fewer individual containers of each branded product, that

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

And the title is amended as follows:

Delete lines 4 - 7



307010

11 and insert:

12 revising the current limitation on the number of
13 containers that may be sold to consumers by craft
14 distilleries; applying such limitation to individual
15 containers for each branded product; providing an
16 effective date.



622348

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/12/2015	.	
	.	
	.	
	.	

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

Senate Amendment to Amendment (307010)

Delete lines 5 - 6
and insert:
two or fewer individual containers of each branded product, or
up to four individual containers, whichever is greater, that



805354

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/12/2015	.	
	.	
	.	
	.	

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

Senate Amendment

Delete line 69
and insert:
spirits on each of its premises in this state or in another
state, territory, or country.



124280

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/12/2015	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 50 - 52

and insert:

2. A craft distillery may not ~~only~~ ship or ~~arrange to ship, or deliver~~ any of its distilled spirits to consumers and may only sell and deliver to consumers within the state in a face-to-face transaction at the distillery property.

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



124280

11 And the title is amended as follows:

12 Delete line 7

13 and insert:

14 product; prohibiting a craft distillery from shipping
15 or arranging to ship any of its distilled spirits to
16 consumers; providing an exception; providing an
17 effective date.

By Senator Hays

11-00723A-15

2015596__

1 A bill to be entitled
 2 An act relating to craft distilleries; amending s.
 3 565.03, F.S.; defining the term "branded product";
 4 applying the current limitation on the number of
 5 containers that may be sold to consumers by craft
 6 distilleries to individual containers for each branded
 7 product; providing an effective date.
 8
 9 Be It Enacted by the Legislature of the State of Florida:
 10
 11 Section 1. Paragraphs (a) and (b) of subsection (1) of
 12 section 565.03, Florida Statutes, are redesignated as paragraphs
 13 (b) and (c), respectively, a new paragraph (a) is added to that
 14 subsection, and paragraph (c) of subsection (2) of that section
 15 is amended, to read:
 16 565.03 License fees; manufacturers, distributors, brokers,
 17 sales agents, and importers of alcoholic beverages; vendor
 18 licenses and fees; craft distilleries.—
 19 (1) As used in this section, the term:
 20 (a) "Branded product" means any distilled spirits product
 21 manufactured on site, which requires a federal certificate and
 22 label approval by the Federal Alcohol Administration Act or
 23 regulations.
 24 (2)
 25 (c) A craft distillery licensed under this section may sell
 26 to consumers, at its souvenir gift shop, branded products
 27 ~~spirits~~ distilled on its premises in this state in factory-
 28 sealed containers that are filled at the distillery for off-
 29 premises consumption. Such sales are authorized only on private

Page 1 of 3

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

11-00723A-15

2015596__

30 property contiguous to the licensed distillery premises in this
 31 state and included on the sketch or diagram defining the
 32 licensed premises submitted with the distillery's license
 33 application. All sketch or diagram revisions by the distillery
 34 shall require the division's approval verifying that the
 35 souvenir gift shop location operated by the licensed distillery
 36 is owned or leased by the distillery and on property contiguous
 37 to the distillery's production building in this state. A craft
 38 distillery ~~or licensed distillery~~ may not sell any factory-
 39 sealed individual containers of spirits except in face-to-face
 40 sales transactions with consumers who are making a purchase of
 41 two or fewer individual containers of each branded product, that
 42 comply with the container limits in s. 565.10, per calendar year
 43 for the consumer's personal use and not for resale and who are
 44 present at the distillery's licensed premises in this state.
 45 1. A craft distillery must report to the division within 5
 46 days after it reaches the production limitations provided in
 47 paragraph (1) (b) ~~(1) (a)~~. Any retail sales to consumers at the
 48 craft distillery's licensed premises are prohibited beginning
 49 the day after it reaches the production limitation.
 50 2. A craft distillery may only ship, arrange to ship, or
 51 deliver any of its distilled spirits to consumers within the
 52 state in a face-to-face transaction at the distillery property.
 53 However, a craft distiller licensed under this section may ship,
 54 arrange to ship, or deliver such spirits to manufacturers of
 55 distilled spirits, wholesale distributors of distilled spirits,
 56 state or federal bonded warehouses, and exporters.
 57 3. Except as provided in subparagraph 4., it is unlawful to
 58 transfer a distillery license for a distillery that produces

Page 2 of 3

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

11-00723A-15

2015596__

59 75,000 or fewer gallons per calendar year of distilled spirits
60 on its premises or any ownership interest in such license to an
61 individual or entity that has a direct or indirect ownership
62 interest in any distillery licensed in this state; another
63 state, territory, or country; or by the United States government
64 to manufacture, blend, or rectify distilled spirits for beverage
65 purposes.

66 4. A craft distillery shall not have its ownership
67 affiliated with another distillery, unless such distillery
68 produces 75,000 or fewer gallons per calendar year of distilled
69 spirits on its premises.

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



THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:

Appropriations Subcommittee on General Government, *Chair*
Governmental Oversight and Accountability, *Vice Chair*
Appropriations
Environmental Preservation and Conservation
Ethics and Elections
Fiscal Policy

JOINT COMMITTEE:

Joint Select Committee on Collective Bargaining, *Alternating Chair*

SENATOR ALAN HAYS

11th District

MEMORANDUM

To: Senator Rob Bradley, Chair
Regulated Industries Committee
CC: Booter Imhof, Staff Director
Lynn Koon, Committee Administrative Assistant

From: Senator D. Alan Hays

Subject: Request to agenda SB 596 – Craft Distilleries

Date: February 5, 2015

I respectfully request that you agenda the above referenced bill at your earliest convenience. If you have any questions regarding this legislation, I welcome the opportunity to meet with you one-on-one to discuss it in further detail. Thank you so much for your consideration of this request.

Sincerely,

A handwritten signature in black ink that reads "D. Alan Hays, DMD".

D. Alan Hays, DMD
State Senator, District 11

REPLY TO:

- 871 South Central Avenue, Umatilla, Florida 32784-9290 (352) 742-6441
- 320 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5011
- 1104 Main Street, The Villages, Florida 32159 (352) 360-6739 FAX: (352) 360-6748
- 685 West Montrose Street, Suite 210, Clermont, Florida 34711 (352) 241-9344 FAX: (888) 263-3677

Senate's Website: www.flsenate.gov

ANDY GARDINER
President of the Senate

GARRETT RICHTER
President Pro Tempore

THE FLORIDA SENATE
APPEARANCE RECORD

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

03-11-15
Meeting Date

596
Bill Number (if applicable)

Topic CRAFT Distilleries

Amendment Barcode (if applicable)

Name Scott Dick

Job Title Lobbyist

Address 210 S. Monroe St.

Phone 850 421-9100

Tallahassee, FL 32301
City State Zip

Email Scott@skdgrp.com

Speaking: For Against Information

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

Representing ABC Fine Wine & Spirits

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/11/15

Meeting Date

SB 596

Bill Number (if applicable)

Topic Craft Distilleries

Amendment Barcode (if applicable)

Name Scott Ashley

Job Title President & General Counsel

Address 215 S. Monroe St.

Phone 850-681-8700

Street

Talla. FL 32308

City

State

Zip

Email scott@wsdflorida.com

Speaking: For Against Information

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

Representing Wine & Spirits Distributors of Florida

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

3/11/15

Meeting Date

594

Bill Number (if applicable)

Topic Craft Distilleries

Amendment Barcode (if applicable)

Name Carolyn Johnson

Job Title Policy Director

Address 136 S Bronaugh St

Phone _____

Street

Tallahassee

FL

32301

Email _____

City

State

Zip

Speaking: For Against Information

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

Representing FL chamber of commerce

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/11/15
Meeting Date

596
Bill Number (if applicable)

Topic CRAFT DISTILLERIES

Amendment Barcode (if applicable)

Name PHILIP McJANDEL

Job Title CEO

Address 112 RUBERIA

Phone

Street

St. AUGUSTINE FL 32084

City

State

Zip

Email PHILIP@ST.AUGUSTINE
DISTILLERY.COM

Speaking: For Against Information

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

Representing ST AUGUSTINE DISTILLERY / FLORIDA CRAFT DISTILLERS GUILD

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

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

THE FLORIDA SENATE
APPEARANCE RECORD

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

March 11, 2015

Meeting Date

596

Bill Number (if applicable)

Topic Craft Distilleries

Amendment Barcode (if applicable)

Name Jason Unger

Job Title GrayRobinson

Address 301 S. Bronough Street, Suite 600

Phone 577-9090

Street

Tallahassee

FL

32301

Email junger@gray-robinson.com

City

State

Zip

Speaking: For Against Information

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

Representing Florida Craft Distillers Guild

Appearing at request of Chair: Yes No

Lobbyist registered with Legislature: Yes No

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

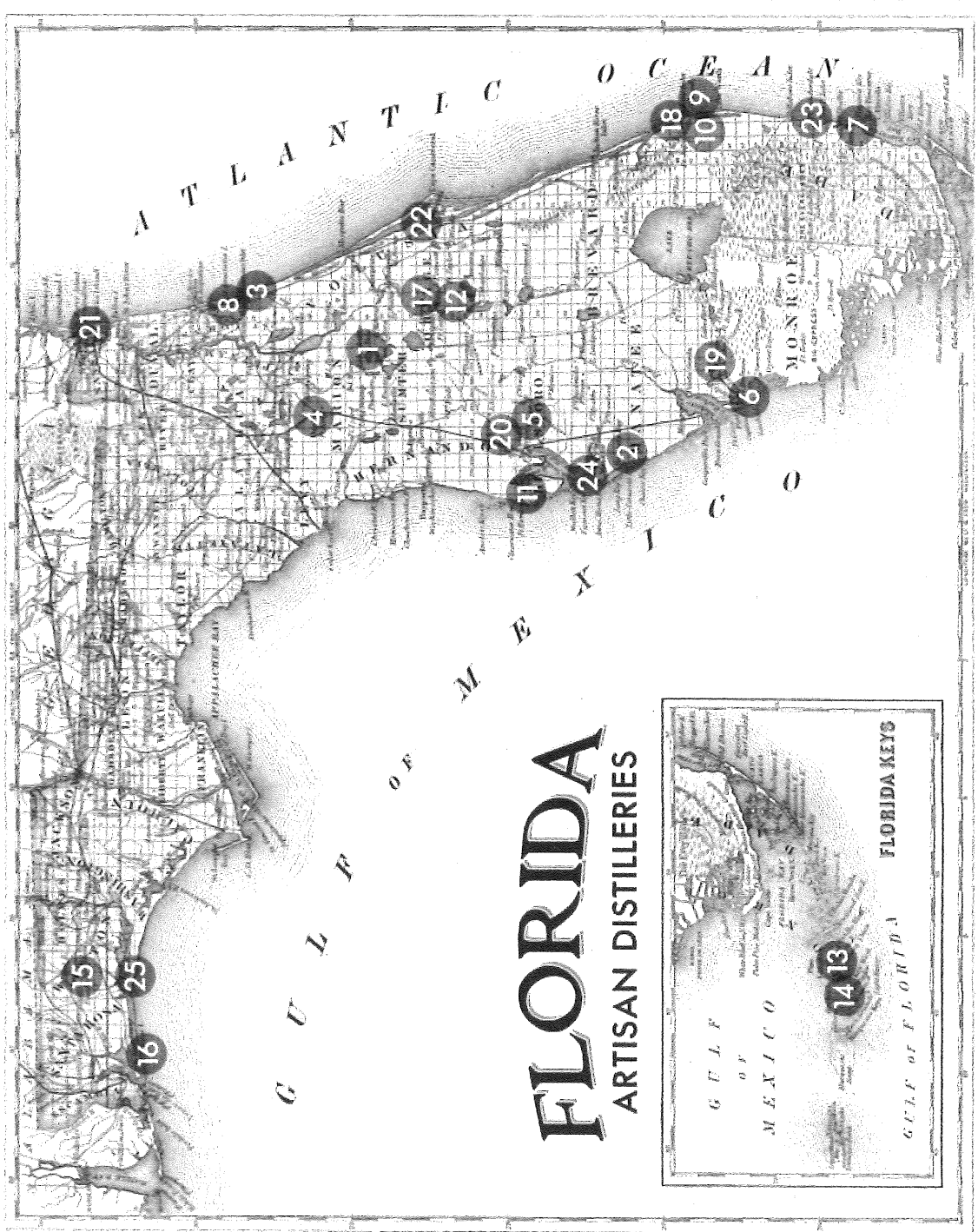
This form is part of the public record for this meeting.

S-001 (10/14/14)

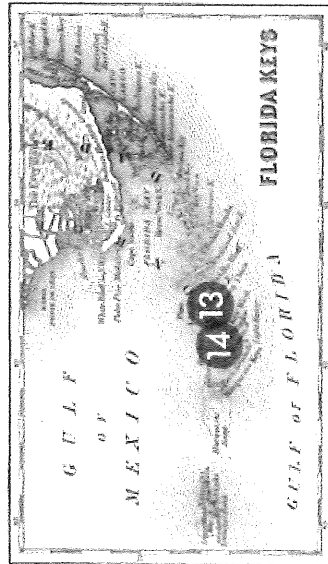
FLORIDA ARTISAN DISTILLERIES

- 1 Florida Farm Distillers** - Umahilla (2009)
- 2 Siesta Key Rum** - Sarasota (2009)
- 3 Flagler Distillery** - Palm Coast (2011)
- 4 Fish Hawk Spirits** - Ocala (2012)
- 5 The Florida CANE Distillery** - Tampa (2012)
- 6 Wicked Dolphin Distillery** - Cape Coral (2012)
- 7 Alchemist Distilleries, Inc.** - Miami (2013)
- 8 St. Augustine Distillery** - St. Augustine (2013)
- 9 Black Coral Rum - Riviera Beach (2014)
- 10 Citrus Distillers, LLC** - Riviera Beach (2014)
- 11 Cothermen Distilling Co.** - Dunedin (2014)
- 12 JLA Distillery - Orlando (2014)
- 13 Key West Distilling** - Key West (2014)
- 14 Key West Legal Rum - Key West (2014)
- 15 Peadar Brothers Distillery - Crestview (2014)
- 16 Rollins Distillery** - Gulf Breeze (2014)
- 17 Winter Park Distilling** - Winter Park (2014)
- 18 Bahama Bank Rum - Jupiter (2015)
- 19 Curator's Reserve - Fort Myers (2015)
- 20 Florida Spirits - Tampa (2015)
- 21 Martin and Barrel Distillery** - Fernandina Beach (2015)
- 22 Playalinda Distilling** - Titusville (2015)
- 23 South Florida Distillers Inc. - Fort Lauderdale (2015)
- 24 St. Petersburg Distillery - Saint Petersburg (2015)
- 25 Timber Creek Distillery** - Destin (2015)

** Members of the Florida Craft Distillers Guild
 † Currently under construction



FLORIDA ARTISAN DISTILLERIES



CourtSmart Tag Report

Room: EL 110
Caption: Senate Regulated Industries Committee

Case:

Type:
Judge:

Started: 3/11/2015 2:04:16 PM
Ends: 3/11/2015 3:18:08 PM
Length: 01:13:53

2:04:26 PM Meeting Called to order by the Chairman
2:04:49 PM Roll call
2:05:27 PM Comments by the chair
2:05:43 PM Senator Bean commenting
2:06:42 PM SB 338 Senator Alman
2:07:02 PM Amendment #224476
2:07:20 PM Senator Altman to explain the amendment
2:08:30 PM Strike all amendment
2:09:33 PM Thomas Grogan, FL Structural Engineers Assoc.
2:10:43 PM Brian Pitts - Justice-2-Jesus
2:14:44 PM Strike all Amendment - Adopted
2:15:12 PM Bill as amended
2:15:34 PM Senator Altman to close on bill
2:17:22 PM CSSB 338 - Passed
2:17:51 PM SB 548 - Senator Clemens
2:18:37 PM Senator Clemens commenting on the bill
2:19:37 PM Introduction of students from Palm Beach Lakes Community High School-- Ruben Garcia, Delili Gomez, Zindi Rios
2:21:58 PM Power Point Presentation by Ruben Garcia, Delili Gomez and Zindi Rios.
2:25:22 PM Senator Negron questioning
2:26:03 PM Ruben replying to Sen. Negron
2:29:15 PM Deili G. responding to Sen. Negron
2:31:19 PM Senator Negron commenting
2:31:57 PM Senator Sachs questioning
2:32:33 PM Deili G. responding
2:34:41 PM Erica Whitfield - Palm BeachCounty School Board
2:35:43 PM Brian Pitts - Justice-2-Jesus
2:37:28 PM Senator Stargel commenting on the bill
2:38:57 PM Senator Abruzzo commenting
2:39:22 PM Senator Richter commenting
2:41:00 PM Senator Sachs commenting
2:42:00 PM Senator Flores commenting
2:43:19 PM Senator Clemens to close on the bill
2:44:44 PM SB 548 - Passed
2:45:22 PM SB 490 - Senator Thompson
2:45:38 PM Senator Thompson to explain the bill
2:46:17 PM Amendment # 925440
2:46:35 PM Senator Thompson explaining the amendment
2:46:53 PM Amendment - Adopted
2:47:24 PM Bill as amended
2:47:35 PM Brian Pitts - Justice-2-Jesus
2:49:39 PM Senator Bean commenting and questioning
2:51:16 PM Senator Stargel commenting
2:52:07 PM Senator Thompson to close on the bill
2:54:22 PM CSSB 490 - Passes
2:55:10 PM SB 662 - Senator Latvala
2:55:31 PM Senator Latvala to explain the bill
2:59:06 PM Senator Latvala to close on the bill
2:59:46 PM SB 662 - Passes
3:00:12 PM SB 932 - Senator Stargel
3:00:27 PM Senator Stargel to explain the bill
3:01:24 PM Senator Sachs questioning

3:01:39 PM Senator Stargel responding
3:01:58 PM Gary Hunter - American Resort Development Association
3:03:02 PM Senator Stargel to close on the bill
3:03:21 PM SB 932 - Passes
3:03:47 PM SB 596 - Senator Hays
3:04:00 PM Senator Hays to explain the bill
3:05:01 PM Amendment #307010 - Senator Bean
3:05:45 PM Amendment to the Amendment - Senator Bean
3:06:32 PM Amendment to the Amendment #622348
3:07:13 PM Senator Margolis questioning
3:08:08 PM Jason Unger - FL Craft Distillers Guild
3:09:09 PM Senator Margolis commenting
3:09:53 PM Amendment to the Amendment - Adopted
3:10:18 PM Amendment as Amended - Adopted
3:10:49 PM Amendment #124280 (late filed)
3:11:28 PM Late filed Amendment - Adopted
3:11:44 PM Late filed Amendment #805354
3:12:09 PM Late filed Amendment - Adopted
3:13:05 PM Phillip McDaniel - St. Augustine Distillery
3:15:39 PM Senator Sachs commenting
3:16:18 PM Senator Hays to close on the bill
3:16:35 PM CSSB 596 - Passes
3:17:07 PM Meeting adjourned