Tab 1	**SB 332** by **Perry**; (Similar to CS/H 01169) Unlicensed Contracting

869056	A	S	RCS	RI, Perry	Delete L.37 - 49:	03/30 02:42 PM

Tab 2	**SB 1836** by **Polsky**; (Compare to CS/H 01395) Public Records/Lottery Winners

267086	A	S	RCS	RI, Polsky	Delete L.19 - 21:	03/30 02:42 PM

Tab 3	**SB 1966** by **Diaz (CO-INTRODUCERS) Garcia**; (Similar to CS/H 01517) Department of Business and Professional Regulation

361442	A	S	RCS	RI, Diaz	btw L.355 - 356:	03/30 02:42 PM
640586	A	S	RCS	RI, Diaz	Delete L.394 - 396:	03/30 02:42 PM

Tab 4	**SB 902** by **Rodrigues**; (Similar to H 00463) Public Pool Regulations

110370	D	S	RCS	RI, Rodrigues	Delete everything after	03/30 02:42 PM

Tab 5	**SB 1358** by **Gruters**; (Similar to H 01007) Valuation of Timeshare Real Property

The Florida Senate

COMMITTEE MEETING EXPANDED AGENDA

REGULATED INDUSTRIES
Senator Hutson, Chair
Senator Book, Vice Chair

MEETING DATE: Tuesday, March 30, 2021
TIME: 12:30—3:00 p.m.
PLACE: *Pat Thomas Committee Room,* 412 Knott Building

MEMBERS: Senator Hutson, Chair; Senator Book, Vice Chair; Senators Albritton, Gruters, Hooper, Passidomo, Rodrigues, Rouson, and Stewart

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
	PUBLIC TESTIMONY WILL BE RECEIVED FROM ROOM A3 AT THE DONALD L. TUCKER CIVIC CENTER, 505 W. PENSACOLA STREET, TALLAHASSEE, FL 32301		
1	**SB 332** Perry (Similar CS/H 1169)	Unlicensed Contracting; Revising the criminal penalties for persons who engage in contracting or advertise themselves as contractors without proper registration or certification, etc. RI 03/30/2021 Fav/CS ACJ AP	Fav/CS Yeas 7 Nays 0
2	**SB 1836** Polsky (Identical H 1395)	Public Records/Lottery Winners; Exempting from public records the names of lottery winners who win prizes over a specified value; providing for future legislative review and repeal of the exemption; providing a statement of public necessity, etc. RI 03/30/2021 Fav/CS GO RC	Fav/CS Yeas 7 Nays 0

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
3	**SB 1966** Diaz (Similar CS/H 1517, Compare CS/CS/H 867, CS/S 630)	Department of Business and Professional Regulation; Requiring that certain reports relating to the transportation or possession of cigarettes be filed with the Division of Alcoholic Beverages and Tobacco through the division's electronic data submission system; requiring that certain entities file reports, rather than returns, relating to tobacco products with the division; providing that specified records relating to tobacco products may be kept in an electronic or paper format; removing provisions relating to an additional fee for application and renewal, transfer of funds, recommendations by the Construction Industry Licensing Board for use of such funds, distribution of such funds by the department, and required reports of the department; prohibiting a temporary permit from being extended; renaming the Florida State Boxing Commission as the Florida Athletic Commission; requiring that an annual budget be proposed to unit owners and adopted by the board before a specified time, etc. RI 03/30/2021 Fav/CS AP RC	Fav/CS Yeas 7 Nays 0
4	**SB 902** Rodrigues (Similar H 463)	Public Pool Regulations; Exempting pools serving condominium, cooperative, homeowners', and other property associations from public pool regulations under certain circumstances, with an exception, etc. RI 03/30/2021 Fav/CS CA RC	Fav/CS Yeas 7 Nays 0
5	**SB 1358** Gruters (Similar H 1007)	Valuation of Timeshare Real Property; Providing a condition for the adequacy of the number of resales for the purposes of certain tax appeals; providing that this condition meets the constitutional mandate for just valuation, etc. RI 03/30/2021 Favorable FT AP	Favorable Yeas 4 Nays 3
	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 332
INTRODUCER:	Regulated Industries Committee and Senator Perry
SUBJECT:	Unlicensed Contracting
DATE:	March 31, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sharon	Imhof	RI	**Fav/CS**
2.			ACJ	
3.			AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 332 increases the criminal penalties when an unlicensed person engages in the business or acts in the capacity of a contractor without being duly registered or certified.

For such violations, the bill creates a tiered penalty structure, increasing in severity with the contract price. If the contract price is:

- Less than $1,000, the penalty is a first degree misdemeanor.[1]
- $1,000 or more, but less than $20,000, the penalty is a third degree felony.[2]
- $20,000 or more, but less than $200,000, the penalty is a second degree felony.[3]
- $200,000 or more, the penalty is a first degree felony.[4]

The bill is effective October 1, 2021.

[1] Section 775.082, F.S., provides that a misdemeanor of the first degree is punishable by a term of imprisonment not exceeding one year. Section 775.083, F.S., provides that a misdemeanor of the first degree is punishable by a fine not to exceed $1,000.

[2] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not exceeding five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.

[3] Section 775.082, F.S., provides that a felony of the second degree is punishable by a term of imprisonment not exceeding 15 years. Section 775.083, F.S., provides that a felony of the second degree is punishable by a fine not to exceed $10,000.

[4] Section 775.082, F.S., provides that a felony of the first degree is punishable by a term of imprisonment not exceeding 30 years. Section 775.083, F.S., provides that a felony of the first degree is punishable by a fine not to exceed $10,000.

II. Present Situation:

Regulation of Construction Activities and Exemptions

The Legislature regulates the construction industry "in the interest of the public health, safety, and welfare,"[5] and has enacted ch. 489, F.S., to address requirements for construction contracting, electrical and alarm system contracting, and septic tank contracting.[6]

More than 20 categories of persons are exempt from the contractor licensing requirements of ch. 489, F.S., including but not limited to:

- Contractors in work on bridges, roads, streets, highways, or railroads, and other services defined by the board and the Florida Department of Transportation;
- Employees of licensed contractors, if acting within the scope of the contractor's license, with that licensee's knowledge;
- Certain employees of federal, state, or local governments or districts (excluding school and university boards), under limited circumstances;
- Certain public utilities, on construction, maintenance, and development work by employees;
- Property owners, when acting as their own contractor and providing "direct, onsite supervision" of all work not performed by licensed contractors on one-family or two-family residences, farm outbuildings, or commercial buildings at a cost not exceeding $75,000;
- Work undertaken on federal property or when federal law supersedes part I of ch. 489, F.S.;
- Work falling under the so-called handyman exemption, meaning it is of a "casual, minor, or inconsequential nature," and the total contract price for all labor, materials, and all other items is less than $2,500, subject to certain exceptions;
- Registered architects and engineers acting within their licensed practice, including those exempt from such licensing, but not acting as a contractor unless licensed under ch. 489, F.S.
- Work on one-, two-, or three-family residences constructed or rehabilitated by Habitat for Humanity, International, Inc., or a local affiliate, subject to certain requirements;
- Certain disaster recovery mitigation or other organizations repairing or replacing a one-family, two-family or three-family residence impacted by a disaster, subject to certain requirements; and
- Employees of an apartment community or apartment community management company who make minor repairs to existing electric water heaters, electric heating, ventilating, and air-conditioning systems, subject to certain requirements.[7]

Local Licensure Exemption in s. 489.117(4)(d), F.S.

Section 489.117(4)(d), F.S., commonly referred to as the "Jim Walter" exemption, was enacted in 1993[8] and allows unlicensed persons to perform contracting services for the construction, remodeling, repair, or improvement of single-family residences and townhouses[9] without obtaining a local license. The person must be under the supervision of a certified or registered general, building, or residential contractor, and the work may not be work that requires licensure

[5] *See* s. 489.101, F.S.
[6] *See* parts I, II, and III, respectively, of ch. 489, F.S.
[7] *See* s. 489.103, F.S., for additional exemptions.
[8] *See* ch. 93-154, s. 3, and ch. 93-166, s. 12, Laws of Fla. These provisions have been subsequently amended.
[9] The term "townhouses" was added to the exemption in 2003. *See* ch. 2003-257, s. 5, Laws of Fla.

in the areas of roofing, sheet metal, air-conditioning, mechanical, pool/spa, plumbing, solar, or underground utility and excavation.[10] The supervising contractor need not have a direct contract with the unlicensed person performing the contracting services.

Florida's Fifth District Court of Appeals has addressed the applicability of this exemption to a local building contractor licensing requirement in a St. Johns County ordinance.[11] In this case, the court found that under s. 489.117(4)(d), F.S., the county's ordinance requiring all non-certified contractors to obtain a local license conflicted with state law.[12]

Another example of this exemption's applicability is contained in a 2001 Attorney General Opinion. In this opinion, Florida's Attorney General, Robert A. Butterworth, explained that a county may not enact an ordinance that requires local certification of drywall installers. Mr. Butterworth reasoned that, under the exemption in s. 489.117(4)(d), F.S., "the county may not require certification of persons performing drywall installation on single-family residences when such persons are working under the supervision of a certified or registered general, building, or residential contractor." [13] Drywall installation fits the local licensing exemption because one does not have to obtain registration or certification under s. 489.105(3)(d)-(o), F.S., to perform this aspect of construction.

Construction Contracting

The Construction Industry Licensing Board (CILB) within the DBPR is responsible for licensing and regulating the construction industry in this state under part I of ch. 489, F.S.[14] The CILB is divided into two divisions with separate jurisdictions:

- Division I comprises the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
- Division II comprises the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.[15]

The Electrical Contractors' Licensing Board (ECLB) within the DBPR is responsible for licensing and regulating electrical and alarm system contractors in Florida under part II of ch. 489, F.S.[16]

[10] Section 489.117(4)(d), F.S.
[11] *See Florida Home Builders Ass'n v. St. Johns County*, 914 So.2d 1035 (Fla. 5th DCA 2005).
[12] *Id.* at 1037
[13] *See* Op. Att'y. Gen. Fla. 2001-25 (2001), available at http://www.myfloridalegal.com/ago.nsf/opinions/4c31d4cae5f162bf85256a1e00532dac (last visited Mar. 25, 2021).
[14] *See* s. 489.107, F.S.
[15] Section 489.105(3), F.S.
[16] Section 489.507, F.S.

Master septic tank contractors and septic tank contractors are regulated by the Department of Health under part III of ch. 489, F.S.[17]

Construction contractors regulated under part I of ch. 489, F.S., and electrical and alarm contractors regulated under part II of ch. 489, F.S., must satisfactorily complete a licensure examination before being licensed.[18] The CILB and ECLB may deny a license application for any person whom it finds guilty of any of the grounds for discipline set forth in s. 455.227(1), F.S., or set forth in the profession's practice act.[19]

A "specialty contractor" is a contractor whose scope of practice is limited to:
- A particular construction category adopted by board rule; and
- A subset of the trade categories for contractors listed in s. 489.105(3)(a) through (p), F.S., such as roofing, air-conditioning, plumbing, etc.[20]

For example, specialty swimming pool contractors have limited scopes of work for the construction of pools, spas, hot tubs, and decorative or interactive water displays.[21] Jurisdiction is dependent on the scope of work and whether Division I or Division II has jurisdiction over such work in accordance with the applicable administrative rule.[22]

Certification and Registration of Contractors

Under current law, a "certified contractor" has met competency requirements for a particular trade category and holds a geographically unlimited certificate of competency from the DBPR which allows the contractor to contract in any jurisdiction in the state without being required to fulfill the competency requirements of other jurisdictions.[23]

The term "registered contractor" means a contractor who has registered with the DBPR as part of meeting competency requirements for a trade category in a particular jurisdiction, which limits the contractor to contracting only in the jurisdiction for which the registration is issued.[24]

Fee for Certification and Registration

As provided in s. 489.109, F.S., an applicant for certification as a contractor is required to pay an initial application fee not to exceed $150, and, if an examination cost is included in the application fee, the combined amount may not exceed $350. For an applicant for registration as a contractor, the initial application fee may not exceed $100, and the initial registration fee and the

[17] *See* ss. 489.551-489.558, F.S.
[18] *See* ss. 489.113 and 489.516, F.S., respectively.
[19] Section 455.227(2), F.S.
[20] Section 489.105(3)(q), F.S.
[21] *See* Fla. Admin. Code R. 61G4-15.032 and 61G4-15.040 (2021).
[22] *See* Fla. Admin. Code R. 61G4-15.032 (2021).
[23] Sections 489.105(8) and 489.113(1), F.S.
[24] Sections 489.105(10) and 489.117(1)(b), F.S.

renewal fee may not exceed $200.[25] The initial application fee and the renewal fee is $50 for an application to certify or register a business.[26]

Fees must be adequate to ensure the continued operation of the CILB, and must be based on the DBPR's estimates of revenue required to implement part I of ch. 489, F.S., and statutory provisions regulating the construction industry.[27]

All certificate holders and registrants must pay a fee of $4 to the DBPR at the time of application or renewal, to fund projects relating to the building construction industry or continuing education programs offered to building construction industry workers in Florida, to be selected by the Florida Building Commission.[28]

Subcontractors

In most circumstances, a contractor must subcontract all electrical, mechanical, plumbing, roofing, sheet metal, swimming pool, and air-conditioning work unless the contractor holds a state certificate or registration in the appropriate trade category.[29]

A subcontractor who does not have a state certificate or registration may work under the supervision of a licensed or certified contractor, if:

- The work of the subcontractor falls within the scope of the contractor's license; and
- The subcontractor is not engaged in construction work that would require specified contractor licensing (i.e., licensure as an electrical contractor,[30] a septic tank contractor,[31] a sheet metal contractor, roofing contractor, Class A, B, or C air-conditioning contractor, mechanical contractor, commercial pool/spa contractor, residential pool/spa contractor, swimming pool servicing contractor, plumbing contractor, underground utility and excavation contractor, or solar contractor).[32]

Unlicensed Contractors

A person without a valid certificate or registration, engaged in activities that require licensure under part 1 of ch. 489, F.S., is guilty of unlicensed contracting.[33] The DBPR may impose an administrative fine of up to $10,000 on anyone found guilty of unlicensed contracting, along with investigative and legal costs for prosecution of the offense.[34] A person who is registered but working outside of their registration's geographical scope is guilty of unlicensed contracting,

[25] Section 489.109, F.S. Any applicant who seeks certification as a contractor under part I of ch. 489, F.S., by taking a practical examination must pay as an examination fee the actual cost incurred by the DBPR in developing, preparing, administering, scoring, score reporting, and evaluating the examination, if the examination is conducted by the DBPR.
[26] *Id*.
[27] *Id*.
[28] Section 489.109(3), F.S.
[29] Section 489.113(3), F.S. Various exceptions for general, building, residential, and solar contractors are set forth in s. 489.113(3)(a) through (g), F.S.
[30] *See* Part II, of ch. 489, F.S., relating to Electrical and Alarm System Contracting.
[31] *See* Part III of ch. 489, F.S., relating to Septic Tank Contracting.
[32] Section 489.113(2), F.S.
[33] Section 489.13(1), F.S.
[34] Section 489.13(3), F.S.

however, for a first offense will only be issued a notice of noncompliance.[35] A portion of the fines collected are used to maintain the DBPR's unlicensed contractor website and also to fund the Florida Homeowners' Construction Recovery Fund.[36]

Current law prohibits an unlicensed person from:

- Falsely holding themselves or a business organization out as a licensee, certificate holder, or registrant;
- Falsely impersonating a certificate holder or registrant;
- Presenting another person's registration or certificate as their own;
- Knowingly giving false or forged evidence to the board or a board member;
- Using or attempting to use a suspended or revoked certificate or registration;
- Engaging in or advertising themselves or a business organization as available to engage in contracting;
- Operating a contracting business organization 60 days after the termination of its only qualifying agent, without designating another primary qualifying agent;
- Commencing or performing work without a required building permit; or
- Willfully or deliberately disregarding or violating any municipal or county ordinance relating to unlicensed contractors.[37]

Section 489.127(2), F.S., provides that an unlicensed person who violates any of the above provisions commits a:

- First degree misdemeanor for a first conviction.
- Third degree felony for a second or subsequent conviction.
- Third degree felony if a person commits a violation during a state of emergency declared by executive order of the Governor.[38]

In addition to the criminal penalties set forth in s. 489.127, F.S., the CILB is empowered to take any of the following actions against a certificate holder or registrant, engaged in certain acts, including the uncertified and unregistered practice of contracting:

- Place the individual on probation or reprimand;
- Revoke, suspend, or deny issuance or renewal of a certificate or registration;
- Require financial restitution, not to exceed $10,000 per violation, to a consumer harmed financially;

[35] Section 489.131(2), F.S.

> It is the intent of the Legislature that a local jurisdiction agency charged with enforcing regulatory laws shall issue a notice of noncompliance as its first response to a minor violation of a regulatory law in any instance in which it is reasonable to assume that the violator was unaware of such a law or unclear as to how to comply with it. A violation of a regulatory law is a "minor violation" if it does not result in economic or physical harm to a person or adversely affect the public health, safety, or welfare or create a significant threat of such harm. . . .A notice of noncompliance should not be accompanied with a fine or other disciplinary penalty. It should identify the specific ordinance that is being violated, provide information on how to comply with the ordinance, and specify a reasonable time for the violator to comply with the ordinance.

[36] Section 489.131(4)(c). The Florida Homeowners' Construction Recovery Fund was established to compensate someone who contracted for the construction or improvement of their residence and was awarded a final judgment granting restitution by the CILB on grounds involving an act of misconduct by a licensed contractor.

[37] Section 489.127(1), F.S.

[38] *See supra* at n. 1 and n. 2.

- Require continuing education; or
- Assess costs associated with investigation and prosecution.[39]

III. Effect of Proposed Changes:

The bill amends s. 489.127, F.S., to increase the criminal penalties when an unlicensed person violates the provisions of s. 489.127(1)(f), by engaging in the business or acting in the capacity of a contractor.

For such violations, the bill creates a tiered penalty structure, increasing in severity with the contract price. If the contract price is:

- Less than $1,000, the penalty remains a first degree misdemeanor.[40]
- $1,000 or more, but less than $20,000, the penalty is a third degree felony.[41]
- $20,000 or more, but less than $200,000, the penalty is a second degree felony.[42]
- $200,000 or more, the penalty is a first degree felony.[43]

The criminal penalties for all other unlicensed contracting activities are not affected by this bill.

The bill reenacts s. 489.13(7), F.S., to incorporate the changes made to s. 489.127, F.S.

The bill is effective October 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

[39] *See* s. 489.129(1) F.S.
[40] *See supra* at n. 1.
[41] *See supra* at n. 2.
[42] *See supra* at n. 3.
[43] *See supra* at n. 4.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Unlicensed persons who engage in contracting activity will be subject to imposition of the terms of imprisonment and the fines for such activity described in the bill.

C. Government Sector Impact:

The government sector impact of the bill has not yet been reviewed by the Criminal Justice Impact Conference within the Office of Economic and Demographic Research. The impact is indeterminate and will depend on the number of persons who have a term of imprisonment imposed.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 489.127 and 489.13.

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 30, 2021:
The Committee Substitute:

- Replaces the term "contract amount," which is undefined under current law, and replaces it with the term "contract price" which is defined under s. 713.01, F.S.
- Clarifies that the enhanced penalties only apply to persons engaged in the business or acting in the capacity of a contractor.

B. Amendments:

None.

869056

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2021	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 37 - 49

and insert:

by engaging in the business or acting in the capacity of a contractor without being duly registered or certified commits the following:

1. If the contract price is less than $1,000, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

869056

2. If the contract price is $1,000 or more, but less than $20,000, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. If the contract price is $20,000 or more, but less than $200,000, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. If the contract price is $200,000 or more, a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

For purposes of this paragraph, the term "contract price" has the same meaning as in s. 713.01.

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

And the title is amended as follows:

Delete lines 4 - 5

and insert:

persons who engage in contracting without proper registration

By Senator Perry

8-00535-21 2021332__

A bill to be entitled

An act relating to unlicensed contracting; amending s. 489.127, F.S.; revising the criminal penalties for persons who engage in contracting or advertise themselves as contractors without proper registration or certification; making technical changes; reenacting s. 489.13(7), F.S., relating to unlicensed contracting, to incorporate the amendment made to s. 489.127, F.S., in a reference thereto; providing an effective date.

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

Section 1. Subsection (2) of section 489.127, Florida Statutes, is amended to read:

489.127 Prohibitions; penalties.—

(2)(a) Except as provided in paragraph (b), an ~~Any~~ unlicensed person who violates subsection (1):

1. ~~any of the provisions of subsection (1)~~ Commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2.~~(b) Any unlicensed person who commits a violation of subsection (1)~~ After having been previously found guilty of such violation, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

3.~~(c) Any unlicensed person who commits a violation of subsection (1)~~ During the existence of a state of emergency declared by executive order of the Governor, commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

8-00535-21 2021332__

4.~~(d)~~ By operating ~~Any person who operates~~ as a pollutant storage systems contractor, precision tank tester, or internal pollutant storage tank lining applicator, ~~in violation of subsection (1)~~ commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.083.

(b) An unlicensed person who violates paragraph (1)(f) commits the following:

1. If the contract amount is less than $1,000, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

2. If the contract amount is $1,000 or more, but less than $20,000, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

3. If the contract amount is $20,000 or more, but less than $200,000, a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

4. If the contract amount is $200,000 or more, a felony of the first degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

The remedies set forth in this subsection are not exclusive and may be imposed in addition to the remedies set forth in s. 489.129(2).

Section 2. For the purpose of incorporating the amendment made by this act to section 489.127, Florida Statutes, in a reference thereto, subsection (7) of section 489.13, Florida Statutes, is reenacted to read:

489.13 Unlicensed contracting; notice of noncompliance;

fine; authority to issue or receive a building permit; web page.—

(7) The remedies set forth in this section are not exclusive and may be imposed in addition to the remedies set forth in s. 489.127(2). In addition, nothing in this section is intended to prohibit the department or any local governing body from filing a civil action or seeking criminal penalties against an unlicensed contractor.

Section 3. This act shall take effect October 1, 2021.

The Florida Senate

Committee Agenda Request

To: Senator Travis Hutson, Chair
Committee on Regulated Industries

Subject: Committee Agenda Request

Date: January 12, 2021

I respectfully request that **Senate Bill #332**, relating to Unlicensed Contracting, be placed on the:

☐ committee agenda at your earliest possible convenience.

☒ next committee agenda.

W. Keith Perry

Senator Keith Perry
Florida Senate, District 8

File signed original with committee office

S-020 (03/2004)

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21
Meeting Date

332
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Unlicensed Contracting

Name Edward Briggs

Job Title Director of Government Relations

Address 235 W. Brandon Blvd. Ste. 640
Street

Brandon FL 33511
City *State* *Zip*

Phone 8509335994

Email edward@rsaconsultingllc.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Cotney Construction Law

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:	CS/SB 1836
INTRODUCER:	Regulated Industries Committee and Senator Polsky
SUBJECT:	Public Records/Lottery Winners
DATE:	March 31, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Kraemer	Imhof	RI	**Fav/CS**
2.			GO	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1836 amends s. 24.1051(3), F.S., to provide a public records exemption for 90 days from the date a prize is claimed, for the name of a winner of a lottery prize valued at $250,000 or more, unless the winner consents to the release of his or her name, or if disclosure is required by other provisions of current law.

The exemption is subject to the Open Government Sunset Review Act (act) and will stand repealed on October 2, 2026, unless reviewed and reenacted by the Legislature.

The bill creates a public records exemption, and therefore it requires a two-thirds vote of the members present and voting for final passage.

The bill takes effect upon becoming a law.

II. Present Situation:

Access to Public Records - Generally

The Florida Constitution provides that the public has the right to inspect or copy records made or received in connection with official governmental business.[1] The right to inspect or copy applies to the official business of any public body, officer, or employee of the state, including all three

[1] FLA. CONST. art. I, s. 24(a).

branches of state government, local governmental entities, and any person acting on behalf of the government.[2]

Additional requirements and exemptions related to public records are found in various statutes and rules, depending on the branch of government involved. For instance, s. 11.0431, F.S., provides public access requirements for legislative records. Relevant exemptions are codified in s. 11.0431(2)-(3), F.S., and the statutory provisions are adopted in the rules of each house of the legislature.[3] Florida Rule of Judicial Administration 2.420 governs public access to judicial branch records.[4] Lastly, ch. 119, F.S., provides requirements for public records held by executive agencies.

Executive Agency Records – The Public Records Act

Chapter 119, F.S., known as the Public Records Act, provides that all state, county and municipal records are open for personal inspection and copying by any person, and that providing access to public records is a duty of each agency.[5]

A public record includes virtually any document or recording, regardless of its physical form or how it may be transmitted.[6] The Florida Supreme Court has interpreted the statutory definition of "public record" to include "material prepared in connection with official agency business which is intended to perpetuate, communicate, or formalize knowledge of some type."[7]

The Florida Statutes specify conditions under which public access to public records must be provided. The Public Records Act guarantees every person's right to inspect and copy any public record at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.[8] A violation of the Public Records Act may result in civil or criminal liability.[9]

The Legislature may exempt public records from public access requirements by passing a general law by a two-thirds vote of both the House and the Senate.[10] The exemption must state

[2] *Id*.
[3] *See* Rule 1.48, *Rules and Manual of the Florida Senate*, (2020-2022) and Rule 14.1, *Rules of the Florida House of Representatives*, (2020-2022).
[4] *State v. Wooten*, 260 So. 3d 1060 (Fla. 4th DCA 2018).
[5] Section 119.01(1), F.S. Section 119.011(2), F.S., defines "agency" as "any state, county, district, authority, or municipal officer, department, division, board, bureau, commission, or other separate unit of government created or established by law including, for the purposes of this chapter, the Commission on Ethics, the Public Service Commission, and the Office of Public Counsel, and any other public or private agency, person, partnership, corporation, or business entity acting on behalf of any public agency."
[6] Section 119.011(12), F.S., defines "public record" to mean "all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency."
[7] *Shevin v. Byron, Harless, Schaffer, Reid and Assoc., Inc*., 379 So. 2d 633, 640 (Fla. 1980).
[8] Section 119.07(1)(a), F.S.
[9] Section 119.10, F.S. Public records laws are found throughout the Florida Statutes, as are the penalties for violating those laws.
[10] FLA. CONST. art. I, s. 24(c).

with specificity the public necessity justifying the exemption and must be no broader than necessary to accomplish the stated purpose of the exemption.[11]

General exemptions from the public records requirements are contained in the Public Records Act.[12] Specific exemptions often are placed in the substantive statutes relating to a particular agency or program.[13]

When creating a public records exemption, the Legislature may provide that a record is "exempt" or "confidential and exempt." Custodians of records designated as "exempt" are not prohibited from disclosing the record; rather, the exemption means that the custodian cannot be compelled to disclose the record.[14] Custodians of records designated as "confidential and exempt" may not disclose the record except under circumstances specifically defined by the Legislature.[15]

Open Government Sunset Review Act

The Open Government Sunset Review Act[16] (the act) prescribes a legislative review process for newly created or substantially amended[17] public records or open meetings exemptions, with specified exceptions.[18] It requires the automatic repeal of such exemption on October 2nd of the fifth year after creation or substantial amendment, unless the Legislature reenacts the exemption.[19]

The act provides that a public records or open meetings exemption may be created or maintained only if it serves an identifiable public purpose and is no broader than is necessary.[20]

An exemption serves an identifiable purpose if it meets one of the following purposes *and* the Legislature finds that the purpose of the exemption outweighs open government policy and cannot be accomplished without the exemption:

- It allows the state or its political subdivisions to effectively and efficiently administer a governmental program, and administration would be significantly impaired without the exemption;[21]

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[11] *Id*. *See, e.g., Halifax Hosp. Medical Center v. News-Journal Corp.*, 724 So. 2d 567 (Fla. 1999) (holding that a public meetings exemption was unconstitutional because the statement of public necessity did not define important terms and did not justify the breadth of the exemption); *Baker County Press, Inc. v. Baker County Medical Services, Inc.*, 870 So. 2d 189 (Fla. 1st DCA 2004) (holding that a statutory provision written to bring another party within an existing public records exemption is unconstitutional without a public necessity statement).

[12] *See, e.g.*, s. 119.071(1)(a), F.S. (exempting from public disclosure examination questions and answer sheets of examinations administered by a governmental agency for the purpose of licensure).

[13] *See, e.g.*, s. 213.053(2)(a), F.S. (exempting from public disclosure information contained in tax returns received by the Department of Revenue).

[14] *See Williams v. City of Minneola*, 575 So. 2d 683, 687 (Fla. 5th DCA 1991).

[15] *WFTV, Inc. v. The School Board of Seminole*, 874 So. 2d 48 (Fla. 5th DCA 2004).

[16] Section 119.15, F.S.

[17] An exemption is considered to be substantially amended if it is expanded to include more records or information or to include meetings as well as records. Section 119.15(4)(b), F.S.

[18] Section 119.15(2)(a) and (b), F.S., provide that exemptions that are required by federal law or are applicable solely to the Legislature or the State Court System are not subject to the Open Government Sunset Review Act.

[19] Section 119.15(3), F.S.

[20] Section 119.15(6)(b), F.S.

[21] Section 119.15(6)(b)1., F.S.

- It protects sensitive, personal information, the release of which would be defamatory, cause unwarranted damage to the good name or reputation of the individual, or would jeopardize the individual's safety. If this public purpose is cited as the basis of an exemption, however, only personal identifying information is exempt;[22] or
- It protects information of a confidential nature concerning entities, such as trade or business secrets.[23]

In examining an exemption, the act directs the Legislature to carefully question the purpose and necessity of reenacting the exemption. The act requires the Legislature to consider the following specific questions in such a review:[24]

- What specific records or meetings are affected by the exemption?
- Whom does the exemption uniquely affect, as opposed to the general public?
- What is the identifiable public purpose or goal of the exemption?
- Can the information contained in the records or discussed in the meeting be readily obtained by alternative means? If so, how?
- Is the record or meeting protected by another exemption?
- Are there multiple exemptions for the same type of record or meeting that it would be appropriate to merge?

If the exemption is continued and expanded, then a public necessity statement and a two-thirds vote for passage are required.[25] If the exemption is continued without substantive changes or if the exemption is continued and narrowed, then a public necessity statement and a two-thirds vote for passage are *not* required. If the Legislature allows an exemption to sunset, the previously exempt records will remain exempt unless provided for by law.[26]

Department of the Lottery

Operations

Section 15 of Article X of the State Constitution allows lotteries to be operated by the state. The Department of the Lottery (department) operates the state lottery in accordance with the intent of the Legislature, stated in s. 24.102(2), F.S., which provides:
The net proceeds of lottery games shall be used to support improvements in public education;
Lottery operations shall be undertaken as an entrepreneurial business enterprise; and
The department shall be accountable through audits, financial disclosure, open meetings, and public records laws.

The department operates the Florida Lottery to maximize revenues "consonant with the dignity of the state and the welfare of its citizens"[27] for the benefit of public education.[28] The department contracts with retailers (e.g., supermarkets, convenience stores, gas stations, and newsstands) to

[22] Section 119.15(6)(b)2., F.S.
[23] Section 119.15(6)(b)3., F.S.
[24] Section 119.15(6)(a), F.S.
[25] *See generally* s. 119.15, F.S.
[26] Section 119.15(7), F.S.
[27] *See* s. 24.104, F.S.
[28] *See* s. 24.121(2), F.S.

provide adequate and convenient availability of lottery tickets.[29] Retailers receive commissions of five percent of the ticket price, one percent of the prize value for redeeming winning tickets, and bonus and performance incentive payments.[30] Retailers are eligible to receive bonuses for selling select winning tickets and performance incentive payments.[31]

The department selects retailers based on financial responsibility, integrity, reputation, accessibility, convenience, security of the location, and estimated sales volume, with special consideration for small businesses.[32] Retailers must be at least 18 years old, and the sale of lottery tickets must occur as part of an ongoing retail business. Contracting with a retailer with a felony criminal history is prohibited,[33] and the authority to act as a retailer may not be transferred.[34]

Retailers may not extend credit or lend money to a person to purchase a lottery ticket. The use of a credit or charge card or other instrument issued by a bank, savings association, credit union, charge card company, or by a retailer (for installment sales of goods) is allowed, if the lottery ticket purchase is part of a purchase transaction for other goods and services that cost $20 or more.[35]

The department may establish by rule a system to verify and pay winning lottery tickets:[36]

- Any lottery retailer, as well as any department office, may redeem a winning ticket valued at less than $600.[37] Payments less than $50 are generally paid by a retailer in cash, depending on store policy or local ordinance. Higher amounts may be paid by cash, check, or money order at no cost to the winner.
- Only a department office may redeem a winning ticket valued at $600 or more.[38] Winning tickets are paid at the claimant's option in a combination of cash, check, or lottery tickets (with a limitation of $200 payable in cash).

Prizes must be claimed within certain time limits, depending on the type of game played. Instant lottery tickets (e.g., scratch-off tickets), must be redeemed within 60 days after the end of that lottery game.[39] Other lottery tickets (e.g., tickets for drawings) must be redeemed within 180 days after the winning drawing.

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[29] *See* s. 24.105(17), F.S.
[30] *See* Office of Program Policy Analysis and Gov't Accountability, Florida Legislature, *Review of the Florida Lottery, 2020*, Report No. 21-02, (Jan. 2021), *available at* https://oppaga.fl.gov/Documents/Reports/21-02.pdf, at page 1, (footnote 4) (last visited Mar. 26, 2021).
[31] *Id*.
[32] *See* s. 24.112(2), F.S., which also includes a statement of legislative intent that retailer selections be based on business considerations and public convenience, without regard to political affiliation.
[33] *See* s. 24.112(3)(c), F.S.
[34] *See* s. 24.112(4), F.S.
[35] *See* s. 24.118(1), F.S.
[36] *See* s. 24.115, F.S., and Fla. Admin. Code R. 53ER 21-3.
[37] *Id*. The winner has the option of presenting a winning ticket in person to any lottery retailer, any of the nine lottery district offices, or to lottery headquarters in Tallahassee.
[38] *Id*. Mega Millions® and Powerball® prizes up to $1 million may be claimed at any lottery district office. All other prizes greater than $250,000 must be claimed at lottery headquarters.
[39] *See* s. 24.115(1)(f), F.S.

The department may adopt rules governing the types of lottery games to be conducted,[40] including lottery terminals or devices that "may be operated solely by the player without the assistance of the retailer."[41]

The department promotes responsible lottery ticket play and directs persons struggling with a gambling problem to contact the 1-888-ADMIT-IT telephone line for assistance.[42]

Confidential and Exempt Information Held by the Department of Lottery

The following information held by the department is confidential and exempt from inspection and copying requirements under s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution:

- Information that, if released, could harm the security or integrity of the department, including:
  - Information relating to the security of the department's technologies, processes, and practices designed to protect networks, computers, data processing software, data, and data systems from attack, damage, or unauthorized access.
  - Security information or information that would reveal security measures of the department, whether physical or virtual.
  - Information about lottery games, promotions, tickets, and ticket stock, including information concerning the description, design, production, printing, packaging, shipping, delivery, storage, and validation of such games, promotions, tickets, and stock.
  - Information concerning terminals, machines, and devices that issue tickets.
- Information that must be maintained as confidential in order for the department to participate in a multistate lottery association or game.
- Personal identifying information obtained by the department when processing background investigations of current or potential retailers or vendors.
- Financial information about an entity which is not publicly available and is provided to the department in connection with its review of the financial responsibility of the entity pursuant to ss. 24.111 or s. 24.112, F.S., provided that the entity marks such information as confidential. However, financial information related to any contract or agreement, or an addendum thereto, with the department, including the amount of money paid, any payment structure or plan, expenditures, incentives, bonuses, fees, and penalties, shall be public record.

Information made confidential and exempt under s. 24.1051, F.S., may be released to other governmental entities as needed in connection with the performance of their duties. The

[40] S*ee* s. 24.105(9)(a), F.S.

[41] Prior to 1996, there was no provision for player-activated lottery terminals or devices. Section 4 of ch. 96-341, Laws of Fla., authorized such machines, subject to restrictions that they be: (1) designed solely for dispensing of instant lottery tickets; (2) activated by coin or currency; (3) in the direct line of sight of on-duty retail employees; (4) capable of being electronically deactivated for 5 minutes or more; and (5) incapable of redeeming winning tickets, though they may dispense change. Chapter 2012-130, Laws of Fla., moved the restrictions on player-activated machines from s. 24.105(9)(a)4., F.S., to s. 24.112(15), F.S. As amended, the law (1) authorizes lottery vending machines to dispense "online lottery tickets, instant lottery tickets, or both," and (2) prohibits use of mechanical reels or video depictions of slot machine or casino game themes or titles (but does not prohibit use of casino game themes or titles on lottery tickets, signage, or advertising displays on the vending machines).

[42] *See* http://www.flalottery.com/playResponsibly (last visited Mar. 26, 2021).

receiving governmental entity must maintain the confidential and exempt status of such information.

The exemption is subject to the Open Government Sunset Review Act in accordance with s. 119.15, F.S., and is repealed on October 2, 2024, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 24.1051(2), F.S., provides the street address and the telephone number of a winner are confidential and exempt from inspection and copying requirements pursuant to s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution, unless the winner consents to the release of such information, or if required by:

- Section 24.115(4), F.S., relating to debts owed to a state agency or child support collected through a court, including spousal support or alimony if the child support obligation is being enforced by the Florida Department of Revenue; or
- Section 409.2577, F.S., relating to locating parents who have deserted their children.

Any information made confidential and exempt under this section must be disclosed to the Auditor General, to the Office of Program Policy Analysis and Government Accountability, or to the independent auditor selected under s. 24.123, F.S., upon request. If the President of the Senate or the Speaker of the House of Representatives certifies that information made confidential and exempt under this section is necessary for effecting legislative changes, the requested information shall be disclosed to him or her, and he or she may disclose such information to members of the Legislature and legislative staff as necessary to effect such purpose.

Any person who, with intent to defraud or with intent to provide a financial or other advantage to himself, herself, or another, knowingly and willfully discloses any information relating to the lottery designated as confidential and exempt from s. 119.07(1), F.S., and s. 24(a), Art. I of the State Constitution pursuant to s. 24.1051, F.S., is guilty of a felony of the first degree, punishable by a term of imprisonment not to exceed thirty years, and a fine not to exceed $10,000.

III. Effect of Proposed Changes:

The bill amends s. 24.1051(3), F.S., to provide a public records exemption for 90 days from the date a prize is claimed, for the name of a winner of a lottery prize valued at $250,000 or more, unless the winner consents to the release of his or her name, or if required by law.[43]

The bill provides for the repeal of the exemption pursuant to the Open Government Sunset Review Act on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

[43] Florida law provides that such disclosure is required under s. 24.115(4), F.S., relating to debts owed to a state agency or child support collected through a court, including spousal support or alimony if the child support obligation is being enforced by the Florida Department of Revenue, and under s. 409.2577, F.S., relating to locating parents who have deserted their children.

The bill includes the following legislative statement of public necessity:

> The Legislature finds that it is a public necessity that the name of a winner of a lottery prize valued at $250,000 or more be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the State Constitution for 90 days from the date the prize is claimed, because persons who win valuable lottery prizes have been the targets of violent and nonviolent criminal acts based upon publicly available identifying information. For this reason, the Legislature finds that it is a public necessity to maintain the confidential and exempt status of such information for 90 days from the date the prize is claimed.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

Vote Requirement
Article I, s. 24(c) of the State Constitution requires a two-thirds vote of the members present and voting for final passage of a bill creating or expanding an exemption to the public records requirements. This bill does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Public Necessity Statement
Article I, s. 24(c) of the State Constitution requires a bill creating or expanding an exemption to the public records requirements to state with specificity the public necessity justifying the exemption. This bill does not create or expand an exemption, thus, the bill does not require a two-thirds vote to be enacted.

Breadth of Exemption
Article I, s. 24(c) of the State Constitution requires an exemption to the public records requirements to be no broader than necessary to accomplish the stated purpose of the law. The exemption in the bill does not appear to be broader than necessary to accomplish the purpose of the law.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

According to the department, the impacts to lottery game ticket sales and transfers to the Educational Enhancement Trust Fund are indeterminate.[44]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Under the bill, a winner of a lottery prize valued at $250,000 or more will be able to decline to have their name disclosed publicly for a period of 90 days after the prize is claimed. The department indicates that "real winner stories are an important component to promoting transparency and building trust with the public."[45]

VIII. Statutes Affected:

This bill amends section 24.1051 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 Committee on March 30, 2021:
The committee substitute:

- Limits the public records exemption created by the bill to 90 days after a prize valued at $250,000 or more is claimed by the winner; and
- Provides the winner's name is no longer confidential and exempt 90 days after a prize valued at $250,000 or more is claimed.

[44] *See* Department of the Lottery, *Agency Bill Analysis for SB 1836* at 4 (Mar. 26, 2021) (on file with the Senate Committee on Regulated Industries).
[45] *Id*. at 2.

B. Amendments:

None.

267086

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2021	.	
	.	
	.	
	.	

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

Senate Amendment (with title amendment)

Delete lines 19 - 21
and insert:
24(a), Art. I of the State Constitution for 90 days from the date the prize is claimed, unless the winner consents to the release of his or her name or as provided for in s. 24.115(4) or s. 409.2577. After 90 days, the winner's name is no longer confidential and exempt.

267086

========== T I T L E A M E N D M E N T ==========
And the title is amended as follows:
Delete line 3
and insert:
24.1051, F.S.; creating a temporary exemption from public records for the names

By Senator Polsky

29-00589B-21 20211836__

A bill to be entitled

An act relating to public records; amending s. 24.1051, F.S.; exempting from public records the names of lottery winners who win prizes over a specified value; providing for future legislative review and repeal of the exemption; providing a statement of public necessity; providing an effective date.

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

Section 1. Present subsections (3) and (4) of section 24.1051, Florida Statutes, are redesignated as subsections (4) and (5), respectively, and a new subsection (3) is added to that section, to read:

24.1051 Exemptions from inspection or copying of public records.—

(3)(a) The name of a winner of a prize valued at $250,000 or more is confidential and exempt from s. 119.07(1) and s. 24(a), Art. I of the State Constitution, unless the winner consents to the release of his or her name or as provided for in s. 24.115(4) or s. 409.2577.

(b) This subsection is subject to the Open Government Sunset Review Act in accordance with s. 119.15 and shall stand repealed on October 2, 2026, unless reviewed and saved from repeal through reenactment by the Legislature.

Section 2. The Legislature finds that it is a public necessity that the name of a winner of a lottery prize valued at $250,000 or more be made confidential and exempt from s. 119.07(1), Florida Statutes, and s. 24(a), Article I of the

29-00589B-21 20211836__

State Constitution, because persons who win valuable lottery prizes have been the targets of violent and nonviolent criminal acts based upon publicly available identifying information. For this reason, the Legislature finds that it is a public necessity to maintain the confidential and exempt status of such information.

Section 3. This act shall take effect upon becoming a law.

2021 AGENCY LEGISLATIVE BILL ANALYSIS
Department of the Lottery

BILL INFORMATION	
BILL NUMBER:	SB 1836
BILL TITLE:	Public Records/Lottery Winners
BILL SPONSOR:	Sen. Polsky
EFFECTIVE DATE:	Upon becoming a law

COMMITTEES OF REFERENCE
1) Regulated Industries
2) Governmental Oversight and Accountability
3) Rules
4)
5)

CURRENT COMMITTEE
Regulated Industries

SIMILAR BILLS	
BILL NUMBER:	N/A
SPONSOR:	N/A

PREVIOUS LEGISLATION	
BILL NUMBER:	N/A
SPONSOR:	N/A
YEAR:	N/A
LAST ACTION:	N/A

IDENTICAL BILLS	
BILL NUMBER:	HB 1395
SPONSOR:	Rep. Davis

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	March 16, 2021
LEAD AGENCY ANALYST:	Jeff Ivey, Legislative Affairs Director
ADDITIONAL ANALYST(S):	
LEGAL ANALYST:	Dane Dunson, General Counsel
FISCAL ANALYST:	Brea Gelin, Budget Director

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

The bill amends section (s.) 24.1051, Florida Statutes (F.S.), to make the name of a winner of a prize valued at $250,000 or more confidential and exempt from the public records law, unless the winner consents to its release.

The exemption is subject to the Open Government Sunset Review Act.[1]

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Lottery Public Record Exemptions

Pursuant to s. 24.1051(2), F.S., the street address and telephone number of a winner are confidential and exempt from public records law, unless the winner consents to the release of the information, or as provided for in s. 24.115(4), F.S. or s. 409.2577, F.S.

Lottery Prize Winners

The Florida Lottery (Lottery) features major prize winners in various venues – press releases, social media posts, and the Lottery's website.[2] When winners come to claim their prize in-person, Lottery staff have the opportunity to meet with the winner(s) to hear about their winning experience. An additional venue, as a part of the Lottery's marketing strategy, is highlighting real winner stories through recorded and user-generated videos. These individuals, no matter the prize amounts won, have agreed to have their name and likeness utilized.

Resources for Lottery Prize Winners

Major Prize Winners

When players win prizes of $250,000 or more, the Lottery's Division of Claims Processing sends a Top Prize Winner Packet (Packet)[3] to the winner, which includes instructions for claiming their prize and an explanation of what information is subject to disclosure. The individual's full name is included in the list of information subject to disclosure.

The Packet also provides the Customer Service Hotline contact information if the winner has any questions.

All Prize Winners

The Lottery also provides information for all winners in *The Player's Guide*. *The Player's Guide* has an entire section titled "Win Responsibly," which provides information to players interested in information on managing and protecting winnings and public disclosure information.[4]

EFFECT OF THE BILL:

The bill would make the name of a winner of a prize valued at $250,000 or more confidential and exempt from the public records law, unless the winner consents to its release.

For prize winners over $250,000, the Lottery would be required to receive consent from the winner to have their name be public record. This could be achieved with the player providing written permission to the Lottery, or the Lottery amending the Winner Claim form to allow for players to provide their consent for their name to be used. Amending the Winner Claim form would require a rule change.

The Lottery expects there will be fewer winner stories to share with the public if this bill is in effect (the amount is indeterminate). Real winner stories are an important component to promoting transparency and building trust with the public.

[1] s. 119.15, F.S.
[2] https://www.flalottery.com/winnerNews
[3] Top Prize Winner Packet
[4] https://playersguide.flalottery.com/a11y/win-responsibly

2. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☐ N☒

If yes, explain:	N/A
Is the change consistent with the agency's core mission?	Y☐ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	N/A

***3.* WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

Proponents and summary of position:	N/A
Opponents and summary of position:	N/A

4. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y☐ N☒

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

5. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y☐ N☒

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☐ N☒

Revenues:	N/A
Expenditures:	N/A

Does the legislation increase local taxes or fees? If yes, explain.	N/A
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☐ N☐

Revenues:	The impact to sales of lottery game tickets and transfers to the Educational Enhancement Trust Fund are indeterminate.
Expenditures:	N/A
Does the legislation contain a State Government appropriation?	N/A
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☐ N☐

Revenues:	The impact to Lottery retailers is indeterminate.
Expenditures:	N/A
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☐ N☒

If yes, explain impact.	N/A
Bill Section Number:	N/A

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y☐ N☒

If yes, describe the anticipated impact to the agency including any fiscal impact.	N/A

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y☐ N☒

If yes, describe the anticipated impact including any fiscal impact.	N/A

ADDITIONAL COMMENTS

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Agriculture
Appropriations Subcommittee on Education
Community Affairs
Education
Ethics and Elections
Judiciary

SENATOR TINA SCOTT POLSKY
29th District

March 4, 2021

Chairman Travis Hutson
Committee on Regulated Industries
525 Knott Building
404 S. Monroe Street
Tallahassee, FL 32399-1100

Chairman Hutson,

I respectfully request that you place SB 1836, relating to Public Records/Lottery Winners, on the agenda of the Committee on Regulated Industries, at your earliest convenience.

Should you have any questions or concerns, please feel free to contact me or my office. Thank you in advance for your consideration.

Kindest Regards,

Senator Tina S. Polsky
Florida Senate, District 29

cc: Booter Imhof, Staff Director
Susan Datres, Administrative Assistant

REPLY TO:
❒ 5301 North Federal Highway, Suite 135, Boca Raton, Florida 33487 (561) 443-8170
❒ 222 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5029

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

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL:	CS/SB 1966
INTRODUCER:	Regulated Industries Committee and Senators Diaz and Garcia
SUBJECT:	Department of Business and Professional Regulation
DATE:	March 31, 2021 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.			AP	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1966 revises provisions relating to the licensing and regulation of cosmetics manufacturers, construction contractors, tobacco products, alcoholic beverages, pugilistic events, condominium associations, and public food and lodging establishments by the Department of Business and Professional Regulation (DBPR).

Relating to reporting requirements for tobacco product wholesalers, the bill:

- Requires tax and sales reports to be filed with the Division of Alcoholic Beverages and Tobacco through the agency's electronic system; and
- Revises the reporting requirements.

Relating to construction contracting, the bill allows registered contractors to apply for a state-wide certified contractors' license without having to take the state licensure examination.

Relating to construction and electrical contractors, the bill repeals the $4 fee all certificate holders and registrants must pay to the DBPR at the time of application or renewal, to fund projects relating to the building construction industry or continuing education programs offered to building construction industry workers in Florida.

Relating to cosmetic manufacturers, the bill:

- Creates an exemption from the cosmetic manufacturing permit requirements for a person who manufactures limited cosmetic products, such as soaps, and has annual gross sales of $25,000 or less;
- Authorizes a temporary permit for 90 calendar days to allow continued operation of a cosmetics establishment when there is a change of ownership, controlling interest, or location; and
- Authorizes the DBPR to issue remedial, nondisciplinary citations for violations that do not pose a substantial threat to the public health, safety, or welfare.

Relating to procedures for licensing public lodging establishments and public food service establishments, the bill:

- Deletes the requirement for a staggered license renewal schedule; and
- Requires the full annual license fee to be paid at the time of application, instead of a prorated initial license fee.

Relating to regulation of pugilistic events, the bill:

- Changes the name of the Florida State Boxing Commission to the Florida Athletic Commission (commission);
- Authorizes the commission to establish the weight of any gloves used in pugilistic matches by rule; and
- Deletes the requirement for all participants in pugilistic matches to wear gloves.

Relating to alcohol beverage regulations, the bill:

- Requires applicants for an alcoholic beverage license to submit fingerprints to the DBPR electronically, provide proof of the applicant's right of occupancy for the entire premises they are seeking to license, and maintain a current electronic mailing address with the DBPR;
- Requires licensees to submit alcohol sales reports through the DBPR's electronic system;
- Requires notices related to a vendor's delinquent payment to a distributor be provided by the DBPR through electronic mail;
- Revises the compliance audit timeframes for special restaurant licensees; and
- Removes "grains of paradise" from the list of prohibited ingredients in liquor under the crime of "adulterating liquor."

Relating to condominium associations, the bill:

- Requires a proposed annual budget to be provided to members of the association and adopted by its board of directors no later than 30 days before the beginning of the fiscal year;
- Defines the circumstances when a person is delinquent in a payment due to an association;
- Deletes the requirement that the condominium ombudsman keep his or her principal office in Leon County; and
- Authorizes the DBPR to adopt rules for submitting complaints against condominium associations.

The bill has a significant fiscal impact on state revenues. According to the DBPR, the elimination of the staggered and prorated renewal schedule for food and lodging establishment licensees under the bill is estimated to reduce state revenues by approximately 4.5 percent (approximately $1.7 million) for Fiscal Year 2021-2022.

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

II. Present Situation:

For ease of reference, the Present Situation for each section of SB 912 is addressed in the Effect of Proposed Changes portion of this bill analysis. Background information about the Department of Business and Professional Regulation (DBPR) is provided below.

Organization of the Department of Business and Professional Regulation

Section 20.165, F.S., establishes the organizational structure of the DBPR, which has 12 divisions:

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

The Florida State Boxing Commission is assigned to the DBPR for administrative and fiscal accountability purposes only.[1] The DBPR also administers the Child Labor Law and Farm Labor Contractor Registration Law.[2]

Powers and Duties of the DBPR

Chapter 455, F.S., applies to the regulation of professions constituting "any activity, occupation, profession, or vocation regulated by the [DBPR] in the Divisions of Certified Public Accounting, Professions, Real Estate, and Regulation."[3] The chapter also provides the procedural and administrative framework for those divisions and the professional boards within the DBPR.[4]

The DBPR's regulation of professions is to be undertaken "only for the preservation of the health, safety, and welfare of the public under the police powers of the state."[5] Regulation is required when:

- The potential for harming or endangering public health, safety, and welfare is recognizable and outweighs any anticompetitive impact that may result;

[1] Section 548.003(1), F.S.
[2] *See* parts I and III of ch. 450, F.S.
[3] *See* s. 455.01(6), F.S.
[4] *See* s. 455.203, F.S. The DBPR must also provide legal counsel for boards within the DBPR by contracting with the Department of Legal Affairs, by retaining private counsel, or by staff counsel of the DBPR. *See* s. 455.221(1), F.S.
[5] Section 455.201(2), F.S.

- The public is not effectively protected by other state statutes, local ordinances, federal legislation, or other means; and
- Less restrictive means of regulation are not available.[6]

However, "neither the department nor any board may create a regulation that has an unreasonable effect on job creation or job retention," or a regulation that unreasonably restricts the ability of those desiring to engage in a profession or occupation from finding employment.[7]

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure.[8] The FCTMH has limited regulatory authority over the following entities and individuals:[9]

- Condominium Associations;
- Cooperative Associations;
- Florida Mobile Home Parks;
- Vacation Units and Timeshares;
- Yacht and Ship Brokers and related business entities; and
- Homeowners' Associations (jurisdiction is limited to arbitration of election and recall disputes).

Division of Hotels and Restaurants

The Division of Hotels and Restaurants (DHR) licenses, inspects, and regulates public lodging and food service establishments in Florida. The DHR also licenses and regulates elevators, escalators, and other vertical conveyance devices.[10]

Division of Alcoholic Beverages and Tobacco

The Division of Alcoholic Beverages and Tobacco (DABT) regulates the manufacture, distribution, sale, and service of alcoholic beverages and tobacco products in Florida, including:

- Receipt and processing of license applications;
- Collection and auditing of taxes, surcharges, and fees paid by licensees; and
- Enforcement of the laws and regulations governing the sale of alcoholic beverages and tobacco products.[11]

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[6] *Id.*
[7] Section 455.201(4)(b), F.S.
[8] Department of Business and Professional Regulation, *Division of Florida Condominiums, Timeshares, and Mobile Homes*, http://www.myfloridalicense.com/DBPR/condos-timeshares-mobile-homes/, (last visited Mar. 12, 2021).
[9] *Id.*
[10] Florida Department of Business and Professional Regulation, Division of Hotels and Restaurants, http://www.myfloridalicense.com/DBPR/hotels-restaurants/ (last visited Mar. 12, 2021).
[11] Florida Department of Business and Professional Regulation, Division of Alcoholic Beverages and Tobacco, http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/ (last visited Mar. 12, 2021).

III. Effect of Proposed Changes:

Tobacco Products Regulation and Taxation

Present Situation

The Division of Alcoholic Beverages and Tobacco (DABT) is responsible for the regulation of tobacco products under ch. 210, F.S., which sets out tax requirements for cigarettes and other tobacco products, and ch. 569, F.S., which sets out requirements for the retail sale of tobacco products.[12]

"Cigarettes" are defined in s. 210.01(1), F.S., for the purpose of taxation, as:

> …any roll for smoking, except one of which the tobacco is fully naturally fermented, without regard to the kind of tobacco or other substances used in the inner roll or the nature or composition of the material in which the roll is wrapped, which is made wholly or in part of tobacco irrespective of size or shape and whether such tobacco is flavored, adulterated or mixed with any other ingredient.

"Tobacco products" are defined in s. 210.25(11), F.S., in the context of state taxes on tobacco products other than cigarettes or cigars, as:

> …loose tobacco suitable for smoking; snuff; snuff flour; cavendish; plug and twist tobacco; fine cuts and other chewing tobaccos; shorts; refuse scraps; clippings, cuttings, and sweepings of tobacco, and other kinds and forms of tobacco prepared in such manner as to be suitable for chewing.

Cigars, nicotine products, and nicotine dispensing devices are not included in the above definitions and therefore are not taxed as a cigarette or tobacco product in Florida.[13]

A person, firm, association, or corporation must obtain a permit from the DABT to function as any of the following in Florida:

- Retail tobacco products dealer;[14]
- Cigarette manufacturer;[15]
- Cigarette wholesale dealer;[16]
- Cigarette distributing agent;[17]
- Cigarette importer;[18]

[12] Section 561.02, F.S.
[13] Sections 210.01(1) and 210.25(12), F.S. "Nicotine dispensing device" means any product that employs an electronic, chemical, or mechanical means to produce vapor from a nicotine product. "Nicotine products" do not include tobacco products, certain smoking cessation products, and products with incidental nicotine. Section 877.112(1)(a) and (b), F.S.
[14] Section 569.003, F.S.
[15] Sections 210.01(21) and 210.15, F.S.
[16] Sections 210.01(6) and 210.15(1), F.S.
[17] Sections 210.01(14) and 210.15(1), F.S.
[18] Sections 210.01(20) and 210.15(1), F.S.

- Cigarette exporter;[19]
- Cigar wholesale dealer;[20] or
- Tobacco wholesale dealer/distributor.[21]

The DABT collects monthly business records related to cigarettes, which are used to accurately collect and distribute cigarette taxes. Such records must be submitted to the DABT by any manufacturer, importer, distributing agent, wholesale dealer, retail dealer, common carrier, or any other person handling, transporting, or possessing cigarettes for sale or distribution in Florida. The DABT prescribes the manner in which these records are submitted.[22]

The DABT also collects monthly returns showing the taxable price of each tobacco product (other than cigarettes or cigars) brought or caused to be brought into Florida for sale, or made, manufactured, or fabricated in this state for sale in this state. Such returns must be submitted by every place of business that sells or manufactures such tobacco products in Florida. The DABT prescribes the form and content for submitting such returns to the DABT. Each return must be accompanied by a remittance for the full tax liability shown.[23]

Effect of Proposed Changes

The bill amends ss. 210.09(2) and 210.55(1), F.S., related to monthly reports and records for cigarettes and other tobacco products, to require that all reports filed with the DABT must be made through the DABT's electronic data submission system. Under the bill, manufacturers, importers, distributing agents, wholesale dealers, agents, and retail dealers may keep records in an electronic or paper format.

The bill also amends s. 210.55(1), F.S., to require a tobacco wholesaler (the taxpayer) to submit a full and complete report with the DABT showing the tobacco products (other than cigars or cigarettes) brought or caused to be brought into Florida for sale, or made, manufactured, or fabricated in this state for sale in this state. The bill replaces the term "return" with the term "report." It requires the tax report to be submitted to the DABT electronically, and permits any records that are required to be kept to be in an electronic or paper format.

Construction Industry Licensing Board

Present Situation

Construction Contractor Divisions

[19] Sections 210.01(17) and 210.15(1), F.S.
[20] The term "cigar wholesale dealer" is not defined or referenced in ch. 210, F.S. However, the DABT issues a permit for "cigar wholesale dealer." See DBPR, *Permits for Cigarettes and Other Tobacco Products*, page 20, available at: www.myfloridalicense.com/dbpr/abt/documents/ABTLicenses.pdf (last visited Mar. 27, 2021).
[21] Sections 210.25(5) and 210.40, F.S.
[22] Section 210.09(2), F.S. Some tax forms are electronically filed with the DABT, and some require manual transmission. Department of Business and Professional Regulation, *Alcoholic Beverages and Tobacco- Forms & Publications, Licensing Related Forms, Tax-Related Forms*, http://www.myfloridalicense.com/DBPR/alcoholic-beverages-and-tobacco/forms-and-publications/#1516309637983-6566a2a4-a2f1 (last visited Mar. 12, 2021).
[23] Sections 210.55(1), F.S.

The Construction Industry Licensing Board (CILB) within the DBPR is responsible for licensing and regulating the construction industry in this state under part I of ch. 489, F.S.[24] The CILB is divided into two divisions with separate jurisdictions:

- Division I comprises the general contractor, building contractor, and residential contractor members of the CILB. Division I has jurisdiction over the regulation of general contractors, building contractors, and residential contractors.
- Division II comprises the roofing contractor, sheet metal contractor, air-conditioning contractor, mechanical contractor, pool contractor, plumbing contractor, and underground utility and excavation contractor members of the CILB. Division II has jurisdiction over the regulation of roofing contractors, sheet metal contractors, class A, B, and C air-conditioning contractors, mechanical contractors, commercial pool/spa contractors, residential pool/spa contractors, swimming pool/spa servicing contractors, plumbing contractors, underground utility and excavation contractors, solar contractors, and pollutant storage systems contractors.[25]

Under current law, a "certified contractor" has met competency requirements for a particular trade category and holds a geographically unlimited certificate of competency from the DBPR which allows the contractor to contract in any jurisdiction in the state without being required to fulfill the competency requirements of other jurisdictions.[26]

The term "registered contractor" means a contractor who has registered with the DBPR as part of meeting competency requirements for a trade category in a particular jurisdiction, which limits the contractor to contracting only in the jurisdiction for which the registration is issued.[27]

Section 489.118, F.S., permits registered contractors to obtain state-wide certification without taking the state licensure examination if they meet certain criteria. To qualify for this examination exception, a registered contractor must have applied to the DBPR before November 1, 2015. Because the "grandfathering" date of the November 1, 2015 has passed, registered contractors must sit for and satisfactorily pass the state certified license examination to receive a state certified contractor's license.

License Fees

As provided in s. 489.109, F.S., an applicant for certification as a contractor is required to pay an initial application fee not to exceed $150, and, if an examination cost is included in the application fee, the combined amount may not exceed $350. For an applicant for registration as a contractor, the initial application fee may not exceed $100, and the initial registration fee and the renewal fee may not exceed $200. [28] The initial application fee and the renewal fee is $50 for an application to certify or register a business.[29]

[24] *See* s. 489.107, F.S.
[25] Section 489.105(3), F.S.
[26] Sections 489.105(8) and 489.113(1), F.S.
[27] Sections 489.105(10) and 489.117(1)(b), F.S.
[28] Section 489.109, F.S. Any applicant who seeks certification as a contractor under part I of ch. 489, F.S., by taking a practical examination must pay as an examination fee the actual cost incurred by the DBPR in developing, preparing, administering, scoring, score reporting, and evaluating the examination, if the examination is conducted by the DBPR.
[29] *Id*.

Fees must be adequate to ensure the continued operation of the CILB, and must be based on DBPR's estimates of revenue required to implement part I of ch. 489, F.S., and statutory provisions regulating the construction industry.[30]

All certificate holders and registrants must pay a fee of $4 to the DBPR at the time of application or renewal, to fund projects relating to the building construction industry or continuing education programs offered to building construction industry workers in Florida, to be selected by the Florida Building Commission.[31] The Florida Building Commission's advice is not binding on the DBPR, but the DBPR must ensure the distribution of research reports and the availability of continuing education programs to all segments of the building construction industry.[32]

Electrical contractors licensed by the Electrical Contractors' Licensing Board are also required to pay a fee of $4 to the DBPR at the time of application or renewal, to fund projects relating to the building construction industry or continuing education programs offered to building construction industry workers in Florida, to be selected by the Florida Building Commission.[33]

Each biennium, upon receipt of funds from the Construction Industry Licensing Board and the Electrical Contractors' Licensing Board collected under ss. 489.109(3) and 489.509(3), F.S., the DBPR must determine the amount of funds available for the Florida Building Code Compliance and Mitigation Program.[34]

Effect of Proposed Changes

The bill amends ss. 489.109(3) and 489.509(3), F.S., to repeal the $4 fee all construction contracting and electrical contracting, respectively, certificate holders and registrants must pay a fee to the DBPR at the time of application or renewal to fund projects relating to the building construction industry or continuing education programs offered to building construction industry workers in Florida.

The bill repeals s. 553.841(5), F.S. to delete the requirement that the CILB each biennium determine the amount of funds available for the Florida Building Code Compliance and Mitigation Program from the $4 fee collected ss. 489.109(3) and 489.509(3), F.S. However, the bill does not repeal the $4 fee collected under 489.509(3), F.S., relating to electrical contractors.

The bill amends s. 489.118, F. S., to delete the November 1, 2015 application deadline for registered contractors to apply for a state-wide certified contractors' license without having to take the state licensure examination.

[30] *Id*.
[31] Section 489.109(3), F.S.
[32] *Id.*
[33] Section 489.509(3), F.S.
[34] Section 553.841, F.S.

Cosmetic Manufacturers

Present Situation

The Division of Drugs, Devices and Cosmetics within the DBPR administers the "Florida Drug and Cosmetic Act," in part I of ch. 499, F.S., which is intended to safeguard the health, safety, and welfare of the citizens of the state of Florida from injury due to the use of adulterated, contaminated, misbranded drugs, drug ingredients and cosmetics.

Section 499.01(2)(p), F.S., requires a person manufacturing or repackaging cosmetics in the state to obtain a cosmetic manufacturing permit. Current law provides an exemption from the permit requirement if a person only labels or changes the labeling of a cosmetic but does not open the container sealed by the manufacturer of the product.

According to the DBPR, there are numerous home businesses without the cosmetic manufacturing permit who manufacture "pour soaps," creams, and lotions. These cosmetic products are typically offered for sale at flea markets, online, and at open markets. A cosmetic manufacturer's permit holder must comply with current good manufacturing practices that apply to all cosmetic manufacturers whether the cosmetic manufacturer is manufacturing a "pour soap," bath wash, eye liner, lip gloss, or liquid foundation. According to the DBPR, many initial applicants for a cosmetic manufacturing permit cannot meet the criteria for the permit and are currently manufacturing cosmetics as unlicensed cosmetic manufacturers.[35]

A cosmetics manufacturer permit is nontransferable, and is valid only for the person or governmental unit for which the permit is issued.[36] A permit is also only valid for the establishment, i.e., the physical location,[37] for which the permit is issued.[38] A cosmetics manufacturer must submit an application for a new permit when a change of ownership, change of controlling interest, or a change of location occurs. According to the DBPR, cosmetics manufacturers are often unable to present the documentation to establish the change of ownership or controlling interest when submitting the application for the new permit because the legal change of ownership, controlling interest, or location has not occurred. Consequently, there may be a period between such change and an application during which the permit holder is not legally compliant. For example, when an establishment changes location a lapse may occur because the business rarely is able to shut down one location and move equipment to the new location simultaneously with the issuance of the new permit thus requiring the business to maintain two permitted locations to continue to operate.[39]

If a person violates any criminal provision in ch. 499, F.S., the DBPR may provide relevant information to the appropriate state attorney or prosecuting agency having jurisdiction. The DBPR may seek a cease and desist order in circuit court to permanently or temporarily enjoin any person violating any provision of ch. 499, F.S., or any rule adopted under that chapter. The

[35] *See* Department of Business and Professional Regulation, *SB 1966 Bill Analysis*, p. 4, (Mar. 12, 2021) (on file with Senate Committee on Regulated Industries).
[36] Section 499.012(6), F.S.
[37] *See* s. 499.003(18), F.S.
[38] Section 499.012(6), F.S.
[39] *Supra*, n. 34.

DBPR may also impose an administrative fine not to exceed $5,000 per day, for a violation relating to ch. 499, F.S., or any rule adopted under that chapter.

The DBPR or the Florida Department of Health (DOH) may issue such citations as a remedial or nondisciplinary tool for resolution of violations for which there is no substantial threat to the public health, safety, or welfare but for which the licensee or permit holder has been provided prior opportunity to correct.[40] Current law does not authorize the DBPR to issue a remedial, nondisciplinary citation for violations of ch. 499, F.S., or any rule adopted under that chapter.

Effect of Proposed Changes

Permit Exemption

The bill amends s. 499.01(2)(p), F.S., to exempt from the requirement for a cosmetic manufacturing permit a person who manufacturers cosmetics with annual gross sales of $25,000 or less. Under the bill, an exempt cosmetics manufacturer may only:

- Sell prepackaged cosmetics affixed with a label containing information required by the United States Food and Drug Administration.
- Manufacture and sell cosmetics that are soaps, not otherwise exempt from the definition of cosmetics, lotions, moisturizers, and creams.
- Sell cosmetic products that are not adulterated or misbranded, in accordance with 21 U.S.C. ss. 361 and 362.

Each unit of cosmetic product must contain, in a contrasting color, a statement in the form provided by the bill, indicating that the product is "made by a manufacturer exempt from Florida's cosmetic manufacturing permit requirements."

The bill authorizes the DBPR to investigate complaints. It provides that any officer or employee of the DBPR may enter and inspect the premises of an exempt cosmetic manufacturer to determine compliance with ch. 499, F.S., and rules of the department. A refusal to permit entry to the premises or to permit an inspection is a violation of the prohibition in s. 499.005(6), F.S.,[41] which prohibits refusing to allow an authorized officer or employee of the DBPR to enter the premises to conduct an inspection. Under the bill, refusal to allow an inspection is grounds for disciplinary action pursuant to s. 499.066, F.S., which provides remedies and penalties for violations of ch. 499, F.S., including administrative fines of up to $5,000 per violation.

The bill clarifies that s. 499.01(2)(p), F.S., does not exempt any person from any state or federal tax law, rule, regulation, or county or municipal law or ordinance that applies to cosmetic manufacturing.

Temporary Permits

The bill creates s. 499.012(6)(d), F.S., to authorize a 90 day temporary permit for issuance upon an application for change of ownership, controlling interest, or location. The existing permit

[40] *See* ss. 455.224 and 456.077, F.S., authorizing the DBPR and the DOH to issue citations, respectively.

[41] Section 499.005, F.S., specifies several prohibited acts, but does not specify any disciplinary actions. Disciplinary actions for violations of ch. 499, F.S, are specified in s.499.066, F.S., relating to penalties and remedies, s. 499.0661, F.S., relating to cease and desist orders, and s. 499.067, F.S., relating to denial, suspension, or revocation of permit, certification, or registration.

expires when the DBPR authorizes the temporary permit. The temporary permit would allow the new owner to continue to operate for 90 days until the new owner's permit is issued, and would allow an establishment to continue to operate at the old location without renewing the permit if necessary until the new location is inspected and appropriately permitted, thus avoiding two separate permitting fees.

Citations

The bill creates s. 499.066(8), F.S., to authorize the DBPR to adopt rules to issue remedial, nondisciplinary citations to a permit holder alleged to have committed a violation. The bill specifies the information that must be included in the citation, including a brief factual statement, the sections of law allegedly violated, and the monetary assessment, or other remedial measures imposed. The person receiving the citation would have 30 days after the citation is served to contest the citation by providing supplemental and clarifying information to the DBPR.

The citation must clearly state that the person may choose, in lieu of accepting the citation, to have the department rescind the citation and conduct an investigation of violations alleged in the citation. The DBPR may rescind the citation if the person remedies or corrects the violations or deficiencies contained in the citation within 30 days after the citation is served. However, if the person does not successfully contest the citation to the satisfaction of the department, or complete the remedial action, the citation becomes a final order but does not constitute discipline.

Although the bill provides that a citation may become a final order and that such order does not constitute discipline, the bill requires the citation to include any monetary assessment imposed for the violation. The bill also provides that the DBPR is entitled to recover the costs of investigation, in addition to any penalty provided according to department rule, as part of the penalty levied pursuant to a citation.

The DBPR must issue a citation within six months after the filing of a complaint against the manufacturer, e.g., a consumer or other person notifies the department alleging a violation, that is the basis for the citation.

The citation may be served by personal service or certified mail, restricted delivery, to the person at their last known address of record with the DBPR, or to the person's Florida registered agent.

The bill authorizes the department to adopt rules to designate the violations for which a person may be subject to issuance of a citation and the monetary assessments or other remedial measures that must be taken for those violations. Violations designated as subject to issuance of a citation must be limited to violations for which there is no substantial threat to the public health, safety, or welfare. The DBPR may amend such rules.

Division of Hotels and Restaurants

Present Situation

The Division of Hotels and Restaurants (DHR) licenses, inspects, and regulates public lodging establishments and public food service establishments in Florida.[42]

The term "public lodging establishment" includes:

- "Transient public lodging establishments," which means "any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days, or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests;" and
- "Nontransient public lodging establishments," which means "any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests for periods of at least 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests for periods of at least 30 days or one calendar month."[43]

"Public food service establishments" means "any building, vehicle, place, or structure, or any room or division thereof, where food is prepared, served, or sold for immediate consumption on or in the vicinity of the premises; called for or taken out by customers; or prepared prior to being delivered to another location for consumption," with certain exceptions.[44]

Each public lodging establishment and public food service establishment must obtain a license from the DHR. Licenses are renewed annually, and the DHR must adopt a rule establishing a staggered schedule for license renewals.[45] For public lodging establishments, the DHR must adopt, by rule, a schedule of fees to be paid based on the number of rental units in the public lodging establishment, and based on seating capacity and services offered for public food service establishments. Such fees may not exceed $1,000.[46]

License fees generally range from $91 for a temporary food vendor to $370 for a hotel with more than 500 rental units.[47]

The fee schedule for a public lodging establishment and public food service establishment license must require an applicant for an initial license to pay the full license fee if the application is made during the annual renewal period or more than six months before the next such renewal

[42] Section 509.032, F.S.
[43] Section 509.013(4), F.S.
[44] Section 509.013(5), F.S.
[45] Section 509.241(1), F.S.
[46] Section 509.251(1) and (2), F.S.
[47] *See* Fla. Admin. Code R. 61C-1.008 and Department of Business and Professional Regulation, *Hotel and Restaurants – Hotel-Motel Guide*, http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/hotels-and-restaurants-hotel-motel-guide/ (last visited Mar. 24, 2021); Department of Business and Professional Regulation, *Hotel and Restaurants – Food Service Fees*, http://www.myfloridalicense.com/DBPR/hotels-restaurants/licensing/hotels-and-restaurants-hotel-motel-guide/ (last visited Mar. 24, 2021).

period. The fee is one-half of the fee amount if the application is made six months or less before the next renewal period.[48]

Effect of Proposed Changes

The bill amends s. 509.241(1), F.S., to delete the requirement for a staggered license renewal schedule for public lodging establishments and public food service establishments. The bill authorizes the DHR to adopt rules to establish procedures for license issuance and renewals.

The bill amends s. 509.251(1) and (2), F.S., to delete the requirement for payment of a prorated initial license fee based on when an application is submitted. Under the bill, the full annual license fees must be paid at the time of the initial license application.

State Boxing Commission

Present Situation:

Chapter 548, F.S., provides for the regulation of professional and amateur boxing, kickboxing,[49] and mixed martial arts[50] by the Florida State Boxing Commission (commission), which is assigned to the Department of Business and Professional Regulation (DBPR) for administrative and fiscal purposes.[51]

The commission has exclusive jurisdiction over every boxing, kickboxing, and mixed martial arts match held in Florida,[52] which involves a professional.[53] Professional matches held in Florida must meet the requirements set forth in ch. 548, F.S., and the rules adopted by the commission.[54] Chapter 548, F.S., does not apply to certain professional or amateur "martial arts," such as karate, aikido, judo, and kung fu; the term "martial arts" is distinct from and does not include "mixed martial arts."[55]

However, as to amateur matches, the commission's jurisdiction is limited to the approval, disapproval, suspension of approval, and revocation of approval of all amateur sanctioning organizations for amateur boxing, kickboxing, and mixed martial arts matches held in Florida.[56] Amateur sanctioning organizations are business entities organized for sanctioning and

[48] Sections 509.251(1) and (2), F.S., relating to the fee schedule for public lodging establishments and public food service establishments, respectively, and Fla. Admin. Code R. 61C-1.008.
[49] The term "kickboxing" means the unarmed combat sport of fighting by striking with the fists, hands, feet, legs, or any combination, but does not include ground fighting techniques. *See* s. 548.002(12), F.S.
[50] The term "mixed martial arts" means the unarmed combat sport involving the use of a combination of techniques, including, but not limited to, grappling, kicking, striking, and using techniques from martial arts disciplines, including, but not limited to, boxing, kickboxing, Muay Thai, jujitsu, and wrestling. *See* s. 548.002(16), F.S.
[51] *See* s. 548.003(1), F.S.
[52] *See* s. 548.006(1), F.S.
[53] The term "professional" means a person who has "received or competed for a purse or other article of a value greater than $50, either for the expenses of training or for participating in a match." *See* s. 548.002(19), F.S.
[54] *See* s. 548.006(4), F.S.
[55] *See* s. 548.007(6), F.S., and *supra* n. 49 for the definition of "mixed martial arts."
[56] *See* s. 548.006(3), F.S.

supervising matches involving amateurs.[57] During Fiscal Year 2018-2019, there were 59 sanctioned professional events and 137 amateur events.[58]

Under current law, certain persons providing certain services for a match involving a professional competing in a boxing, kickboxing, or mixed martial arts match must be licensed by the commission before directly or indirectly performing those services. Licensing is mandated for a participant, manager, trainer, second, timekeeper, referee, judge, announcer, physician, matchmaker, or promoter.[59]

The commission must establish, by rule, the appropriate weight of gloves used in each boxing match. All participants in boxing matches must wear gloves weighing not less than eight ounces each, and participants in mixed martial arts matches must wear gloves weighing between four to eight ounces each. Participants must also wear any protective devices the commission deems necessary.[60]

Effect of Proposed Changes

The bill amends s. 548.003, F.S., to change the name of the commission to the Florida Athletic Commission.

The bill amends s. 548.043(3), F.S., to authorize the commission to establish by rule the need for gloves, if any, in each pugilistic match. The bill also authorizes the commission to establish by rule the weight of any gloves used in pugilistic matches, and deletes the requirement that the gloves weigh between four to eight ounces each. The bill also deletes the requirement for all participants in pugilistic matches to wear gloves.

The bill amends ss. 455.219, 548.002, 548.05, 548.071, and 548.077, F.S., to conform references to the name of the commission, as revised by the bill.

Division of Alcoholic Beverages and Tobacco

Present Situation

The DABT is responsible for enforcing the Beverage Law and supervising the conduct, management, and operation of the manufacturing, packaging, distribution, and sale of all alcoholic beverages in Florida.[61]

Permit Carriers

Section 561.57(1), F.S., permits an alcoholic beverage vendor to make deliveries. Deliveries made by a manufacturer, distributor, or vendor away from its place of business may only be

[57] Section 548.002(2), F.S.
[58] *See* DBPR, *Florida State Boxing Commission Annual Report, Fiscal Year 2018-2019*, at p. 2, available at: http://www.myfloridalicense.com/dbpr/os/documents/Boxing18_19.pdf (last visited Mar. 24, 2021).
[59] The term "participant" means a professional competing in a boxing, kickboxing, or mixed martial arts match. *See* s. 548.002, F.S., for the definitions of "participant," "manager," "second," "judge," "physician," "matchmaker," and "promoter." The terms "trainer," "timekeeper," "referee," and "announcer" are not defined in ch. 548, F.S.
[60] Section 548.043(3), F.S.
[61] Section 561.02, F.S.

made in vehicles owned or leased by the licensee. By acceptance of an alcoholic beverage license and the use of vehicles owned by or leased by the vendor, the vendor agrees the vehicle is subject to be inspected and searched without a search warrant by employees of the division or law enforcement officers to ascertain compliance with all provisions of the alcoholic beverage laws.[62]

The term "permit carrier" is defined as a licensee authorized to make deliveries as provided in s. 561.57, F.S.[63] A separate permit is not required for licensees making a delivery of alcoholic beverages under this section.

In 2015, the Legislature amended s. 561.57, F.S., to delete a requirement that each vehicle used to deliver alcoholic beverages from a distributor's place of business to the vendor's licensed premises or to an off-premises storage have a permit. The 2015 amendment to s. 561.57, F.S., also removed a requirement for vendors to possess an invoice or sales ticket during the transportation of alcoholic beverages.[64]

License Application Process

Before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, a person must file a sworn application in the format prescribed by the DABT. The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part. The format and content of the application is determined by the DABT.[65]

Before any application is approved, the DABT may require an applicant, and any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought, to file a set of fingerprints with the DABT on regular United States Department of Justice forms.[66]

All applications for alcoholic beverage licenses for consumption on the premises must be accompanied by a certificate from the DHR, the Department of Agriculture and Consumer Services, the Department of Health, the Agency for Health Care Administration, or the county health department stating that the place of business where the business is to be conducted meets all of the sanitary requirements of the state.[67]

The application for an alcoholic beverage license must include a sketch of the licensed premises over which the applicant must have some dominion and control.[68] Current law does not require an applicant for an alcoholic beverage license to submit proof of the applicant's right of occupancy for the entire premises sought to be licensed.

[62] Section 561.57(2), F.S.
[63] Section 561.01(20), F.S.
[64] Chapter 2015-52, Laws of Fla.
[65] Section 561.17(1), F.S.
[66] *Id*.
[67] Section 561.17(2), F.S.
[68] Section 561.01(11), F.S., defining the term "licensed premises," and s. 565.03(2)(c), F.S., for craft distilleries.

Current law does not require an alcoholic beverage licensee or an applicant for a license to provide and maintain an electronic mail address for communications with the DABT.

Quota Licenses

Section 561.20(1), F.S., limits, by county, the number of alcoholic beverage licenses that may be issued for the sale of distilled spirits, to one license per 7,500 residents within the county. These limited alcoholic beverage licenses are known as "quota" licenses. The quota license is the only alcoholic beverage license that is limited in number; all other types of alcoholic beverage licenses are available without limitation, if certain conditions are met.

Section 561.19(2)(a), F.S., authorizes the DABT to hold a public drawing by double random selection to determine which applicants may be considered for a quota license when one or more additional licenses become available due to an increase in county population or if a quota license is revoked. Current law does not reference the availability of a quota license due to the cancellation of a license.

Special Restaurant Licenses

A "special license" is an exception to the quota licensing scheme that allows the sale of beer, wine, and distilled spirits without a quota license and subject to conditions. One such special license is a "special restaurant license," which applies to a food service establishment that has 2,500 square feet, is equipped to serve 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages. The DABT must perform an audit to confirm compliance with the food and nonalcoholic beverage sales percentage requirements during the first 60-day operating period and each 12-month operating period thereafter.[69]

If a special restaurant licensee fails to satisfy the percentage requirements of food and nonalcoholic beverage sales, the license must be revoked or a pending license application must be denied. A licensee whose license is revoked is ineligible to have an interest in a subsequent application for a license for 120 days after the revocation or denial of a license application.[70]

Recordkeeping and Reporting Requirements

Each manufacturer, distributor, broker, sales agent, importer, and exporter must keep a complete and accurate record and make reports to the DABT showing the amount of alcoholic beverages:[71]

- Manufactured or sold within the state and to whom sold;
- Imported from beyond the limits of the state and to whom sold; and
- Exported beyond the limits of the state, to whom sold, the place where sold, and the address of the person to whom sold.

Each manufacturer, distributor, broker, sales agent, and importer must send this full and complete report to the DABT by the 10th day of each month for the previous calendar month. The report must be made out in triplicate with two copies sent to the DABT and a third copy to

[69] Section 561.20(2)(a)4., F.S.
[70] *Id.*
[71] Section 561.55(1), F.S.

be retained for the licensee's record. Reports must be made on forms prepared and furnished by the DABT.[72]

Credit for the Sale of Liquor

A retail vendor must make a timely payment to a distributor of alcoholic beverages within 10 days after the calendar week in which the alcoholic beverages were purchased. When a vendor does not make a timely payment, the distributor who made the sale must, within three days, notify the DABT in writing that payment has not been made.[73]

The DABT must then give notice to the vendor that it has received a notice of payment delinquency from a distributor. The vendor has five days after receipt of the notice to show cause why further sales to the vendor should not be prohibited. The vendor may demand a hearing before the DABT. The demand for a hearing must be delivered to the DABT in person or by mail within those five days.[74]

If a vendor does not demand a hearing, the DABT must declare in writing to the vendor and to all manufacturers and distributors in Florida that all further sales to such vendor are prohibited until the DABT certifies in writing that such vendor has fully paid for all liquors previously purchased.[75]

Adulterated Liquor

Section 562.455, F.S., provides that a person who adulterates, for the purpose of sale, any liquor, used or intended for drink with cocculus indicus, vitriol, grains of paradise, opium, alum, capsicum, copperas, laurel water, logwood, brazil wood, cochineal, sugar of lead, or any other substance which is poisonous or injurious to health, and whoever knowingly sells any liquor so adulterated, is guilty of a third degree felony.[76] This law was enacted in 1868.

Grains of paradise is a spice related to ginger and native to West Africa.[77] It is commonly used in alcoholic beverages, food, and medicine.[78] Grains of paradise has been found to be generally regarded as safe by the Food and Drug Administration (FDA).[79]

On January 28, 2020, the United States District Court for the Southern District of Florida held that s. 562.455, F.S., as it relates to prohibiting the use of grains of paradise in liquor, is preempted by federal law.[80] The court found that the Federal Food, Drug, and Cosmetic Act

[72] Section 561.55(2), F.S.
[73] Section 561.42(3), F.S.
[74] Section 561.42(4), F.S.
[75] *Id*.
[76] Section 775.082, F.S., provides that a felony of the third degree is punishable by a term of imprisonment not to exceed five years. Section 775.083, F.S., provides that a felony of the third degree is punishable by a fine not to exceed $5,000.
[77] Merriam-Webster Dictionary, *Grains of Paradise*, https://www.merriam-webster.com/dictionary/grains%20of%20paradise (last visited Mar. 24, 2021).
[78] WebMD, *Grains of Paradise*, https://www.webmd.com/vitamins/ai/ingredientmono-670/grains-of-paradise (last visited Mar. 24, 2021); SPICEography, *Grains of Paradise: An African Spice with a European History*, https://www.spiceography.com/grains-of-paradise/ (last visited Mar. 24, 2021).
[79] 21 C.F.R. § 182.10 (2021).
[80] *Marrache v. Bacardi U.S.A., Inc*., 2020 WL 434928 (S.D. Fla. 2020).

(FFDCA) and FDA regulations conflict with s. 562.455, F.S., because it frustrates the purposes and objectives of the FFDCA and implementing FDA regulations. Under FFDCA, the FDA has broad regulatory authority to monitor and control the introduction of "food additives" in interstate commerce. The FFDCA seeks to advance food technology by allowing the use of safe food additives, and the Florida law prohibits the use of an additive that is generally regarded as safe by the FDA.[81]

Effect of Proposed Changes

The bill deletes the definition for the term "permit carrier" in s. 561.01(20), F.S. The bill also corrects cross-references in s. 561.20(2)(a), F.S., affected by the deletion of the definition of the term "permit carrier."

The bill amends the alcoholic beverage license application process in s. 561.17(1), F.S., to require applicants to file fingerprints electronically through an approved electronic fingerprinting vendor, or to use a form prescribed by the Florida Department of Law Enforcement. The bill deletes the requirement that the fingerprints be submitted on regular United States Department of Justice forms.
The bill amends s. 561.17(2), F.S., to require an applicant for any alcoholic beverage license to provide proof of the applicant's right of occupancy for the entire premises sought to be licensed.

The bill creates s. 561.17(5), F.S., to require any person or entity licensed or permitted by the DABT to provide an electronic mail address to the DABT to function as the primary contact for all communication by the DABT to the licensee or permittee. Under the bill, licensees and permittees are responsible for maintaining accurate contact information with the DABT.

The bill amends s. 561.20(2)(a)4., F.S., to revise the auditing timeframes for special restaurant licensees. Under the bill, the DABT must perform the initial compliance audit within the first 120 days of operation, instead of within the first 60 days.

In addition, the bill revises the frequency of subsequent audits. Under the bill, the frequency of compliance audits is determined by the percentage of the licensee's gross revenue from the sale of food and nonalcoholic beverages, as established by the licensee's most recent audit. The bill provides the following audit levels:

- Level 1 licensees, with 51 to 60 percent, will be audited every year;
- Level 2 licensees, with 61 to 75 percent, will be audited every two years;
- Level 3 licensees, with 76 to 90 percent, will be audited every three years; and
- Level 4 licensees, with 91 to 100 percent, will be audited every four years.

The bill amends s. 561.42(4), F.S., to require the DABT to give a retail vendor notice of a payment delinquency via electronic mail. The bill deletes the requirement that the delinquency notice be a written notice. The bill also allows a vendor to send a demand for a hearing to the DABT by electronic mail.

[81] *Id.* at p. 2.

The bill amends s. 561.55(2), F.S., to delete the requirement that reports by a manufacturer, distributor, broker, sales agent, and importer be made out in triplicate. Under the bill, the reports must be submitted to the DABT through the DABT's electronic data submission system.

The bill amends s. 562.455, F.S., to remove "grains of paradise" as an ingredient that if added to liquor, would cause the liquor to be adulterated. Anyone who sells adulterated liquor commits a third degree felony.

Condominiums

Present Situation

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., the Condominium Act, comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.[82] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[83] All unit owners are members of the condominium association, an entity responsible for the operation and maintenance of the common elements owned by the unit owners. The condominium association is overseen by an elected board of directors, which enacts bylaws governing the administration of the association.[84]

Division of Florida Condominiums, Timeshares, and Mobile Homes

The Division of Florida Condominiums, Timeshares, and Mobile Homes (FCTMH) within the DBPR administers the provisions of chs. 718 and 719, F.S., for condominium and cooperative associations, respectively. The FCTMH may investigate complaints and enforce compliance with chs. 718 and 719, F.S., with respect to associations that are still under developer control.[85] The FCTMH also has the authority to investigate complaints against developers involving improper turnover or failure to transfer control to the association.[86] After control of the condominium is transferred from the developer to the unit owners, the FCTMH's jurisdiction is limited to investigating complaints related to financial issues, elections, and unit owner access to association records.[87] For cooperatives, the FCTMH's jurisdiction extends to the development, construction, sale, lease, ownership, operation, and management of residential cooperative units.[88]

As part of the FCTMH's authority to investigate complaints, the FCTMH may subpoena witnesses, take sworn statements from witnesses, issue cease and desist orders, and impose civil penalties against developers and associations.[89]

[82] Section 718.103(11), F.S.
[83] Section 718.104(2), F.S.
[84] Section 718.103(4), F.S.
[85] Sections 718.501(1) and 719.501(1), F.S.
[86] *Id.*
[87] Section 718.501(1), F.S.
[88] Section 719.501(1), F.S.
[89] *Supra* at n. 85.

If the FCTMH has reasonable cause to believe that a violation of any provision of ch. 718, F.S., ch. 719, F.S., or a related rule has occurred, the FCTMH may institute enforcement proceedings in its own name against any developer, bulk assignee, bulk buyer, association, officer, or member of the board of administration, or its assignees or agents. The FCTMH may conduct an investigation and issue an order to cease and desist from unlawful practices and take affirmative action to carry out the purpose of the applicable chapter. In addition, the FCTMH is authorized to petition a court to appoint a receiver or conservator to implement a court order, or to enforce an injunction or temporary restraining order. The FCTMH may also impose civil penalties.[90]

Annual Budget

Every condominium association must have an annual financial budget that sets forth the proposed expenditure of funds for the maintenance, management, and operation of the condominium association. The annual budget must include operating expenses for the coming year and reserve accounts for capital expenditures and deferred maintenance.[91]

An association must hold a meeting to adopt a proposed budget. The association must provide notice of the meeting and a copy of the proposed budget to the members of the association at least 14 days before the meeting.[92] The proposed budget must be detailed, and, at a minimum, include the condominium's estimated revenues and expenses.[93] Current law does not define the timing for adoption of the budget.

Board of Directors – Eligibility based on Payment of Monetary Obligations

A condominium association is overseen by an elected board of directors, termed a Board of Administration. The board is responsible for managing the affairs of the association, has a fiduciary relationship with the unit owners, has the responsibility to act with the highest degree of good faith, and must place the interests of the unit owners above the personal interests of the directors.[94]

To become a board member, a person may be:
- Elected to the board by the members of the association;[95]
- Appointed to the board by the developer if the developer is still entitled to representation; or
- Appointed by the board of directors if a vacancy on the board occurs between meetings.[96]

A condominium association's bylaws establish the eligibility requirements to serve on the association's board of directors.[97] However, current law also establishes minimum qualification to serve on an association's board of directors.[98] To serve as a director, a person may not:[99]

[90] *Id.*
[91] Section 718.112(2)(f), F.S.
[92] Section 718.112(2)(e)1., F.S.
[93] Sections 718.112(2)(f) and 718.504(21), F.S.
[94] Sections 718.103(4), 718.111, and 718.112, F.S.
[95] Section 718.112(2)(d)4., F.S.
[96] Sections 617.0809 and 718.112(2)(d)9., F.S.
[97] Section 718.112(2)(a), F.S.
[98] Section 718.112(2)(d), F.S.
[99] *Id.*

- Be a co-owner of a unit with another director unless they own more than one unit or the condominium association is made up of less than ten units;
- Be delinquent in the payment of any monetary obligation to the condominium association;
- Have been previously suspended or removed from a condominium association's board of directors or by the FCTMH; or
- Have been convicted of a felony, under certain circumstances.[100]

Chapter 718, F.S., does not define the terms "monetary obligation" or "delinquent." According to the DBPR, defining the term "delinquent" would assist in the FCTMH's investigation of cases in which the unit owner alleges they were left off of an election ballot because of a delinquent payment to the association.[101] The DBPR also maintains that it is the practice of a "controlling board of directors to issue fines to unit owners in an effort to limit the pool of eligible candidates who can compete in an election."[102]

Condominium Ombudsman

The Office of the Ombudsman within the FCTMH is an attorney appointed by the Governor to be a neutral resource for unit owners and condominium associations. The ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the FCTMH, and the Legislature on any matter or subject within the jurisdiction of the FCTMH. In addition, the ombudsman may make recommendations to the FCTMH for changes in rules and procedures for the filing, investigation, and resolution of complaints.[103]

The ombudsman also acts as a liaison among the FCTMH, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.[104]

The ombudsman is required to maintain his or her principal office in Leon County.[105]

Effect of Proposed Changes

The bill amends s. 718.112(2)(d)2.F.S., to replace the term "monetary obligation" with the term "assessment." The bill also provides that a person is delinquent if a payment is not made by the due date identified in the association's governing documents, which include the declaration, articles of incorporation, and bylaws. If no due date is specifically identified in the governing documents, the due date is the first day of the assessment period.

The bill amends s. 718.112(2)(f), F.S., to require a condominium association's annual budget to be proposed to unit owners and adopted by the board of directors no later than 30 days before the beginning of the fiscal year.

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[100] Section 718.111(1)(d), F.S.
[101] *See* Department of Business and Professional Regulation, *SB 1966 Bill Analysis*, p. 4, Mar. 12, 2021 (on file with Senate Committee on Regulated Industries).
[102] *Id.*
[103] Sections 718.5011 and 718.5012, F.S.
[104] *Id.*
[105] Section 718.5014, F.S.

The bill amends s. 718.501, F.S., to authorize the FCTMH to adopt rules regarding the submission of a complaint against a condominium association.

The bill amends s. 718.5014, F.S., to delete the requirement that the condominium ombudsman maintain his or her principal office in Leon County.

Effective Date

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, construction and electrical contractors would not have to pay the $4 fee to the DBPR at the time of application or renewal to fund projects relating to the building construction industry or continuing education programs.

The bill may provide an opportunity for small cosmetic manufacturing businesses to generate revenues up to $25,000 in annual gross sales without the cost of a cosmetic manufacturing permit.

Relating to cosmetic manufacturers, the bill may save license expenses needed to continue operation of the business during permitting transfers due to change of ownership, change of controlling interest, or change of location. According to the DBPR, the bill will eliminate the dual permit fee many firms currently pay to continue operating pending approval of the new permit.[106]

According to the DBPR, the bill may reduce license fees paid by public food and lodging licensees during their first 12 months of licensure by eliminating the staggered schedule and prorating system which in turn provides new licensees with a full year of licensure. The DBPR states that, under the current license fee structure, new applicants often pay for a new license and pay to renew their license within the same fiscal year and that this would not happen under the bill. The DBPR estimates that licensees will save approximately $1.6 million in Fiscal Year 2021-22.[107]

C. Government Sector Impact:

The bill amends s. 489.118, F. S., to delete the November 1, 2015, application deadline for registered contractors to apply for a state-wide certified contractors' license without having to take the state licensure examination. According to the DBPR, by allowing registered contractors to be certified without sitting for the certification examination, there may be an indeterminate reduction in local registered license, renewal, and reciprocity fees.[108]

The DBPR states that tax revenue may be maximized by requiring the electronic submission of reports to the Division of Alcoholic Beverages and Tobacco.[109]

For the Division of Hotels and Restaurants, the DBPR projects that the bill will reduce the division's revenue by approximately 4.5 percent (approximately $1.7 million) for Fiscal Year 2021-2022.[110]

The bill repeals the $4 fee for Construction Industry Licensing Board and the Electrical Contractors' Licensing Board license applications and license renewals. According to the DBPR, based on historical data, the repeal of the fee may result in a revenue reduction of $129,622 in Fiscal Year 2021-2022 and $232,297 in Fiscal Year 2022-2023 for the Construction Industry Licensing Board.[111]

VI. Technical Deficiencies:

None.

[106] *See* Department of Business and Professional Regulation, *SB 1966 Bill Analysis*, p. 10, Mar. 12, 2021 (on file with Senate Committee on Regulated Industries).
[107] *Id.* at 8 and 10.
[108] Id. at 9.
[109] *Id.* at 8.
[110] *Id.* at 9.
[111] *Id.*

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 210.09, 210.55, 210.60, 489.109, 489.118, 489.509, 499.01, 499.012, 499.066, 509.241, 509.251, 548.003, 548.043, 553.841, 561.01, 561.17, 561.19, 561.20, 561.42, 561.55, 562.455, 718.112, 718.501, 718.5014, 455.219, 548.002, 548.05, 548.071, and 548.077.

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 30, 2021:
The committee substitute (CS) repeals s. 489.509(3), F.S., delete the $4 fee that all certified and registered electrical contractors must pay to the DBPR at the time of application or renewal. The CS also clarifies that refusal to permit an authorized officer or employee of the Department of Business and Professional Regulation to enter the premises is a violation of s. 499.005(6), F.S., and is grounds for disciplinary action pursuant to s. 499.066, F.S.

B. Amendments:

None.

361442

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2021	.	
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The Committee on Regulated Industries (Diaz) recommended the following:

Senate Amendment (with title amendment)

Between lines 355 and 356
insert:

Section 6. Subsection (3) of section 489.509, Florida Statutes, is amended, and subsection (1) of that section is republished, to read:

489.509 Fees.—

(1) The board, by rule, shall establish fees to be paid for applications, examination, reexamination, transfers, licensing

and renewal, reinstatement, and recordmaking and recordkeeping. The examination fee shall be in an amount that covers the cost of obtaining and administering the examination and shall be refunded if the applicant is found ineligible to sit for the examination. The application fee is nonrefundable. The fee for initial application and examination for certification of electrical contractors may not exceed $400. The initial application fee for registration may not exceed $150. The biennial renewal fee may not exceed $400 for certificateholders and $200 for registrants. The fee for initial application and examination for certification of alarm system contractors may not exceed $400. The biennial renewal fee for certified alarm system contractors may not exceed $450. The board may establish a fee for a temporary certificate as an alarm system contractor not to exceed $75. The board may also establish by rule a delinquency fee not to exceed $50. The fee to transfer a certificate or registration from one business organization to another may not exceed $200. The fee for reactivation of an inactive license may not exceed $50. The board shall establish fees that are adequate to ensure the continued operation of the board. Fees shall be based on department estimates of the revenue required to implement this part and the provisions of law with respect to the regulation of electrical contractors and alarm system contractors.

~~(3) Four dollars of each fee under subsection (1) paid to the department at the time of application or renewal shall be transferred at the end of each licensing period to the department to fund projects relating to the building construction industry or continuing education programs offered~~

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~~to persons engaged in the building construction industry in Florida. The board shall, at the time the funds are transferred, advise the department on the most needed areas of research or continuing education based on significant changes in the industry's practices or on the most common types of consumer complaints or on problems costing the state or local governmental entities substantial waste. The board's advice is not binding on the department. The department shall ensure the distribution of research reports and the availability of continuing education programs to all segments of the building construction industry to which they relate. The department shall report to the board in October of each year, summarizing the allocation of the funds by institution and summarizing the new projects funded and the status of previously funded projects.~~

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

And the title is amended as follows:

Between lines 23 and 24

insert:

488.509, F.S.; deleting requirements relating to certain fees collected by the department for electrical and alarm system contracting; amending s.

640586

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2021	.	
	.	
	.	
	.	

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

Senate Amendment

Delete lines 394 - 396
and insert:
department rules, as applicable. A refusal to permit an authorized officer or employee of the department to enter the premises or to conduct an inspection is a violation of s. 499.005(6) and is grounds for disciplinary action pursuant to s. 499.066.

By Senator Diaz

36-01363B-21 20211966__

A bill to be entitled

An act relating to the Department of Business and Professional Regulation; amending s. 210.09, F.S.; requiring that certain reports relating to the transportation or possession of cigarettes be filed with the Division of Alcoholic Beverages and Tobacco through the division's electronic data submission system; providing that specified records relating to cigarettes received, sold, or delivered within the state may be kept in an electronic or paper format; amending s. 210.55, F.S.; requiring that certain entities file reports, rather than returns, relating to tobacco products with the division; providing requirements for such reports; amending s. 210.60, F.S.; providing that specified records relating to tobacco products may be kept in an electronic or paper format; amending s. 489.109, F.S.; removing provisions relating to an additional fee for application and renewal, transfer of funds, recommendations by the Construction Industry Licensing Board for use of such funds, distribution of such funds by the department, and required reports of the department; amending s. 489.118, F.S.; removing an obsolete date; amending s. 499.01, F.S.; exempting certain persons from specified permit requirements under certain circumstances; requiring an exempt cosmetics manufacturer to provide, upon request, to the department specified documentation verifying his or her annual gross sales; authorizing an exempt cosmetics manufacturer to only

36-01363B-21 20211966__

manufacture and sell specified products; requiring specified labeling for each unit of cosmetics manufactured by an exempt cosmetics manufacturer; authorizing the department to investigate complaints and to enter and inspect the premises of an exempt cosmetics manufacturer; providing disciplinary actions; providing construction; amending s. 499.012, F.S.; authorizing specified establishments to submit a request for a temporary permit; requiring such establishments to submit the request to the department on specified forms; providing that upon authorization by the department for a temporary permit for a certain location, the existing permit for such location is immediately null and void; prohibiting a temporary permit from being extended; providing for expiration of a temporary permit; prohibiting an establishment from operating under an expired temporary permit; amending s. 499.066, F.S.; requiring the department to adopt rules to permit the issuance of remedial, nondisciplinary citations; providing requirements for such citations; providing for contest of and the rescinding of a citation; authorizing the department to recover specified costs relating to a citation; providing a timeframe for when a citation may be issued; providing requirements for the service of a citation; authorizing the department to adopt and amend rules, designate violations and monetary assessments, and order remedial measures that must be taken for such violations; amending s. 509.241, F.S.;

revising rulemaking requirements relating to public lodging and food service licenses; amending s. 509.251, F.S.; deleting provisions relating to fee schedule requirements; specifying that all fees are payable in full upon submission of an application for a public lodging establishment license or a public food service license; amending s. 548.003, F.S.; renaming the Florida State Boxing Commission as the Florida Athletic Commission; amending s. 548.043, F.S.; revising rulemaking requirements for the commission relating to gloves; amending s. 553.841, F.S.; conforming a provision to changes made by the act; amending s. 561.01, F.S.; deleting the definition of the term "permit carrier"; amending s. 561.17, F.S.; revising a requirement related to the filing of fingerprints with the division; requiring that applications be accompanied by certain information relating to right of occupancy; providing requirements relating to contact information for licensees and permittees; amending s. 561.19, F.S.; revising provisions relating to the availability of beverage licenses to include by reason of the cancellation of a quota beverage license; amending s. 561.20, F.S.; conforming cross-references; revising requirements for issuing special licenses to certain food service establishments; amending s. 561.42, F.S.; requiring the division, and authorizing vendors, to use electronic mail to give certain notice; amending s. 561.55, F.S.; revising requirements for reports

relating to alcoholic beverages; amending s. 562.455, F.S.; removing grains of paradise as a form of adulteration of liquor used or intended for drink; amending s. 718.112, F.S.; providing the circumstances under which a person is delinquent in the payment of an assessment in the context of eligibility for membership on certain condominium boards; requiring that an annual budget be proposed to unit owners and adopted by the board before a specified time; amending s. 718.501, F.S.; authorizing the Division of Florida Condominiums, Timeshares, and Mobile Homes to adopt rules regarding the submission of complaints against a condominium association; amending s. 718.5014, F.S.; revising the location requirements for the principal office of the condominium ombudsman; amending ss. 455.219, 548.002, 548.05, 548.071, and 548.077, F.S.; conforming provisions to changes made by the act; providing an effective date.

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

Section 1. Subsections (2) and (3) of section 210.09, Florida Statutes, are amended to read:

210.09 Records to be kept; reports to be made; examination.—

(2) The division is authorized to prescribe and promulgate by rules and regulations, which shall have the force and effect of the law, such records to be kept and reports to be made to the division by any manufacturer, importer, distributing agent,

wholesale dealer, retail dealer, common carrier, or any other person handling, transporting or possessing cigarettes for sale or distribution within the state as may be necessary to collect and properly distribute the taxes imposed by s. 210.02. All reports shall be made on or before the 10th day of the month following the month for which the report is made, unless the division by rule or regulation shall prescribe that reports be made more often. All reports shall be filed with the division through the division's electronic data submission system.

(3) All manufacturers, importers, distributing agents, wholesale dealers, agents, or retail dealers shall maintain and keep for a period of 3 years at the place of business where any transaction takes place, such records of cigarettes received, sold, or delivered within the state as may be required by the division. Such records may be kept in an electronic or paper format. The division or its duly authorized representative is hereby authorized to examine the books, papers, invoices, and other records, the stock of cigarettes in and upon any premises where the same are placed, stored, and sold, and the equipment of any such manufacturers, importers, distributing agents, wholesale dealers, agents, or retail dealers, pertaining to the sale and delivery of cigarettes taxable under this part. To verify the accuracy of the tax imposed and assessed by this part, each person is hereby directed and required to give to the division or its duly authorized representatives the means, facilities, and opportunity for such examinations as are herein provided for and required.

Section 2. Section 210.55, Florida Statutes, is amended to read:

210.55 Distributors; monthly reports ~~returns~~.—

(1) On or before the 10th of each month, every taxpayer with a place of business in this state shall file a full and complete report ~~return~~ with the division showing the taxable price of each tobacco product brought or caused to be brought into this state for sale, or made, manufactured, or fabricated in this state for sale in this state, during the preceding month. Every taxpayer outside this state shall file a full and complete report with the division through the division's electronic data submission system ~~return~~ showing the quantity and taxable price of each tobacco product shipped or transported to retailers in this state, to be sold by those retailers, during the preceding month. Reports must ~~Returns shall~~ be made upon forms furnished and prescribed by the division and must ~~shall~~ contain any other information that the division requires. Each report must ~~return shall~~ be accompanied by a remittance for the full tax liability shown and be filed with the division through the division's electronic data submission system.

(2) As soon as practicable after any report ~~return~~ is filed, the division shall examine each report ~~return~~ and correct it, if necessary, according to its best judgment and information. If the division finds that any amount of tax is due from the taxpayer and unpaid, it shall notify the taxpayer of the deficiency, stating that it proposes to assess the amount due together with interest and penalties. If a deficiency disclosed by the division's examination cannot be allocated to one or more particular months, the division shall notify the taxpayer of the deficiency, stating its intention to assess the amount due for a given period without allocating it to any

particular months.

(3) If, within 60 days after the mailing of notice of the proposed assessment, the taxpayer files a protest to the proposed assessment and requests a hearing on it, the division shall give notice to the taxpayer of the time and place fixed for the hearing, shall hold a hearing on the protest, and shall issue a final assessment to the taxpayer for the amount found to be due as a result of the hearing. If a protest is not filed within 60 days, the division shall issue a final assessment to the taxpayer. In any action or proceeding in respect to the proposed assessment, the taxpayer shall have the burden of establishing the incorrectness or invalidity of any final assessment made by the division.

(4) If any taxpayer required to file any report ~~return~~ fails to do so within the time prescribed, the taxpayer shall, on the written demand of the division, file the report ~~return~~ within 20 days after mailing of the demand and at the same time pay the tax due on its basis. If the taxpayer fails within that time to file the report ~~return~~, the division shall prepare the report ~~return~~ from its own knowledge and from the information that it obtains and on that basis shall assess a tax, which shall be paid within 10 days after the division has mailed to the taxpayer a written notice of the amount and a demand for its payment. In any action or proceeding in respect to the assessment, the taxpayer shall have the burden of establishing the incorrectness or invalidity of any report ~~return~~ or assessment made by the division because of the failure of the taxpayer to make a report ~~return~~.

(5) All taxes are due not later than the 10th day of the

month following the calendar month in which they were incurred, and thereafter shall bear interest at the annual rate of 12 percent. If the amount of tax due for a given period is assessed without allocating it to any particular month, the interest shall begin with the date of the assessment.

(6) In issuing its final assessment, the division shall add to the amount of tax found due and unpaid a penalty of 10 percent, but if it finds that the taxpayer has made a false report ~~return~~ with intent to evade the tax, the penalty shall be 50 percent of the entire tax as shown by the corrected report ~~return~~. In assessing a tax on the basis of a report ~~return~~ made under subsection (4), the division shall add to the amount of tax found due and unpaid a penalty of 25 percent.

(7) For the purpose of compensating the distributor for the keeping of prescribed records and the proper accounting and remitting of taxes imposed under this part, the distributor shall be allowed 1 percent of the amount of the tax due and accounted for and remitted to the division in the form of a deduction in submitting his or her report and paying the amount due; and the division shall allow such deduction of 1 percent of the amount of the tax to the person paying the same for remitting the tax in the manner herein provided, for paying the amount due to be paid by him or her, and as further compensation to the distributor for the keeping of prescribed records and for collection of taxes and remitting the same.

(a) The collection allowance may not be granted, nor may any deduction be permitted, if the tax is delinquent at the time of payment.

(b) The division may reduce the collection allowance by 10

percent or $50, whichever is less, if a taxpayer files an incomplete report ~~return~~.

1. An "incomplete report ~~return~~" means ~~is~~, for purposes of this section ~~part~~, a report ~~return~~ which is lacking such uniformity, completeness, and arrangement that the physical handling, verification, or review of the report ~~return~~ may not be readily accomplished.

2. The division shall adopt rules requiring such information as it may deem necessary to ensure that the tax levied hereunder is properly collected, reviewed, compiled, and enforced, including, but not limited to: the amount of taxable sales; the amount of tax collected or due; the amount claimed as the collection allowance; the amount of penalty and interest; the amount due with the report ~~return~~; and such other information as the division may specify.

Section 3. Section 210.60, Florida Statutes, is amended to read:

210.60 Books, records, and invoices to be kept and preserved; inspection by agents of division.—Every distributor shall keep in each licensed place of business complete and accurate records for that place of business, including itemized invoices of tobacco products held, purchased, manufactured, brought in or caused to be brought in from without the state, or shipped or transported to retailers in this state, and of all sales of tobacco products made, except sales to an ultimate consumer. Such records shall show the names and addresses of purchasers and other pertinent papers and documents relating to the purchase, sale, or disposition of tobacco products. When a licensed distributor sells tobacco products exclusively to

ultimate consumers at the addresses given in the license, no invoice of those sales shall be required, but itemized invoices shall be made of all tobacco products transferred to other retail outlets owned or controlled by that licensed distributor. All books, records and other papers, and other documents required by this section to be kept shall be preserved for a period of at least 3 years after the date of the documents, as aforesaid, or the date of the entries thereof appearing in the records, unless the division, in writing, authorizes their destruction or disposal at an earlier date. At any time during usual business hours, duly authorized agents or employees of the division may enter any place of business of a distributor and inspect the premises, the records required to be kept under this part, and the tobacco products contained therein to determine whether all the provisions of this part are being fully complied with. Refusal to permit such inspection by a duly authorized agent or employee of the division shall be grounds for revocation of the license. Every person who sells tobacco products to persons other than an ultimate consumer shall render with each sale an itemized invoice showing the seller's name and address, the purchaser's name and address, the date of sale, and all prices and discounts. The seller shall preserve legible copies of all such invoices for 3 years from the date of sale. Every retailer shall produce itemized invoices of all tobacco products purchased. The invoices shall show the name and address of the seller and the date of purchase. The retailer shall preserve a legible copy of each such invoice for 3 years from the date of purchase. Invoices shall be available for inspection by authorized agents or employees of the division at the

retailer's place of business. Any records required by this section may be kept in an electronic or paper format.

Section 4. Subsection (3) of section 489.109, Florida Statutes, is amended to read:

489.109 Fees.—

~~(3) In addition to the fees provided in subsection (1) for application and renewal for certification and registration, all certificateholders and registrants must pay a fee of $4 to the department at the time of application or renewal. The funds must be transferred at the end of each licensing period to the department to fund projects relating to the building construction industry or continuing education programs offered to persons engaged in the building construction industry in Florida, to be selected by the Florida Building Commission. The board shall, at the time the funds are transferred, advise the department on the most needed areas of research or continuing education based on significant changes in the industry's practices or on changes in the state building code or on the most common types of consumer complaints or on problems costing the state or local governmental entities substantial waste. The board's advice is not binding on the department. The department shall ensure the distribution of research reports and the availability of continuing education programs to all segments of the building construction industry to which they relate. The department shall report to the board in October of each year, summarizing the allocation of the funds by institution and summarizing the new projects funded and the status of previously funded projects.~~

Section 5. Section 489.118, Florida Statutes, is amended to

read:

489.118 Certification of registered contractors; grandfathering provisions.—The board shall, upon receipt of a completed application and appropriate fee, issue a certificate in the appropriate category to any contractor registered under this part who makes application to the board and can show that he or she meets each of the following requirements:

(1) Currently holds a valid registered local license in one of the contractor categories defined in s. 489.105(3)(a)-(p).

(2) Has, for that category, passed a written examination that the board finds to be substantially similar to the examination required to be licensed as a certified contractor under this part. For purposes of this subsection, a written, proctored examination such as that produced by the National Assessment Institute, Block and Associates, NAI/Block, Experior Assessments, Professional Testing, Inc., or Assessment Systems, Inc., shall be considered to be substantially similar to the examination required to be licensed as a certified contractor. The board may not impose or make any requirements regarding the nature or content of these cited examinations.

(3) Has at least 5 years of experience as a contractor in that contracting category, or as an inspector or building administrator with oversight over that category, at the time of application. For contractors, only time periods in which the contractor license is active and the contractor is not on probation shall count toward the 5 years required by this subsection.

(4) Has not had his or her contractor's license revoked at any time, had his or her contractor's license suspended within

the last 5 years, or been assessed a fine in excess of $500 within the last 5 years.

(5) Is in compliance with the insurance and financial responsibility requirements in s. 489.115(5).

~~Applicants wishing to obtain a certificate pursuant to this section must make application by November 1, 2015.~~

Section 6. Paragraph (p) of subsection (2) of section 499.01, Florida Statutes, is amended to read:

499.01 Permits.—

(2) The following permits are established:

(p) *Cosmetic manufacturer permit.*—A cosmetic manufacturer permit is required for any person that manufactures or repackages cosmetics in this state. A person that only labels or changes the labeling of a cosmetic but does not open the container sealed by the manufacturer of the product is exempt from obtaining a permit under this paragraph. A person who manufactures cosmetics and has annual gross sales of $25,000 or less is exempt from the permit requirements of this paragraph. Upon request, an exempt cosmetics manufacturer must provide to the department written documentation to verify his or her annual gross sales, including all sales of cosmetic products at any location, regardless of the types of products sold or the number of persons involved in the operation.

1. An exempt cosmetics manufacturer may only:

a. Sell prepackaged cosmetics affixed with a label containing information required by the United States Food and Drug Administration.

b. Manufacture and sell cosmetics that are soaps, not

otherwise exempt from the definition of cosmetics, lotions, moisturizers, and creams.

c. Sell cosmetics that are not adulterated or misbranded in accordance with 21 U.S.C. ss. 361 and 362.

d. Sell cosmetic products that are stored on the premises of the cosmetic manufacturing operation.

2. Each unit of cosmetics manufactured under this paragraph must contain, in contrasting color and not less than 10-point type, the following statement: "Made by a manufacturer exempt from Florida's cosmetic manufacturing permit requirements."

3. The department may investigate any complaint which alleges that an exempt cosmetics manufacturer has violated an applicable provision of this chapter or a rule adopted under this chapter. The department's authorized officer or employee may enter and inspect the premises of an exempt cosmetic manufacturer to determine compliance with this chapter and department rules, as applicable. A refusal to permit entry to the premises or to conduct an inspection is grounds for disciplinary action pursuant to s. 499.005.

4. This paragraph does not exempt any person from any state or federal tax law, rule, regulation, or certificate or from any county or municipal law or ordinance that applies to cosmetic manufacturing.

Section 7. Paragraph (d) is added to subsection (6) of section 499.012, Florida Statutes, to read:

499.012 Permit application requirements.—

(6)A permit issued by the department is nontransferable. Each permit is valid only for the person or governmental unit to which it is issued and is not subject to sale, assignment, or

other transfer, voluntarily or involuntarily; nor is a permit valid for any establishment other than the establishment for which it was originally issued.

(d) When an establishment that requires a permit pursuant to this part submits an application to the department for a change of ownership or controlling interest or a change of location with the required fees under this subsection, the establishment may also submit a request for a temporary permit granting the establishment authority to operate for no more than 90 calendar days. The establishment must submit the request for a temporary permit to the department on a form provided by the department and obtain authorization to operate with the temporary permit before operating under the change of ownership or operating at the new location. Upon authorization of a temporary permit, the existing permit at the location for which the temporary permit is submitted is immediately null and void. A temporary permit may not be extended and shall expire and become null and void by operation of law without further action by the department at 12:01 a.m. on the 91st day after the department authorizes such permit. Upon expiration of the temporary permit, the establishment may not continue to operate under such permit.

The department may revoke the permit of any person that fails to comply with the requirements of this subsection.

Section 8. Subsection (8) is added to section 499.066, Florida Statutes, to read:

499.066 Penalties; remedies.—In addition to other penalties and other enforcement provisions:

(8)(a) The department shall adopt rules to authorize the issuance of a remedial, nondisciplinary citation. A citation shall be issued to the person alleged to have committed a violation and contain the person's name, address, and license number, if applicable; a brief factual statement; the sections of the law allegedly violated; and the monetary assessment and or other remedial measures imposed. The person shall have 30 days after the citation is served to contest the citation by providing supplemental and clarifying information to the department. The citation must clearly state that the person may choose, in lieu of accepting the citation, to have the department rescind the citation and conduct an investigation pursuant to s. 499.051 of only those alleged violations contained in the citation. The citation shall be rescinded by the department if the person remedies or corrects the violations or deficiencies contained in the citation within 30 days after the citation is served. If the person does not successfully contest the citation to the satisfaction of the department, or complete remedial action pursuant to this paragraph, the citation becomes a final order and does not constitute discipline.

(b) The department is entitled to recover the costs of investigation, in addition to any penalty provided according to department rule, as part of the penalty levied pursuant to a citation.

(c) A citation must be issued within 6 months after the filing of the complaint that is the basis for the citation.

(d) Service of a citation may be made by personal service or certified mail, restricted delivery, to the person at the

person's last known address of record with the department, or to the person's Florida registered agent.

(e) The department may adopt rules to designate those violations for which a person is subject to the issuance of a citation and the monetary assessments or other remedial measures that must be taken for those violations. Violations designated as subject to issuance of a citation shall include violations for which there is no substantial threat to the public health, safety, or welfare. The department has continuous authority to amend its rules adopted pursuant to this section.

Section 9. Subsection (1) of section 509.241, Florida Statutes, is amended to read:

509.241 Licenses required; exceptions.—

(1) LICENSES; ANNUAL RENEWALS.—Each public lodging establishment and public food service establishment shall obtain a license from the division. Such license may not be transferred from one place or individual to another. It shall be a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083, for such an establishment to operate without a license. Local law enforcement shall provide immediate assistance in pursuing an illegally operating establishment. The division may refuse a license, or a renewal thereof, to any establishment that is not constructed and maintained in accordance with law and with the rules of the division. The division may refuse to issue a license, or a renewal thereof, to any establishment an operator of which, within the preceding 5 years, has been adjudicated guilty of, or has forfeited a bond when charged with, any crime reflecting on professional character, including soliciting for prostitution, pandering,

letting premises for prostitution, keeping a disorderly place, or illegally dealing in controlled substances as defined in chapter 893, whether in this state or in any other jurisdiction within the United States, or has had a license denied, revoked, or suspended pursuant to s. 429.14. Licenses shall be renewed annually, and the division shall adopt rules ~~a rule~~ establishing procedures ~~a staggered schedule~~ for license issuance and renewals. If any license expires while administrative charges are pending against the license, the proceedings against the license shall continue to conclusion as if the license were still in effect.

Section 10. Subsections (1) and (2) of section 509.251, Florida Statutes, are amended to read:

509.251 License fees.—

(1) The division shall adopt, by rule, a schedule of fees to be paid by each public lodging establishment as a prerequisite to issuance or renewal of a license. Such fees shall be based on the number of rental units in the establishment. The aggregate fee per establishment charged any public lodging establishment may not exceed $1,000; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. Vacation rental units or timeshare projects within separate buildings or at separate locations but managed by one licensed agent may be combined in a single license application, and the division shall charge a license fee as if all units in the application are in a single licensed establishment. ~~The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual~~

~~renewal period or more than 6 months before the next such renewal period and one-half of the fee if application is made 6 months or less before such period.~~ The fee schedule shall include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302. All fees~~, which~~ are payable in full for each application at the time ~~regardless of when~~ the application is submitted.

(a) Upon making initial application or an application for change of ownership, the applicant shall pay to the division a fee as prescribed by rule, not to exceed $50, in addition to any other fees required by law, which shall cover all costs associated with initiating regulation of the establishment.

(b) A license renewal filed with the division after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $50, in addition to the renewal fee and any other fees required by law.

(2) The division shall adopt, by rule, a schedule of fees to be paid by each public food service establishment as a prerequisite to issuance or renewal of a license. The fee schedule shall prescribe a basic fee and additional fees based on seating capacity and services offered. The aggregate fee per establishment charged any public food service establishment may not exceed $400; however, the fees described in paragraphs (a) and (b) may not be included as part of the aggregate fee subject to this cap. ~~The fee schedule shall require an establishment which applies for an initial license to pay the full license fee if application is made during the annual renewal period or more than 6 months before the next such renewal period and one-half of the fee if application is made 6 months or less before such~~

~~period.~~ The fee schedule shall include fees collected for the purpose of funding the Hospitality Education Program, pursuant to s. 509.302. All fees~~, which~~ are payable in full for each application at the time ~~regardless of when~~ the application is submitted.

(a) Upon making initial application or an application for change of ownership, the applicant shall pay to the division a fee as prescribed by rule, not to exceed $50, in addition to any other fees required by law, which shall cover all costs associated with initiating regulation of the establishment.

(b) A license renewal filed with the division after the expiration date shall be accompanied by a delinquent fee as prescribed by rule, not to exceed $50, in addition to the renewal fee and any other fees required by law.

Section 11. Section 548.003, Florida Statutes, is amended to read:

548.003 Florida Athletic ~~State Boxing~~ Commission.—

(1) The Florida Athletic ~~State Boxing~~ Commission is created and is assigned to the Department of Business and Professional Regulation for administrative and fiscal accountability purposes only. The ~~Florida State Boxing~~ commission shall consist of five members appointed by the Governor, subject to confirmation by the Senate. One member must be a physician licensed under ~~pursuant to~~ chapter 458 or chapter 459, who must maintain an unencumbered license in good standing, and who must, at the time of her or his appointment, have practiced medicine for at least 5 years. Upon the expiration of the term of a commissioner, the Governor shall appoint a successor to serve for a 4-year term. A commissioner whose term has expired shall continue to serve on

the commission until such time as a replacement is appointed. If a vacancy on the commission occurs before ~~prior to~~ the expiration of the term, it shall be filled for the unexpired portion of the term in the same manner as the original appointment.

(2) The ~~Florida State Boxing~~ commission, as created by subsection (1), shall administer the provisions of this chapter. The commission has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this chapter and to implement each of the duties and responsibilities conferred upon the commission, including, but not limited to:

(a) Development of an ethical code of conduct for commissioners, commission staff, and commission officials.

(b) Facility and safety requirements relating to the ring, floor plan and apron seating, emergency medical equipment and services, and other equipment and services necessary for the conduct of a program of matches.

(c) Requirements regarding a participant's apparel, bandages, handwraps, gloves, mouthpiece, and appearance during a match.

(d) Requirements relating to a manager's participation, presence, and conduct during a match.

(e) Duties and responsibilities of all licensees under this chapter.

(f) Procedures for hearings and resolution of disputes.

(g) Qualifications for appointment of referees and judges.

(h) Qualifications for and appointment of chief inspectors and inspectors and duties and responsibilities of chief inspectors and inspectors with respect to oversight and

coordination of activities for each program of matches regulated under this chapter.

(i) Setting fee and reimbursement schedules for referees and other officials appointed by the commission or the representative of the commission.

(j) Establishment of criteria for approval, disapproval, suspension of approval, and revocation of approval of amateur sanctioning organizations for amateur boxing, kickboxing, and mixed martial arts held in this state, including, but not limited to, the health and safety standards the organizations use before, during, and after the matches to ensure the health, safety, and well-being of the amateurs participating in the matches, including the qualifications and numbers of health care personnel required to be present, the qualifications required for referees, and other requirements relating to the health, safety, and well-being of the amateurs participating in the matches. The commission may adopt by rule, or incorporate by reference into rule, the health and safety standards of USA Boxing as the minimum health and safety standards for an amateur boxing sanctioning organization, the health and safety standards of the International Sport Kickboxing Association as the minimum health and safety standards for an amateur kickboxing sanctioning organization, and the minimum health and safety standards for an amateur mixed martial arts sanctioning organization. The commission shall review its rules for necessary revision at least every 2 years and may adopt by rule, or incorporate by reference into rule, the then-existing current health and safety standards of USA Boxing and the International Sport Kickboxing Association. The commission may adopt emergency

rules to administer this paragraph.

(3) The commission shall maintain an office in Tallahassee. At the first meeting of the commission after June 1 of each year, the commission shall select a chair and a vice chair from among its membership. Three members shall constitute a quorum and the concurrence of at least three members is necessary for official commission action.

(4) Three consecutive unexcused absences or absences constituting 50 percent or more of the commission's meetings within any 12-month period shall cause the commission membership of the member in question to become void, and the position shall be considered vacant. The commission shall, by rule, define unexcused absences.

(5) Each commission member shall be accountable to the Governor for the proper performance of duties as a member of the commission. The Governor shall cause to be investigated any complaint or unfavorable report received by the Governor or the department concerning an action of the commission or any member and shall take appropriate action thereon. The Governor may remove from office any member for malfeasance, unethical conduct, misfeasance, neglect of duty, incompetence, permanent inability to perform official duties, or pleading guilty or nolo contendere to or being found guilty of a felony.

(6) Each member of the commission shall be compensated at the rate of $50 for each day she or he attends a commission meeting and shall be reimbursed for other expenses as provided in s. 112.061.

(7) The commission shall be authorized to join and participate in the activities of the Association of Boxing

Commissions (ABC).

(8) The department shall provide all legal and investigative services necessary to implement this chapter. The department may adopt rules as provided in ss. 120.536(1) and 120.54 to carry out its duties under this chapter.

Section 12. Subsection (3) of section 548.043, Florida Statutes, is amended to read:

548.043 Weights and classes, limitations; gloves.—

(3) The commission shall establish by rule the need for gloves, if any, and the weight of any such gloves to be used in each pugilistic match ~~the appropriate weight of gloves to be used in each boxing match; however, all participants in boxing matches shall wear gloves weighing not less than 8 ounces each and participants in mixed martial arts matches shall wear gloves weighing 4 to 8 ounces each~~. Participants shall wear such protective devices as the commission deems necessary.

Section 13. Subsection (5) of section 553.841, Florida Statutes, is amended to read:

553.841 Building code compliance and mitigation program.—

~~(5) Each biennium, upon receipt of funds by the Department of Business and Professional Regulation from the Construction Industry Licensing Board and the Electrical Contractors' Licensing Board provided under ss. 489.109(3) and 489.509(3), the department shall determine the amount of funds available for the Florida Building Code Compliance and Mitigation Program.~~

Section 14. Subsection (20) of section 561.01, Florida Statutes, is amended to read:

561.01 Definitions.—As used in the Beverage Law:

~~(20) "Permit carrier" means a licensee authorized to make~~

~~deliveries as provided in s. 561.57.~~

Section 15. Subsections (1) and (2) of section 561.17, Florida Statutes, are amended, and subsection (5) is added to that section, to read:

561.17 License and registration applications; approved person.—

(1) Any person, before engaging in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages, shall file, with the district licensing personnel of the district of the division in which the place of business for which a license is sought is located, a sworn application in the format prescribed by the division. The applicant must be a legal or business entity, person, or persons and must include all persons, officers, shareholders, and directors of such legal or business entity that have a direct or indirect interest in the business seeking to be licensed under this part. However, the applicant does not include any person that derives revenue from the license solely through a contractual relationship with the licensee, the substance of which contractual relationship is not related to the control of the sale of alcoholic beverages. Before any application is approved, the division may require the applicant to file a set of fingerprints electronically through an approved electronic fingerprinting vendor or on ~~regular United States Department of Justice~~ forms prescribed by the Florida Department of Law Enforcement for herself or himself and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought, when required by the division. If the applicant or any person who is interested

with the applicant either directly or indirectly in the business or who has a security interest in the license being sought or has a right to a percentage payment from the proceeds of the business, either by lease or otherwise, is not qualified, the division shall deny the application. However, any company regularly traded on a national securities exchange and not over the counter; any insurer, as defined in the Florida Insurance Code; or any bank or savings and loan association chartered by this state, another state, or the United States which has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain the division's approval of its officers, directors, or stockholders or any change of such positions or interests. A shopping center with five or more stores, one or more of which has an alcoholic beverage license and is required under a lease common to all shopping center tenants to pay no more than 10 percent of the gross proceeds of the business holding the license to the shopping center, is not considered as having an interest, directly or indirectly, in the license. A performing arts center, as defined in s. 561.01, which has an interest, directly or indirectly, in an alcoholic beverage license is not required to obtain division approval of its volunteer officers or directors or of any change in such positions or interests.

(2) All applications for any alcoholic beverage license must be accompanied by proof of the applicant's right of occupancy for the entire premises sought to be licensed. All applications for alcoholic beverage licenses for consumption on the premises shall be accompanied by a certificate of the Division of Hotels and Restaurants of the Department of Business

and Professional Regulation, the Department of Agriculture and Consumer Services, the Department of Health, the Agency for Health Care Administration, or the county health department that the place of business wherein the business is to be conducted meets all of the sanitary requirements of the state.

(5) Any person or entity licensed or permitted by the division must provide an electronic mail address to the division to function as the primary contact for all communication by the division to the licensee or permittees. Licensees and permittees are responsible for maintaining accurate contact information on file with the division.

Section 16. Paragraph (a) of subsection (2) of section 561.19, Florida Statutes, is amended to read:

561.19 License issuance upon approval of division.—

(2)(a) When beverage licenses become available by reason of an increase in the population of a county, by reason of a county permitting the sale of intoxicating beverages when such sale had been prohibited, or by reason of the cancellation or revocation of a quota beverage license, the division, if there are more applicants than the number of available licenses, shall provide a method of double random selection by public drawing to determine which applicants shall be considered for issuance of licenses. The double random selection drawing method shall allow each applicant whose application is complete and does not disclose on its face any matter rendering the applicant ineligible an equal opportunity of obtaining an available license. After all applications are filed with the director, the director shall then determine by random selection drawing the order in which each applicant's name shall be matched with a

number selected by random drawing, and that number shall determine the order in which the applicant will be considered for a license. This paragraph does not prohibit a person holding a perfected lien or security interest in a quota alcoholic beverage license, in accordance with s. 561.65, from enforcing the lien or security interest against the license within 180 days after a final order of revocation or suspension. A revoked quota alcoholic beverage license encumbered by a lien or security interest, perfected pursuant to s. 561.65, may not be issued under this subsection until the 180-day period has elapsed or until such enforcement proceeding is final.

Section 17. Paragraph (a) of subsection (2) of section 561.20, Florida Statutes, is amended to read:

561.20 Limitation upon number of licenses issued.—

(2)(a) The limitation of the number of licenses as provided in this section does not prohibit the issuance of a special license to:

1. Any bona fide hotel, motel, or motor court of not fewer than 80 guest rooms in any county having a population of less than 50,000 residents, and of not fewer than 100 guest rooms in any county having a population of 50,000 residents or greater; or any bona fide hotel or motel located in a historic structure, as defined in s. 561.01(20) ~~s. 561.01(21)~~, with fewer than 100 guest rooms which derives at least 51 percent of its gross revenue from the rental of hotel or motel rooms, which is licensed as a public lodging establishment by the Division of Hotels and Restaurants; provided, however, that a bona fide hotel or motel with no fewer than 10 and no more than 25 guest rooms which is a historic structure, as defined in s. 561.01(20)

~~s. 561.01(21)~~, in a municipality that on the effective date of this act has a population, according to the University of Florida's Bureau of Economic and Business Research Estimates of Population for 1998, of no fewer than 25,000 and no more than 35,000 residents and that is within a constitutionally chartered county may be issued a special license. This special license shall allow the sale and consumption of alcoholic beverages only on the licensed premises of the hotel or motel. In addition, the hotel or motel must derive at least 60 percent of its gross revenue from the rental of hotel or motel rooms and the sale of food and nonalcoholic beverages; provided that this subparagraph shall supersede local laws requiring a greater number of hotel rooms;

2. Any condominium accommodation of which no fewer than 100 condominium units are wholly rentable to transients and which is licensed under chapter 509, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

3. Any condominium accommodation of which no fewer than 50 condominium units are wholly rentable to transients, which is licensed under chapter 509, and which is located in any county having home rule under s. 10 or s. 11, Art. VIII of the State Constitution of 1885, as amended, and incorporated by reference in s. 6(e), Art. VIII of the State Constitution, except that the license shall be issued only to the person or corporation that operates the hotel or motel operation and not to the association of condominium owners;

4. A food service establishment that has 2,500 square feet

of service area, is equipped to serve meals to 150 persons at one time, and derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 120-day ~~60-day~~ operating period and the first ~~each~~ 12-month operating period thereafter. Subsequent audit timeframes must be based upon the audit percentage established by the most recent audit and conducted on a staggered scale as follows: level 1, 51 percent to 60 percent, every year; level 2, 61 percent to 75 percent, every 2 years; level 3, 76 percent to 90 percent, every 3 years; and level 4, 91 percent to 100 percent, every 4 years. A food service establishment granted a special license on or after January 1, 1958, pursuant to general or special law may not operate as a package store and may not sell intoxicating beverages under such license after the hours of serving or consumption of food have elapsed. Failure by a licensee to meet the required percentage of food and nonalcoholic beverage gross revenues during the covered operating period shall result in revocation of the license or denial of the pending license application. A licensee whose license is revoked or an applicant whose pending application is denied, or any person required to qualify on the special license application, is ineligible to have any interest in a subsequent application for such a license for a period of 120 days after the date of the final denial or revocation;

5. Any caterer, deriving at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages at each catered event, licensed by the Division of Hotels and Restaurants under chapter 509. This subparagraph does not apply to a culinary education program, as defined in s.

381.0072(2), which is licensed as a public food service establishment by the Division of Hotels and Restaurants and provides catering services. Notwithstanding any law to the contrary, a licensee under this subparagraph shall sell or serve alcoholic beverages only for consumption on the premises of a catered event at which the licensee is also providing prepared food, and shall prominently display its license at any catered event at which the caterer is selling or serving alcoholic beverages. A licensee under this subparagraph shall purchase all alcoholic beverages it sells or serves at a catered event from a vendor licensed under s. 563.02(1), s. 564.02(1), or licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), as appropriate. A licensee under this subparagraph may not store any alcoholic beverages to be sold or served at a catered event. Any alcoholic beverages purchased by a licensee under this subparagraph for a catered event that are not used at that event must remain with the customer; provided that if the vendor accepts unopened alcoholic beverages, the licensee may return such alcoholic beverages to the vendor for a credit or reimbursement. Regardless of the county or counties in which the licensee operates, a licensee under this subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this subparagraph must maintain for a period of 3 years all records and receipts for each catered event, including all contracts, customers' names, event locations, event dates, food purchases and sales, alcoholic beverage purchases and sales, nonalcoholic beverage purchases and sales, and any other records required by the department by rule to demonstrate compliance with the requirements of this

subparagraph. Notwithstanding any law to the contrary, any vendor licensed under s. 565.02(1) subject to the limitation imposed in subsection (1), may, without any additional licensure under this subparagraph, serve or sell alcoholic beverages for consumption on the premises of a catered event at which prepared food is provided by a caterer licensed under chapter 509. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under this subparagraph may ~~shall~~ not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this section shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. The Division of Alcoholic Beverages and Tobacco is hereby authorized to adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement. The first $300,000 in fees collected by the division each fiscal year pursuant to this subparagraph shall be deposited in the Department of Children and Families' Operations and Maintenance Trust Fund to be used only for alcohol and drug abuse education, treatment, and prevention programs. The remainder of the fees collected shall be deposited into the Hotel and Restaurant Trust Fund created pursuant to s. 509.072; or

6. A culinary education program as defined in s. 381.0072(2) which is licensed as a public food service establishment by the Division of Hotels and Restaurants.

a. This special license shall allow the sale and

consumption of alcoholic beverages on the licensed premises of the culinary education program. The culinary education program shall specify designated areas in the facility where the alcoholic beverages may be consumed at the time of application. Alcoholic beverages sold for consumption on the premises may be consumed only in areas designated pursuant to s. 561.01(11) and may not be removed from the designated area. Such license shall be applicable only in and for designated areas used by the culinary education program.

b. If the culinary education program provides catering services, this special license shall also allow the sale and consumption of alcoholic beverages on the premises of a catered event at which the licensee is also providing prepared food. A culinary education program that provides catering services is not required to derive at least 51 percent of its gross revenue from the sale of food and nonalcoholic beverages. Notwithstanding any law to the contrary, a licensee that provides catering services under this sub-subparagraph shall prominently display its beverage license at any catered event at which the caterer is selling or serving alcoholic beverages. Regardless of the county or counties in which the licensee operates, a licensee under this sub-subparagraph shall pay the annual state license tax set forth in s. 565.02(1)(b). A licensee under this sub-subparagraph must maintain for a period of 3 years all records required by the department by rule to demonstrate compliance with the requirements of this sub-subparagraph.

c. If a licensee under this subparagraph also possesses any other license under the Beverage Law, the license issued under

this subparagraph does not authorize the holder to conduct activities on the premises to which the other license or licenses apply that would otherwise be prohibited by the terms of that license or the Beverage Law. Nothing in this subparagraph shall permit the licensee to conduct activities that are otherwise prohibited by the Beverage Law or local law. Any culinary education program that holds a license to sell alcoholic beverages shall comply with the age requirements set forth in ss. 562.11(4), 562.111(2), and 562.13.

d. The Division of Alcoholic Beverages and Tobacco may adopt rules to administer the license created in this subparagraph, to include rules governing licensure, recordkeeping, and enforcement.

e. A license issued pursuant to this subparagraph does not permit the licensee to sell alcoholic beverages by the package for off-premises consumption.

However, any license heretofore issued to any such hotel, motel, motor court, or restaurant or hereafter issued to any such hotel, motel, or motor court, including a condominium accommodation, under the general law shall not be moved to a new location, such license being valid only on the premises of such hotel, motel, motor court, or restaurant. Licenses issued to hotels, motels, motor courts, or restaurants under the general law and held by such hotels, motels, motor courts, or restaurants on May 24, 1947, shall be counted in the quota limitation contained in subsection (1). Any license issued for any hotel, motel, or motor court under this law shall be issued only to the owner of the hotel, motel, or motor court or, in the

event the hotel, motel, or motor court is leased, to the lessee of the hotel, motel, or motor court; and the license shall remain in the name of the owner or lessee so long as the license is in existence. Any special license now in existence heretofore issued under this law cannot be renewed except in the name of the owner of the hotel, motel, motor court, or restaurant or, in the event the hotel, motel, motor court, or restaurant is leased, in the name of the lessee of the hotel, motel, motor court, or restaurant in which the license is located and must remain in the name of the owner or lessee so long as the license is in existence. Any license issued under this section shall be marked "Special," and nothing herein provided shall limit, restrict, or prevent the issuance of a special license for any restaurant or motel which shall hereafter meet the requirements of the law existing immediately prior to the effective date of this act, if construction of such restaurant has commenced prior to the effective date of this act and is completed within 30 days thereafter, or if an application is on file for such special license at the time this act takes effect; and any such licenses issued under this proviso may be annually renewed as now provided by law. Nothing herein prevents an application for transfer of a license to a bona fide purchaser of any hotel, motel, motor court, or restaurant by the purchaser of such facility or the transfer of such license pursuant to law.

Section 18. Subsection (4) of section 561.42, Florida Statutes, is amended to read:

561.42 Tied house evil; financial aid and assistance to vendor by manufacturer, distributor, importer, primary American source of supply, brand owner or registrant, or any broker,

sales agent, or sales person thereof, prohibited; procedure for enforcement; exception.—

(4) Before the division shall so declare and prohibit such sales to such vendor, ~~it shall,~~ within 2 days after receipt of such notice~~,~~ the division shall give ~~written~~ notice to such vendor by electronic mail of the receipt by the division of such notification of delinquency and such vendor shall be directed to forthwith make payment thereof or, upon failure to do so, to show cause before the division why further sales to such vendor may ~~shall~~ not be prohibited. Good and sufficient cause to prevent such action by the division may be made by showing payment, failure of consideration, or any other defense which would be considered sufficient in a common-law action. The vendor shall have 5 days after service ~~receipt~~ of such notice via electronic mail within which to show such cause, and he or she may demand a hearing thereon, provided he or she does so in writing within said 5 days, such written demand to be delivered to the division either in person, by electronic mail, or by due course of mail within such 5 days. If no such demand for hearing is made, the division shall thereupon declare in writing to such vendor and to all manufacturers and distributors within the state that all further sales to such vendor are prohibited until such time as the division certifies in writing that such vendor has fully paid for all liquors previously purchased. In the event such prohibition of sales and declaration thereof to the vendor, manufacturers, and distributors is ordered by the division, the vendor may seek review of such decision by the Department of Business and Professional Regulation within 5 days. In the event application for such review is filed within

such time, such prohibition of sales may ~~shall~~ not be made, published, or declared until final disposition of such review by the department.

Section 19. Subsection (2) of section 561.55, Florida Statutes, is amended to read:

561.55 Manufacturers', distributors', brokers', sales agents', importers', vendors', and exporters' records and reports.—

(2) Each manufacturer, distributor, broker, sales agent, and importer shall make a full and complete report by the 10th day of each month for the previous calendar month. The report must be ~~shall be made out in triplicate; two copies shall be sent to the division, and the third copy shall be retained for the manufacturer's, distributor's, broker's, sales agent's, or importer's record. Reports shall be~~ made on forms prepared ~~and furnished~~ by the division and filed with the division through the division's electronic data submission system.

Section 20. Section 562.455, Florida Statutes, is amended to read:

562.455 Adulterating liquor; penalty.—Whoever adulterates, for the purpose of sale, any liquor, used or intended for drink, with cocculus indicus, vitriol, ~~grains of paradise,~~ opium, alum, capsicum, copperas, laurel water, logwood, brazil wood, cochineal, sugar of lead, or any other substance which is poisonous or injurious to health, and whoever knowingly sells any liquor so adulterated, commits ~~shall be guilty of~~ a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 21. Paragraphs (d) and (f) of subsection (2) of

section 718.112, Florida Statutes, are amended to read:

718.112 Bylaws.—

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

(d) *Unit owner meetings.*—

1. An annual meeting of the unit owners must be held at the location provided in the association bylaws and, if the bylaws are silent as to the location, the meeting must be held within 45 miles of the condominium property. However, such distance requirement does not apply to an association governing a timeshare condominium.

2. Unless the bylaws provide otherwise, a vacancy on the board caused by the expiration of a director's term must be filled by electing a new board member, and the election must be by secret ballot. An election is not required if the number of vacancies equals or exceeds the number of candidates. For purposes of this paragraph, the term "candidate" means an eligible person who has timely submitted the written notice, as described in sub-subparagraph 4.a., of his or her intention to become a candidate. Except in a timeshare or nonresidential condominium, or if the staggered term of a board member does not expire until a later annual meeting, or if all members' terms would otherwise expire but there are no candidates, the terms of all board members expire at the annual meeting, and such members may stand for reelection unless prohibited by the bylaws. Board members may serve terms longer than 1 year if permitted by the bylaws or articles of incorporation. A board member may not serve more than 8 consecutive years unless approved by an

affirmative vote of unit owners representing two-thirds of all votes cast in the election or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. If the number of board members whose terms expire at the annual meeting equals or exceeds the number of candidates, the candidates become members of the board effective upon the adjournment of the annual meeting. Unless the bylaws provide otherwise, any remaining vacancies shall be filled by the affirmative vote of the majority of the directors making up the newly constituted board even if the directors constitute less than a quorum or there is only one director. In a residential condominium association of more than 10 units or in a residential condominium association that does not include timeshare units or timeshare interests, co-owners of a unit may not serve as members of the board of directors at the same time unless they own more than one unit or unless there are not enough eligible candidates to fill the vacancies on the board at the time of the vacancy. A unit owner in a residential condominium desiring to be a candidate for board membership must comply with sub-subparagraph 4.a. and must be eligible to be a candidate to serve on the board of directors at the time of the deadline for submitting a notice of intent to run in order to have his or her name listed as a proper candidate on the ballot or to serve on the board. A person who has been suspended or removed by the division under this chapter, or who is delinquent in the payment of any assessment ~~monetary obligation~~ due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. For purposes of this paragraph, a person is delinquent if a payment is not made

by the due date as specifically identified in the declaration of condominium, bylaws, or articles of incorporation. If a due date is not specifically identified in the declaration of condominium, bylaws, or articles of incorporation, the due date is the first day of the assessment period. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice must include an agenda, must be mailed, hand delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting, and must be posted in a conspicuous place on the condominium property at least 14 continuous days before the annual meeting. Upon notice to the unit owners, the board shall, by duly adopted rule, designate a specific location on the condominium property where all notices of unit owner meetings must be posted. This requirement does not apply if there is no condominium property for posting notices. In lieu of, or in addition to, the physical posting of meeting notices, the association may, by reasonable rule, adopt a procedure for

conspicuously posting and repeatedly broadcasting the notice and the agenda on a closed-circuit cable television system serving the condominium association. However, if broadcast notice is used in lieu of a notice posted physically on the condominium property, the notice and agenda must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required under this section. If broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. In addition to any of the authorized means of providing notice of a meeting of the board, the association may, by rule, adopt a procedure for conspicuously posting the meeting notice and the agenda on a website serving the condominium association for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the condominium property. Any rule adopted shall, in addition to other matters, include a requirement that the association send an electronic notice in the same manner as a notice for a meeting of the members, which must include a hyperlink to the website where the notice is posted, to unit owners whose e-mail addresses are included in the association's official records. Unless a unit owner waives in writing the right to receive notice of the annual meeting, such notice must be hand delivered, mailed, or electronically transmitted to each unit owner. Notice for meetings and notice for all other purposes must be mailed to each unit owner at the address last furnished to the association by the unit owner, or hand delivered to each unit owner. However, if a unit is owned

by more than one person, the association must provide notice to the address that the developer identifies for that purpose and thereafter as one or more of the owners of the unit advise the association in writing, or if no address is given or the owners of the unit do not agree, to the address provided on the deed of record. An officer of the association, or the manager or other person providing notice of the association meeting, must provide an affidavit or United States Postal Service certificate of mailing, to be included in the official records of the association affirming that the notice was mailed or hand delivered in accordance with this provision.

4. The members of the board of a residential condominium shall be elected by written ballot or voting machine. Proxies may not be used in electing the board in general elections or elections to fill vacancies caused by recall, resignation, or otherwise, unless otherwise provided in this chapter. This subparagraph does not apply to an association governing a timeshare condominium.

a. At least 60 days before a scheduled election, the association shall mail, deliver, or electronically transmit, by separate association mailing or included in another association mailing, delivery, or transmission, including regularly published newsletters, to each unit owner entitled to a vote, a first notice of the date of the election. A unit owner or other eligible person desiring to be a candidate for the board must give written notice of his or her intent to be a candidate to the association at least 40 days before a scheduled election. Together with the written notice and agenda as set forth in subparagraph 3., the association shall mail, deliver, or

electronically transmit a second notice of the election to all unit owners entitled to vote, together with a ballot that lists all candidates. Upon request of a candidate, an information sheet, no larger than 8 1/2 inches by 11 inches, which must be furnished by the candidate at least 35 days before the election, must be included with the mailing, delivery, or transmission of the ballot, with the costs of mailing, delivery, or electronic transmission and copying to be borne by the association. The association is not liable for the contents of the information sheets prepared by the candidates. In order to reduce costs, the association may print or duplicate the information sheets on both sides of the paper. The division shall by rule establish voting procedures consistent with this sub-subparagraph, including rules establishing procedures for giving notice by electronic transmission and rules providing for the secrecy of ballots. Elections shall be decided by a plurality of ballots cast. There is no quorum requirement; however, at least 20 percent of the eligible voters must cast a ballot in order to have a valid election. A unit owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid. A unit owner who violates this provision may be fined by the association in accordance with s. 718.303. A unit owner who needs assistance in casting the ballot for the reasons stated in s. 101.051 may obtain such assistance. The regular election must occur on the date of the annual meeting. Notwithstanding this sub-subparagraph, an election is not required unless more candidates file notices of intent to run or are nominated than board vacancies exist.

b. Within 90 days after being elected or appointed to the

board of an association of a residential condominium, each newly elected or appointed director shall certify in writing to the secretary of the association that he or she has read the association's declaration of condominium, articles of incorporation, bylaws, and current written policies; that he or she will work to uphold such documents and policies to the best of his or her ability; and that he or she will faithfully discharge his or her fiduciary responsibility to the association's members. In lieu of this written certification, within 90 days after being elected or appointed to the board, the newly elected or appointed director may submit a certificate of having satisfactorily completed the educational curriculum administered by a division-approved condominium education provider within 1 year before or 90 days after the date of election or appointment. The written certification or educational certificate is valid and does not have to be resubmitted as long as the director serves on the board without interruption. A director of an association of a residential condominium who fails to timely file the written certification or educational certificate is suspended from service on the board until he or she complies with this sub-subparagraph. The board may temporarily fill the vacancy during the period of suspension. The secretary shall cause the association to retain a director's written certification or educational certificate for inspection by the members for 5 years after a director's election or the duration of the director's uninterrupted tenure, whichever is longer. Failure to have such written certification or educational certificate on file does not affect the validity of any board action.

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

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

6. Unit owners may waive notice of specific meetings if allowed by the applicable bylaws or declaration or any law. Notice of meetings of the board of administration, unit owner meetings, except unit owner meetings called to recall board members under paragraph (j), and committee meetings may be given by electronic transmission to unit owners who consent to receive notice by electronic transmission. A unit owner who consents to receiving notices by electronic transmission is solely responsible for removing or bypassing filters that block receipt of mass emails sent to members on behalf of the association in the course of giving electronic notices.

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

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

division.

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

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

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

proxy.

(f) *Annual budget.*—

1. The proposed annual budget of estimated revenues and expenses must be detailed and must show the amounts budgeted by accounts and expense classifications, including, at a minimum, any applicable expenses listed in s. 718.504(21). The annual budget must be proposed to unit owners and adopted by the board of directors no later than 30 days before the beginning of the fiscal year. A multicondominium association shall adopt a separate budget of common expenses for each condominium the association operates and shall adopt a separate budget of common expenses for the association. In addition, if the association maintains limited common elements with the cost to be shared only by those entitled to use the limited common elements as provided for in s. 718.113(1), the budget or a schedule attached to it must show the amount budgeted for this maintenance. If, after turnover of control of the association to the unit owners, any of the expenses listed in s. 718.504(21) are not applicable, they need not be listed.

2.a. In addition to annual operating expenses, the budget must include reserve accounts for capital expenditures and deferred maintenance. These accounts must include, but are not limited to, roof replacement, building painting, and pavement resurfacing, regardless of the amount of deferred maintenance expense or replacement cost, and any other item that has a deferred maintenance expense or replacement cost that exceeds $10,000. The amount to be reserved must be computed using a formula based upon estimated remaining useful life and estimated replacement cost or deferred maintenance expense of each reserve

item. The association may adjust replacement reserve assessments annually to take into account any changes in estimates or extension of the useful life of a reserve item caused by deferred maintenance. This subsection does not apply to an adopted budget in which the members of an association have determined, by a majority vote at a duly called meeting of the association, to provide no reserves or less reserves than required by this subsection.

b. Before turnover of control of an association by a developer to unit owners other than a developer pursuant to s. 718.301, the developer may vote the voting interests allocated to its units to waive the reserves or reduce the funding of reserves through the period expiring at the end of the second fiscal year after the fiscal year in which the certificate of a surveyor and mapper is recorded pursuant to s. 718.104(4)(e) or an instrument that transfers title to a unit in the condominium which is not accompanied by a recorded assignment of developer rights in favor of the grantee of such unit is recorded, whichever occurs first, after which time reserves may be waived or reduced only upon the vote of a majority of all nondeveloper voting interests voting in person or by limited proxy at a duly called meeting of the association. If a meeting of the unit owners has been called to determine whether to waive or reduce the funding of reserves and no such result is achieved or a quorum is not attained, the reserves included in the budget shall go into effect. After the turnover, the developer may vote its voting interest to waive or reduce the funding of reserves.

3. Reserve funds and any interest accruing thereon shall remain in the reserve account or accounts, and may be used only

for authorized reserve expenditures unless their use for other purposes is approved in advance by a majority vote at a duly called meeting of the association. Before turnover of control of an association by a developer to unit owners other than the developer pursuant to s. 718.301, the developer-controlled association may not vote to use reserves for purposes other than those for which they were intended without the approval of a majority of all nondeveloper voting interests, voting in person or by limited proxy at a duly called meeting of the association.

4. The only voting interests that are eligible to vote on questions that involve waiving or reducing the funding of reserves, or using existing reserve funds for purposes other than purposes for which the reserves were intended, are the voting interests of the units subject to assessment to fund the reserves in question. Proxy questions relating to waiving or reducing the funding of reserves or using existing reserve funds for purposes other than purposes for which the reserves were intended must contain the following statement in capitalized, bold letters in a font size larger than any other used on the face of the proxy ballot: WAIVING OF RESERVES, IN WHOLE OR IN PART, OR ALLOWING ALTERNATIVE USES OF EXISTING RESERVES MAY RESULT IN UNIT OWNER LIABILITY FOR PAYMENT OF UNANTICIPATED SPECIAL ASSESSMENTS REGARDING THOSE ITEMS.

Section 22. Paragraph (m) of subsection (1) of section 718.501, Florida Statutes, is amended to read:

718.501 Authority, responsibility, and duties of Division of Florida Condominiums, Timeshares, and Mobile Homes.—

(1) The division may enforce and ensure compliance with the provisions of this chapter and rules relating to the

development, construction, sale, lease, ownership, operation, and management of residential condominium units. In performing its duties, the division has complete jurisdiction to investigate complaints and enforce compliance with respect to associations that are still under developer control or the control of a bulk assignee or bulk buyer pursuant to part VII of this chapter and complaints against developers, bulk assignees, or bulk buyers involving improper turnover or failure to turnover, pursuant to s. 718.301. However, after turnover has occurred, the division has jurisdiction to investigate complaints related only to financial issues, elections, and unit owner access to association records pursuant to s. 718.111(12).

(m) If a complaint is made, the division must conduct its inquiry with due regard for the interests of the affected parties. Within 30 days after receipt of a complaint, the division shall acknowledge the complaint in writing and notify the complainant whether the complaint is within the jurisdiction of the division and whether additional information is needed by the division from the complainant. The division shall conduct its investigation and, within 90 days after receipt of the original complaint or of timely requested additional information, take action upon the complaint. However, the failure to complete the investigation within 90 days does not prevent the division from continuing the investigation, accepting or considering evidence obtained or received after 90 days, or taking administrative action if reasonable cause exists to believe that a violation of this chapter or a rule has occurred. If an investigation is not completed within the time limits established in this paragraph, the division shall, on a

monthly basis, notify the complainant in writing of the status of the investigation. When reporting its action to the complainant, the division shall inform the complainant of any right to a hearing pursuant to ss. 120.569 and 120.57. The division may adopt rules regarding the submission of a complaint against an association.

Section 23. Section 718.5014, Florida Statutes, is amended to read:

718.5014 Ombudsman location.—The ombudsman shall maintain his or her principal office at a ~~in Leon County on the premises of the division or, if suitable space cannot be provided there, at another~~ place convenient to the offices of the division which will enable the ombudsman to expeditiously carry out the duties and functions of his or her office. The ombudsman may establish branch offices elsewhere in the state upon the concurrence of the Governor.

Section 24. Subsection (1) of section 455.219, Florida Statutes, is amended to read:

455.219 Fees; receipts; disposition; periodic management reports.—

(1) Each board within the department shall determine by rule the amount of license fees for its profession, based upon department-prepared long-range estimates of the revenue required to implement all provisions of law relating to the regulation of professions by the department and any board; however, when the department has determined, based on the long-range estimates of such revenue, that a profession's trust fund moneys are in excess of the amount required to cover the necessary functions of the board, or the department when there is no board, the

department may adopt rules to implement a waiver of license renewal fees for that profession for a period not to exceed 2 years, as determined by the department. Each board, or the department when there is no board, shall ensure license fees are adequate to cover all anticipated costs and to maintain a reasonable cash balance, as determined by rule of the department, with advice of the applicable board. If sufficient action is not taken by a board within 1 year of notification by the department that license fees are projected to be inadequate, the department shall set license fees on behalf of the applicable board to cover anticipated costs and to maintain the required cash balance. The department shall include recommended fee cap increases in its annual report to the Legislature. Further, it is legislative intent that no regulated profession operate with a negative cash balance. The department may provide by rule for the advancement of sufficient funds to any profession or the Florida Athletic ~~State Boxing~~ Commission operating with a negative cash balance. Such advancement may be for a period not to exceed 2 consecutive years and shall require interest to be paid by the regulated profession. Interest shall be calculated at the current rate earned on Professional Regulation Trust Fund investments. Interest earned shall be allocated to the various funds in accordance with the allocation of investment earnings during the period of the advance.

Section 25. Subsection (4) of section 548.002, Florida Statutes, is amended to read:

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

(4) "Commission" means the Florida Athletic ~~State Boxing~~ Commission.

Section 26. Subsections (3) and (4) of section 548.05, Florida Statutes, are amended to read:

548.05 Control of contracts.—

(3) The commission may require that each contract contain language authorizing the ~~Florida State Boxing~~ commission to withhold any or all of any manager's share of a purse in the event of a contractual dispute as to entitlement to any portion of a purse. The commission may establish rules governing the manner of resolution of such dispute. In addition, if the commission deems it appropriate, the commission is hereby authorized to implead interested parties over any disputed funds into the appropriate circuit court for resolution of the dispute before ~~prior to~~ release of all or any part of the funds.

(4) Each contract subject to this section shall contain the following clause: "This agreement is subject to the provisions of chapter 548, Florida Statutes, and to the rules of the Florida Athletic ~~State Boxing~~ Commission and to any future amendments of either."

Section 27. Subsection (12) of section 548.071, Florida Statutes, is amended to read:

548.071 Suspension or revocation of license or permit by commission.—The commission may suspend or revoke a license or permit if the commission finds that the licensee or permittee:

(12) Has been disciplined by the ~~Florida State Boxing~~ commission or similar agency or body of any jurisdiction.

Section 28. Section 548.077, Florida Statutes, is amended to read:

548.077 Florida Athletic ~~State Boxing~~ Commission; collection and disposition of moneys.—All fees, fines,

forfeitures, and other moneys collected under the provisions of this chapter shall be paid by the commission to the Chief Financial Officer who, after the expenses of the commission are paid, shall deposit them in the Professional Regulation Trust Fund to be used for the administration and operation of the commission and to enforce the laws and rules under its jurisdiction. In the event the unexpended balance of such moneys collected under the provisions of this chapter exceeds $250,000, any excess of that amount shall be deposited in the General Revenue Fund.

Section 29. This act shall take effect July 1, 2021.

2021 AGENCY LEGISLATIVE BILL ANALYSIS

AGENCY: Department of Business & Professional Regulation

BILL INFORMATION	
BILL NUMBER:	SB 1966
BILL TITLE:	Department of Business and Professional Regulation
BILL SPONSOR:	Sen. Diaz
EFFECTIVE DATE:	07/01/2021

COMMITTEES OF REFERENCE
1) Regulated Industries
2) Appropriations
3) Rules
4) Click or tap here to enter text.
5) Click or tap here to enter text.

CURRENT COMMITTEE
N/A

SIMILAR BILLS	
BILL NUMBER:	N/A
SPONSOR:	N/A

PREVIOUS LEGISLATION	
BILL NUMBER:	SB 912
SPONSOR:	Sen. Diaz
YEAR:	2020
LAST ACTION:	HOUSE Died in returning Messages

IDENTICAL BILLS	
BILL NUMBER:	HB 1517
SPONSOR:	Rep. Duggan

Is this bill part of an agency package?
No

BILL ANALYSIS INFORMATION	
DATE OF ANALYSIS:	March 12, 2021
LEAD AGENCY ANALYST:	Colton Madill, Acting Director, Office of Legislative Affairs
ADDITIONAL ANALYST(S):	Sterling Whisenhunt, Director, Alcoholic Beverages and Tobacco Debi Winters, Alcoholic Beverages and Tobacco Jeff Kelly, Deputy Director, Professions Patrick Cunningham, Executive Director, Florida State Boxing Commission Chevonne Christian, Deputy Director, CTMH

	Michelle Keith, Division of Hotels & Restaurants Marc Drexler, Counsel, Division of Hotels & Restaurants Renee Alsobrook, Chief of Compliance and Enforcement, Division of Drugs, Devices, and Cosmetics Robin Jordan, Technology Jake Whealdon, Acting OGC Rules Tracy Dixon, Service Operations James Richardson, CTMH Legal Megan Kachur, OGC ABT
LEGAL ANALYST:	Kathryn E. Price, DDC Chief Attorney Alison A. Parker, Deputy General Counsel, Administration/Professions
FISCAL ANALYST:	Raleigh Close, Administration

POLICY ANALYSIS

1. EXECUTIVE SUMMARY

Alcoholic Beverages and Tobacco (Sections 1, 2, 3, 14, 15, 16, 17, 18, 19, and 20):
The bill facilitates communications and reporting requirements for the Division of Alcoholic Beverages and Tobacco and the division's licensees by providing options, and in some cases requiring, the use of electronic mail for notifications sent by the division; and requiring the use of the electronic data submission system (EDS) for monthly tax reports submitted to the division. In addition, the bill requires that fingerprints submitted when applying for licensure must be submitted through an approved electronic fingerprinting vendor or on forms prescribed by the Florida Department of Law Enforcement. The bill doubles the amount of time that is used when calculating the percentage of food and non-alcoholic beverages to gross revenue, where a 51% minimum is required for food service establishments to qualify for the special alcoholic beverage license. In addition, the bill deletes the current annual audit of the 51% threshold requirement and replaces it with an audit schedule based on a licensee's demonstrated compliance on the most recent audit.

Drugs, Devices, and Cosmetics (Sections 6, 7, and 8):
The bill creates an exemption from the requirement for a person to obtain a cosmetic manufacturing permit for a person who manufactures limited cosmetic products and has annual gross sales of $25,000 or less for those limited cosmetic products. The bill also creates a temporary permit for 90 calendar days authorizing the new owner to continue to operate at the establishment when there is a change of ownership, change of controlling interest or a change of location pending review and approval of the submitted applicable application to the department. In addition, the bill creates authority for nondisciplinary citations and requires the department to adopt rules providing the specific process for the citation as well as the resolution of the citation.

Florida State Boxing Commission (Sections 11, 12, 25, 26, 27, and 28):
The bill changes the name of the Florida State Boxing Commission to the Florida Athletic Commission. The bill amends the portion of statutory law which mandates certain glove sizes for regulated combat sports. The bill allows for the Florida State Boxing Commission to set glove sizes and requirements by rule.

Division of Condominiums, Timeshares and Mobile Homes (Sections 21, 22, and 23):
The bill amends ch. 718, F.S., clarifying "monetary obligation" as well as defining an assessment delinquency. The bill adds a requirement regarding when the board must adopt a budget. The bill also allows the division to adopt rules regarding the submission of a complaint against an association. The bill removes the requirement that the Ombudsman's Office be located in Leon County, effectively providing the agency with discretion to establish the office location most appropriate for connecting with stakeholders served by this position. The bill requires that the board of directors propose and adopt an annual budget no later than 30 days prior to the beginning of the fiscal year. In addition, the bill permits the division to adopt rules regarding submission of complaints against an association. Further, the bill removes the requirement that the ombudsman's office be located in Leon County.

Division of Hotels and Restaurants (Sections 9 and 10):
The bill revises rulemaking requirements for public lodging and public food service licenses and removes language from s. 509.241(1), F.S., requiring a staggered schedule of license renewals. The bill deletes language from s. 509.251, F.S., requiring full or half year licenses depending on the date applied and the time until next renewal and requires that all fees are paid in full upon submission of a public lodging or public food service application. These

amendments establish a true, full license year for each license holder upon initial license issuance, regardless of the date of issuance.

Division of Professions (Sections 4, 5, and 13):
The bill removes provisions relating to an additional fee for construction licensure applications and renewals, and reopens the provision allowing registered construction contractors to become certified construction contractors after five years of experience.

2. SUBSTANTIVE BILL ANALYSIS

1. PRESENT SITUATION:

Alcoholic Beverages and Tobacco (Sections 1, 2, 3, 14, 15, 16, 17, 18, 19, and 20):
Currently, excise taxes on cigarettes and other tobacco products and the associated reports must be submitted to the Division of Alcoholic Beverages and Tobacco (ABT) on the 10th of each month following the month for which the report is made. The reports ensure the proper collection and distribution the excise taxes.

Reports are required from manufacturers, importers, distributing agents, wholesale dealers, agents, retail dealer, common carrier, or any other person who handles, transports or possesses cigarettes for sale or distribution within the state.

In addition, in order to verify the accuracy of the tax imposed and assessed all manufacturers, importers, distributing agents, wholesale dealers, agents, or retail dealers must:

- Keep for a period of 3 years at the place of business where any transaction takes place, the records of cigarettes received, sold, or delivered within the state; and
- Give ABT or its duly authorized representatives the means, facilities, and opportunity to examine the books, papers, invoices, and other records.

Similarly, on or before the 10th of each month, every taxpayer with a place of business in this state must file a return (report) with ABT showing the taxable price of each tobacco product (other than cigarettes, which are frequently referred to as other tobacco products, OTP) brought or caused to be brought into this state for sale, or made, manufactured, or fabricated in this state for sale in this state, during the preceding month. Every taxpayer outside this state must file a return (report) showing the quantity and taxable price of each tobacco product shipped or transported to retailers in this state, to be sold by those retailers, during the preceding month. Each return (report) must be accompanied by a remittance for the full tax liability shown.

Section 561.17, F.S., outlines the current application process and requirements for licensure needed before any person can engage in the business of manufacturing, bottling, distributing, selling, or in any way dealing in alcoholic beverages in Florida.

Section 561.20, F.S., authorizes the issuance of a special alcoholic beverage license for consumption on premises to a food service establishment that:

- Has 2,500 square feet of service area;
- Is equipped to serve meals to 150 persons at one time, and
- Derives at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages during the first 60-day operating period and each 12-month operating period thereafter.

Section 561.42, F.S., concerning Tied House Evil prohibitions, authorizes distributors to extend credit for the sale of liquors to any vendor up to, but not including, the 10th day after the calendar week within which the sale was made. Failure by a vendor to pay for alcohol received on credit from a distributor can result in the vendor being placed on the "no-sales list". Prior to placing a vendor on the "no-sales list", current statutes require a notification process that uses the mail for delivery of notifications and responses and a specific timeline for the communications between vendor, distributor and ABT.

Section 561.55, F.S., requires each manufacturer, distributor, broker, sales agent, importer, and exporter to keep a complete and accurate record and make reports showing the amount of:

- Beverages manufactured or sold within the state and to whom sold;
- Beverages imported from beyond the limits of the state and to whom sold;
- Beverages exported beyond the limits of the state, to whom sold, the place where sold, and the address of the person to whom sold.

The report must be submitted to ABT by the 10th day of each month for the previous calendar month. The report must be made out in triplicate; two copies must be sent to the ABT, and the third copy shall be retained for the manufacturer's, distributor's, broker's, sales agent's, or importer's records. Reports are made on forms prepared and furnished by the division.

Section 562.455, F.S., establishes a third degree felony penalty for anyone who adulterates, for the purpose of sale, any liquor, used or intended for drink, with cocculus indicus, vitriol, grains of paradise, opium, alum, capsicum, copperas, laurel water, logwood, brazil wood, cochineal, sugar of lead, or any other substance which is poisonous or injurious to health, and whoever knowingly sells any liquor that is adulterated.

Drugs, Devices, and Cosmetics (Sections 6, 7, and 8):
Section 499.01(2)(p), F.S., requires a person that manufactures or repackages cosmetics in the state of Florida to obtain a cosmetic manufacturing permit. The only exemption from the requirement for a permit is if a person only labels or changes the labeling of a cosmetic but does not open the container sealed by the manufacturer of the product. Currently there are numerous home businesses manufacturing without the cosmetic manufacturing permit "pour soaps," creams and lotions. These cosmetic products are offered for sale at flea markets, online, and at open markets. To obtain a cosmetic manufacturer's permit requires compliance with current good manufacturing practices that apply to all cosmetic manufacturers whether the cosmetic manufacturer is manufacturing a "pour soap," bath wash, eye liner, lip gloss or liquid foundation. Many initial applicants for a cosmetic manufacturing permit cannot meet the criteria for the permit and are currently manufacturing cosmetics as unlicensed cosmetic manufacturers.

Current law requires the submission of an application for a new permit when the establishment has a change of ownership, change of controlling interest or a change of location. Often an establishment is unable to present the documentation to establish the change of ownership/controlling interest when submitting the application for the new permit as the legal change of ownership/controlling interest has not yet occurred creating a period of time/lapse in time for the operation of the business. When the establishment changes location a lapse may occur as the business rarely is able to shut down one location and move equipment to the new location simultaneously with the issuance of the new permit thus requiring the business to maintain two permitted locations to continue to operate.

There is no citation authority currently in ch. 499, F.S., as exists for other professions such as contractors (ch. 455, F.S.) and health professions (ch. 456, F.S.). Without statutory authority for citations there is no remedial tool or nondisciplinary tool available to the Division of Drugs, Devices, and Cosmetics for resolution of violations for which there is no substantial threat to the public health, safety, or welfare but for which the permit holder has been provided prior opportunity to correct.

Florida State Boxing Commission (Sections 11, 12, 25, 26, 27, and 28):
Chapter 548.003, F.S., creates the Florida State Boxing Commission to administer the provisions of ch. 548, F.S. The commission's duty is to regulate all aspects of and all types of pugilistic exhibitions. Despite the name, the commission regulates more than just boxing. The commission regulates boxing, kickboxing and mixed martial arts.

Chapter 548, F.S., mandates the weight of gloves to be used for participants engaged in combat sports but gives the commission rule making authority to set glove weight requirements.

Division of Condominiums, Timeshares and Mobile Homes (Sections 21, 22, and 23):
Chapter 718, F.S., also known as the Condominium Act, does not define "monetary obligation" or clarify what constitutes a unit owner delinquency in a monetary obligation; does not allow the division to adopt rules regarding the submission of complaints; does not specify when a board must adopt a budget; and requires that the Ombudsman's Office be located in Leon County.

Division of Hotels and Restaurants (Sections 9 and 10):
Section 509.241(1), F.S., requires each public lodging and public food service establishment under the division's authority to obtain a license and requires the division to adopt rules establishing a staggered schedule for license renewals.

Under s. 509.251, F.S., the division adopted a fee schedule for licensees. This divides the state into seven geographic districts which are constructed of groups of counties. The fee required for a new license depends on the date applied and the time until next renewal. The division's fee schedule is unnecessarily complex and inequitable as it relates to license fee calculations and duration of license time received for the payment. New public lodging and food service establishments are required to pay either a full year fee, half year fee, or in some cases, both a full and half year fee depending on their county/district location in the state. These complexities cause issues for both the operator and division resulting in errors, processing delays and applicants paying for more license time than they actually receive.

The result is a complex licensing structure and inequitable costs for licensure. Districts have five different renewal dates (two of the smaller districts share renewal dates with larger districts). The division's licensees must renew their license annually according to the renewal date for the district in which the business is located. Among other factors which are also embedded in the fee schedule such as the type of license or number of seats/units, the amount an applicant pays for a new license depends on the renewal date for their district and the time of year they plan to open. Businesses opening on the same day in different parts of the state will pay different fees and their licenses will expire at different times. As a result, license fees are unnecessarily complex and new licensees are frequently charged for more license time than they receive.

For example: the renewal date for District 2 is December 1.

- If a restaurant in Palm Beach County applies for a new license in May, they will pay a full year fee, receiving seven months of license time.
- If they apply in October they will pay a half year fee receiving three months of license time.

Using the example above if a restaurant in another area, like Miami-Dade, is opening on the same date the fee, length of license and renewal date will all change based on the staggered schedule in statute. This requires a look-up by applicants and division staff to match county to district, calculate prorating based on estimated opening date, and plan out the renewal which may even occur in the same month. With 12 months and 5 renewal cycles this has 60 different possible results which must be accounted for when applying for a new license.

Division of Professions (Sections 4, 5, and 13):
Section 489.109(3), F.S., requires all certified and registered construction contractors to pay a fee of $4.00 to the department when they apply for initial licensure or renewal. The funds from payment of this fee must be used to fund projects relating to the building construction industry or continuing education programs offered to persons engaged in the building construction industry in Florida, to be selected by the Florida Building Commission.

Section 489.118, F.S., previously permitted Florida registered contractors to grandfather their registered license to a state wide certification without taking the state licensure examination if they met certain criteria and made application to the Department before November 1, 2015. Registered contractors are permitted to work only within local jurisdictions which provide them a local competency card and are not permitted to operate on a state wide basis unless they obtain a state certified license. Since closing of the grandfathering provision on November 1, 2015, registered contractors are required to sit for the state certified license examination prior to receiving a state certified contractor's license.

Section 553.841(5), F.S., specifies that, each biennium, upon receipt of funds from the Construction Industry Licensing Board and the Electrical Contractors' Licensing Board, the department shall determine the amount of funds available for the Florida Building Code Compliance and Mitigation Program.

2. EFFECT OF THE BILL:

Alcoholic Beverages and Tobacco (Sections 1, 2, 3, 14, 15, 16, 17, 18, 19, and 20):
The bill requires all the reports from manufacturers, importers, distributing agents, wholesale dealers, agents, retail dealer, common carrier, or any other person relating to the handling, transporting or possessing cigarettes for sale or distribution within the state to be filed with ABT through the electronic data submission system. It authorizes licensees to keep the records of cigarettes received, sold, or delivered within the state in an electronic or paper format.

Similarly, the bill requires all in-state and out-of-state other tobacco places of business to file their monthly tax report with the division through the electronic data submission system. The bill replaces the term "return" with "report" throughout the section on other tobacco products.

The bill amends s. 561.17, F.S., to require:

- To file the required sets of fingerprints electronically through an approved electronic fingerprinting vendor or on forms prescribed by the Florida Department of Law Enforcement for herself or himself and for any person or persons interested directly or indirectly with the applicant in the business for which the license is being sought; by the division;
- All applications for any alcoholic beverage license must be accompanied by proof of the applicant's right of occupancy for the entire premises sought to be licensed: and

- Any person or entity licensed or permitted by the ABT must provide an electronic mail address to ABT to function as the primary contact for all communication by ABT to the licensee or permittees. Licensees and permittees are responsible for maintaining accurate contact information on file with ABT.

The bill amends the provisions for food service establishments to qualify for the special alcoholic beverage license. The bill doubles the amount of time, from 60 days to 120 days, that is used when calculating the percentage of food and non-alcoholic beverages to gross revenue, where a 51% minimum is required. In addition, the bill deletes the current annual 51% threshold requirement and replaces it with the following audit schedule based on the most recent audit:

- Level 1, 51 percent to 60 percent, every year;
- Level 2, 61 percent to 75 percent, every 2 years;
- Level 3, 76 percent to 90 percent, every 3 years; and
- Level 4, 91 percent to 100 percent, every 4 years.

The bill amends the delivery method of the notifications and responses currently followed when determining if a vendor is to be put on the "no-sales list". The bill requires ABT to utilize electronic mail when giving the vendor notification of delinquency and gives the vendor the option of using electronic mail when responding to ABT.

The bill streamlines s. 561.55, F.S., requiring the monthly reports submitted by the manufacturer, distributor, broker, sales agent, and importer to be filed with ABT through the division's electronic data submission system. Subsequently, it deletes the requirement for the monthly forms submitted by each the licensees to be made out in triplicate with two copies sent to ABT, and the third copy retained for the licensees' records, which is no longer needed due to the electronic submission.

The bill amends s. 562.455, F.S., deleting the spice, grains of paradise, from the list of additives that when combined with alcohol are illegal adulterations.

Drugs, Devices and Cosmetics (Sections 6, 7, and 8):
The bill creates an exemption from the requirement for a cosmetic manufacturing permit for a person who manufacturers cosmetics with annual gross sales of $25,000 or less and who manufacturers non-exempt soaps, lotions, moisturizers, and creams. The bill provides the department access to the annual gross sales and authority to investigate complaints and conduct inspections. The bill also provides the conditions for the exemption from permitting that include: the products' label must be in compliance with requirements of the United States Food and Drug Administration; the products cannot be adulterated or misbranded; the products must be stored on the premises; and the products must indicate the manufacturer is not permitted and contain the statement, "Made by a manufacturer exempt from Florida's cosmetic manufacturing permit requirements." The bill clarifies there is no exemption from any state or federal tax law, rule, regulation, or county or municipal law or ordinance that applies to cosmetic manufacturing.

The bill creates a 90 day temporary permit that expires without any action by the department when applied for by an establishment that has also submitted an application for change of ownership, change of controlling interest or change of location. The temporary permit will allow the new owner to continue to operate with the existing (prior owner's permit) permit for 90 days until the new owner's permit is issued. The temporary permit will allow the establishment to continue to operate at the old location without renewing the permit if necessary until the new location is inspected and appropriately permitted thus avoiding two separate permitting fees.

The bill creates the citation authority so that a nondisciplinary remedial citation may be issued to a permit holder for violations identified in a rule adopted by the department. The citation program will set forth the alleged violations subject to a citation and the monetary assessment for the violation. The citation will fully explain the options available to the recipient of the citation including the right to contest the citation and elect the department rescind the citation and conduct an investigation pursuant to s. 499.051, F.S. The bill requires a process for service of the citation by personal service or certified mail, restricted delivery, to the person last known address of record with the department, or to the person's Florida registered agent. The bill provides the timeframe for service of the citation once a complaint is filed.

Florida State Boxing Commission (Sections 11, 12, 25, 26, 27, and 28):
The bill amends ch. 548.003, F.S. The bill changes the name from the Florida State Boxing Commission, to the Florida Athletic Commission. The name change aligns with the current naming convention for similar regulatory bodies in at least 34 other states.

The bill amends the portion of statutory law which mandates certain glove weights for regulated combat sports. The bill removes the statutorily mandated glove weights while maintaining the commission's rulemaking authority to set glove weights.

Division of Condominiums, Timeshares and Mobile Homes (Sections 21, 22, and 23):
The bill amends s. 718.112(2)(d)2., F.S., by removing the term "monetary obligation" and replacing it with "assessment". It further clarifies how a delinquency should be calculated if a due date is not specified in the governing documents by indicating that the due date is the first date in the assessment period. The bill provides clarity to existing law by amending s. 718.112(2)(f)1, F.S., adding the requirement that a budget must be proposed and adopted no later than 30 days before the beginning of the fiscal year. The bill further amends s. 718.501(1)(m), F.S., allowing the division to adopt rules regarding the submission of a complaint against an association and would contribute in streamlining the division's complaint process. The bill amends s. 718.5014, F.S., removing the requirement that the Ombudsman's Office be located in Leon County, effectively providing the agency with discretion to establish the office location most appropriate for connecting with stakeholders served by this position.

Division of Hotels and Restaurants (Sections 9 and 10):
The bill authorizes the division to adopt rules to establish new procedures for license issuance and renewals and removes the staggered license fee schedule. This simplifies the division's licensing structure, thereby reducing escalations, refunds, deficiencies, customer contact, and labor hours. Additionally, simplifying the fee structure benefits the division's licensees by reducing the costs of the license over twelve months and decreasing the number of application delays (incorrect fees are one of the common issues that prevent approval of applications), thereby helping to ensure Florida businesses open on schedule with lower fees paid during the critical first year of operation.

Division of Professions (Sections 4, 5, and 13):
The bill amends s. 489.109, F.S., to remove the $4.00 fee paid to the department at the time of application or renewal and all related provisions.

The bill amends s. 489.118, F. S., to permanently re-open the period for grandfathering of registered contractors' licenses to state wide certified contractors' licenses indefinitely by removing the requirement that applicants apply by November 1, 2015.

The bill amends s. 553.841, F.S. to remove subsection (5) in its entirety.

3. DOES THE BILL DIRECT OR ALLOW THE AGENCY/BOARD/COMMISSION/DEPARTMENT TO DEVELOP, ADOPT, OR ELIMINATE RULES, REGULATIONS, POLICIES, OR PROCEDURES? Y☒ N☐

If yes, explain:	**Division of Condominiums, Timeshares and Mobile Homes**: The bill allows the division to adopt rules regarding the submission of a complaint against an association. **Division of Hotels and Restaurants:** Section 9 of the bill allows the division to adopt rules establishing procedures for license issuance and renewals. Section 10 of the bill maintains the division's rulemaking authority to establish public lodging establishment and public food service establishment license fee schedules. **Division of Drugs, Devices, and Cosmetics:** Section 7 of the bill requires an application (rule) for the temporary permit form. Section 8 requires the department to adopt rules to authorize the issuance of a remedial, nondisciplinary citation and sets forth requirements for the citation program that should be included in the rule.
Is the change consistent with the agency's core mission?	Y☒ N☐
Rule(s) impacted (provide references to F.A.C., etc.):	**Division of Hotels and Restaurants:** Rule 61C-1.008, F.A.C.

***4.* WHAT IS THE POSITION OF AFFECTED CITIZENS OR STAKEHOLDER GROUPS?**

Proponents and summary of position:	To date, the Department has not been contacted by proponents of the legislation with any stated positions.
Opponents and summary of position:	To date, the Department has not been contacted by opponents of the legislation with any stated positions.

5. ARE THERE ANY REPORTS OR STUDIES REQUIRED BY THIS BILL? Y☐ N☒

If yes, provide a description:	N/A
Date Due:	N/A
Bill Section Number(s):	N/A

6. ARE THERE ANY NEW GUBERNATORIAL APPOINTMENTS OR CHANGES TO EXISTING BOARDS, TASK FORCES, COUNCILS, COMMISSIONS, ETC. REQUIRED BY THIS BILL? Y☐ N☒

Board:	N/A
Board Purpose:	N/A
Who Appoints:	N/A
Changes:	N/A
Bill Section Number(s):	N/A

FISCAL ANALYSIS

1. DOES THE BILL HAVE A FISCAL IMPACT TO LOCAL GOVERNMENT? Y☒ N☐

Revenues:	**Division Professions:** Section 5 of the bill pertaining to CILB Grandfathering may result in a reduction in local registered licensees paying renewal and reciprocity fees, but the impact is indeterminate.
Expenditures:	None anticipated.
Does the legislation increase local taxes or fees? If yes, explain.	No
If yes, does the legislation provide for a local referendum or local governing body public vote prior to implementation of the tax or fee increase?	N/A

2. DOES THE BILL HAVE A FISCAL IMPACT TO STATE GOVERNMENT? Y☒ N☐

Revenues:	**Division of Alcoholic Beverages and Tobacco:** Tax revenue may be maximized by the required electronic submission of tax reports. **Division of Hotels and Restaurants:** Based on internal projections for FY 21-22,

	the bill would reduce the division's revenue by approximately 4.5%. Under the current license fee structure, about 58% of new applicants pay an initial license fee for some fraction of time and then pay the division again to renew their license within the same fiscal year. Under the initiative, the division will collect a slightly larger initial license fee and a lower amount of renewal fees during the first year of licensure for each new license. The initiative would eliminate half year prorating of license fees, replacing it with a full year which slightly increases division revenue but results in a true "annual license" from the start with no same fiscal year renewals. Overall, based on internal projections for FY 2021-22, the initiative would reduce the division's revenue by $1,678,093.43, or roughly 4.54%. The figures are derived from a projected 2.45% growth rate in division revenue and a projected 2.62% growth rate in Food & Lodging License fees.

	2021-22	2022-23	2023-24
Total Div. Revenue	$36,968,791.25	$37,873,673.73	$38,800,704.95
Bill Difference	$(1,678,093.43)	$(1,722,036.96)	$(1,767,131.22)
Revenue with bill implemented	$35,290,697.82	$36,151,636.77	$37,033,573.74
% Change	-4.54%	-4.55%	-4.55%

Division of Drugs, Devices, and Cosmetics: None anticipated.

Division of Professions: The bill removes a $4.00 fee that is currently required for CILB applications and renewals which, based on historical data, may result in a revenue reduction of $129,622 in Fiscal Year 2021-22 and $232,297 in Fiscal Year 2022-23 if the Construction Industry Licensing Board reduces fees by $4.00 via rulemaking. See Fiscal Comment.

Expenditures:	None anticipated.
Does the legislation contain a State Government appropriation?	No
If yes, was this appropriated last year?	N/A

3. DOES THE BILL HAVE A FISCAL IMPACT TO THE PRIVATE SECTOR? Y☒ N☐

Revenues:	**Division of Drugs, Devices, and Cosmetics:** Yes. The bill should provide an opportunity for small cosmetic manufacturing businesses to generate revenues up to annual gross sales of $25,000 without the cost of a cosmetic manufacturing permit.
Expenditures:	**Division of Hotels and Restaurants:** The bill will generally reduce license fees paid by food and lodging licensees during their first 12 months of licensure. The division estimates licensees will save about $1.6 million in FY 2021-22. The decrease comes from eliminating the staggered schedule and outdated prorating system which in turn provides new licensees with a full year of licensure. Under the current license fee structure, new applicants often pay for a new license and pay to renew their license within the same fiscal year. Under the initiative this would not happen.

	2021-22	2022-23	2023-24
Total Div. Revenue	$36,968,791.25	$37,873,673.73	$38,800,704.95
Bill Difference	$(1,678,093.43)	$(1,722,036.96)	$(1,767,131.22)

	<table><tr><td>Revenue with bill implemented</td><td>$35,290,697.82</td><td>$36,151,636.77</td><td>$37,033,573.74</td></tr><tr><td>% Change</td><td>-4.54%</td><td>-4.55%</td><td>-4.55%</td></tr></table> The figures are derived from a projected 2.45% growth rate in division revenue and a projected 2.62% growth rate in Food & Lodging License fees. **Division of Drugs, Devices, and Cosmetics:** The bill should save the private sector the cost of a cosmetic manufacturing permit for small businesses just starting out in the cosmetic manufacturing business. The bill should also save the private sector unknown funds by allowing the continued operation of the business during permitting transfers due to change of ownership, change of controlling interest and change of location. The bill will eliminate the dual permit fee many firms currently pay to continue operating at the former location pending approval of the new permit. **Division of Professions:** The grandfathering application fee will be an expenditure; however, there will be reduced costs to individual licensees that no longer have to maintain registrations in multiple jurisdictions. Impact is indeterminate. See Fiscal Comment. The bill removes a $4.00 fee that is currently required for CILB applications and renewals which, based on historical data, may result in a savings of $129,622 in Fiscal Year 2021-22 and $232,297 in Fiscal Year 2022-23 if the Construction Industry Licensing Board reduces fees by $4.00 via rulemaking. See Fiscal Comment.
Other:	N/A

4. DOES THE BILL INCREASE OR DECREASE TAXES, FEES, OR FINES? Y☒ N☐

If yes, explain impact.	**Division of Hotels and Restaurants:** The bill will generally reduce license fees paid by food and lodging licensees during their first 12 months of licensure. The division estimates licensees will save about $1.6 million in FY 2021-22. The decrease comes from eliminating the staggered schedule and outdated prorating system which in turn provides new licensees with a full year of licensure. The decrease comes from eliminating the staggered schedule and outdated prorating system which in turn provides new licensees with a full year of licensure. Under the current license fee structure, new applicants often pay for a new license and pay to renew their license within the same fiscal year. Under the initiative this would not happen. **Division of Drugs, Devices, and Cosmetics:** The bill will reduce fines as the fine will be monetary assessment in the citation for certain violation previously addressed in a Notice of Violation as a fine. **Division of Professions:** The bill removes a $4.00 fee that is currently required for CILB applications and renewals.
Bill Section Number:	**Division of Drugs, Devices, and Cosmetics:** Section 8. **Division of Professions:** Sections 4 and 13. **Division of Hotels and Restaurants:** Section 10.

TECHNOLOGY IMPACT

1. DOES THE BILL IMPACT THE AGENCY'S TECHNOLOGY SYSTEMS (I.E. IT SUPPORT, LICENSING SOFTWARE, DATA STORAGE, ETC.)? Y☒ N☐

If yes, describe the anticipated impact to the agency including any fiscal impact.	Renaming the Florida State Boxing Commission, to the Florida Athletic Commission. There will also need to be changes to the department's licensing system for fee changes and issuing temporary permits. The additional workflow configuration will need to be done in the department's document management system. In order to modify technology resources to recognize the new division name and make any necessary license fee changes, temporary permits, and workflow changes, DBPR will require a minimum effort to: • Modify Versa: Regulation configuration – 16 hours • Modify Versa Online configuration – 4 hours • Modify OnBase configuration – 8 hours These changes can be accomplished with existing technology resources. **Division of Drugs, Devices, and Cosmetics:** The bill will require the division to work with IT to implement the temporary permit in Versa and the citation program/monetary assessment tracking in OnBase.

FEDERAL IMPACT

1. DOES THE BILL HAVE A FEDERAL IMPACT (I.E. FEDERAL COMPLIANCE, FEDERAL FUNDING, FEDERAL AGENCY INVOLVEMENT, ETC.)? Y☐ N☒

If yes, describe the anticipated impact including any fiscal impact.	None anticipated

ADDITIONAL COMMENTS

Hotels and Restaurants General Comments: The division's intent is that the revised renewal and license fee schedule would only apply to new license applications processed after implementation of this initiative. The bill is not retroactive, thus, existing licenses will retain their current renewal dates. The division also anticipates a reduction in fee related issues which are a common cause of delayed or deficient applications, which would result in faster processing times.

Alcoholic Beverages and Tobacco: The bill creates new requirements that allow the Bureau of Licensing to streamline operations and ease communication between ABT and its licensees by requiring or permitting the use of electronic mail for communications sent by the division. Further, by modernizing the statutory language to either remove unnecessary or obsolete terms or to accurately reflect industry and agency practices, the changes provide clarity while removing opportunities for applicants to attempt to follow the statutory requirements, only to find that the language is outdated.

The proposal requires each manufacturer, distributor, broker, "supplier", sales agent, and importer shall make a full and complete report by the 10th day of each month for the previous calendar month and submitted to the division through the division's electronic data submission system. The requirement for electronic filing will streamline the reporting process for both licensee and ABT. The data entered will have been curated by the licensee, resulting in a reduction of possible data entry errors. The requirement may also result in some reduction in costs related to paper reporting such as postage, document storage, and destruction. The electronic data submission system is operational outside of normal business hours giving the licensee extra time and flexibility to meet the reporting deadline. The data submitted is housed in one system that feeds the reported information directly into the audit module, streamlining the document and data gathering process necessary for conducting audits.

The proposal expands the audit timeframes that a food service establishment must derive at least 51 percent of its gross food and beverage revenue from the sale of food and nonalcoholic beverages, as follows:

- A first audit conducted following the first 120-day operating period, as opposed to the current 60-day operating period; and
- A second audit performed on the following 12-month operating period.

Instead of audits performed on each 12 month operating periods thereafter, subsequent audit timeframes will be based upon the audit percentage established by the most recent audit and conducted on a staggered scale as follows:

- Level 1, 51 to 60 percent, every year;
- Level 2, 61 to 75 percent, every 2 years;
- Level 3, 76 to 90 percent, every 3 years; and
- Level 4, 91 to 100 percent, every 4 years.

The expanded audit timeframes will result in less burdensome regulation on compliant licensees and will help direct ABT's auditing resources to more substantial areas of non-compliance.

Professions Fiscal Comment:

Professions: CILB Grandfathering:
Revenue from a grandfathering fee is indeterminate because it is unknown how many eligible registered Construction Industry Licensing Board (CILB) licensees will apply for grandfathering. The total fee (application fee, initial licensing fee, and unlicensed activity fee) during previous grandfathering periods ranged from $205 to $305 depending on when the applicant applied during the biennium. There are 5,618 Registered Current Active/Inactive CILB licensees who may be able to take advantage of the grandfathering provision. However, the department received only 1,319 applications during the last period of grandfathering, which was from October 1, 2012 to November 1, 2015.

Assuming total application/license fees of $205, the grandfathering fees received by the department over the next three fiscal years could range from $270,395 (if the department receives the same number of applications as the last grandfathering period) to a maximum of $1,151,690.00 if all 5,618 Registered Current Active/Inactive licensees apply over the next three fiscal years.

Professions: Elimination of $4.00 Fee:
During Fiscal Year 2018-19, approximately $232,297 was received from the Construction Industry Licensing Board as a result of the $4.00 fee. During the Fiscal Year 2019-20 approximately $129,622 was received. Because construction industry licenses are biennial, the $4.00 fee from these two fiscal years was used to project state revenue reduction and licensee cost savings in future years.

OGC Rules: No additional comments.

Division of Service Operations: The impact to the division is indeterminate at this time. The bill opens the grandfathering provision that will allow qualified registered contractors to be grandfathered-in to receive a state wide certified license. It is expected that the division will be able to handle this work load with the existing resources.

The bill will also impact the division based on the proposed changes to the renewal cycle for Division of Hotels and Restaurants licenses for new licensees and introducing a temporary permit for DDC licensees. The renewal configuration changes for new DHR licenses will, over time, phase out the currently staggered schedule with prorated renewal rates. Additionally, the temporary permits for the DDC licensees will have no impact if submitted electronically; however, if the items are mailed in, there will be an impact.

LEGAL - GENERAL COUNSEL'S OFFICE REVIEW

Issues/concerns/comments:	No additional comment.

Duplicate

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

THE FLORIDA SENATE

APPEARANCE RECORD

03/30/2021
Meeting Date

1966
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic Department of Business and Professional Regulation

Name Eric Prutsman

Job Title Lobbyist

Address 537 E Park Ave
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 8502241900

Email eric@teamjb.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing Alarm Association of Florida

Appearing at request of Chair: ☐ Yes ☐ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

THE FLORIDA SENATE

APPEARANCE RECORD

3/30/2021 (Deliver BOTH copies of this form to the Senator or Senate Professional Staff conducting the meeting)

Meeting Date

1906

Bill Number (if applicable)

Topic SB 1906 as amended

Amendment Barcode (if applicable)

Name Colton Madill

Job Title Acting Legislative Affairs Director

Address 2601 Blair Stone Road

Street

Phone

Tallahassee FL 32399

City *State* *Zip*

Email

Speaking: ☑ For ☐ Against ☐ Information

Waive Speaking: ☐ In Support ☐ Against

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

Representing DBPR

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:	CS/SB 902
INTRODUCER:	Regulated Industries Committee and Senator Rodrigues
SUBJECT:	Community Association Pools
DATE:	March 31, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Fav/CS**
2.			CA	
3.			RC	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 902 exempts from supervision by the Department of Health (DOH) swimming pools serving homeowners' associations and other property associations that have no more than 32 units or parcels and are not operated as public lodging establishments. Under the bill, swimming pools in such communities are not be required to have a permit issued by the DOH.

The bill authorizes the DOH to supervise such pools when necessary to ensure water quality and for required safety features, such as an anti-entrapment system or device, or systems or devices that protect against evisceration and body-and-limb suction entrapment and systems that cease the operation of the pump when a blockage is detected.

Under the bill, the DOH may impose fines of up to $500 per violation. The bill also authorizes the county health department or the DOH to bring an action to abate or enjoin the use of an exempted public swimming pool that is a nuisance because it presents a significant risk to public health by failing to meet sanitation and safety standards.

The bill takes effect July 1, 2021.

II. Present Situation:

Condominium Associations

A condominium is a "form of ownership of real property created under ch. 718, F.S."[1] Condominium unit owners are in a unique legal position because they are exclusive owners of property within a community, joint owners of community common elements, and members of the condominium association.[2] For unit owners, membership in the association is an unalienable right and a required condition of unit ownership.[3] A condominium is created by recording a declaration of the condominium in the public records of the county where the condominium is located.[4]

Condominium associations are creatures of statute and private contracts. Under the Florida Condominium Act, associations must be incorporated as a Florida for-profit corporation or a Florida not-for-profit corporation.[5] Although unit owners are considered shareholders of this corporate entity, like other corporations, a unit owner's role as a shareholder does not implicitly provide them any authority to act on behalf of the association.

A condominium association is administered by a board of directors referred to as a "board of administration."[6] The board of administrators is comprised of individual unit owners elected by the members of a community to manage community affairs and represent the interests of the association. Association board members must enforce a community's governing documents and are responsible for maintaining a condominium's common elements, which are owned in undivided shares by the unit owners.[7] In litigation, an association's board of directors is in charge of directing attorney actions.[8]

Cooperative Associations

A cooperative differs from a condominium in that cooperative units are not individually owned. Instead, a cooperative owner receives an exclusive right to occupy the unit based on their ownership interest in the cooperative entity as a whole. A cooperative owner is either a stockholder or member of a cooperative apartment corporation who is entitled, solely because of ownership of stock or membership in the corporation, to occupy an apartment in a building owned by the corporation.[9] The cooperative holds the legal title to the unit and all common elements. The cooperative association may assess costs for the maintenance of common expenses.[10]

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

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[1] Section 718.103(11), F.S.
[2] *See* s. 718.103, F.S.
[3] *Id.*
[4] Section 718.104(2), F.S.
[5] Section 718.303(3), F.S.
[6] Section 718.103(4), F.S.
[7] Section 718.103(2), F.S.
[8] Section 718.103(30), F.S.
[9] *See Walters v. Agency for Health Care Administration*, 288 So.3d 1215 (Fla. 3rd DCA 2019).
[10] *See* ss. 719.106(1)(g) and 719.107, F.S.

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

Homeowners' Associations in Mobile Home Parks

Chapter 723, F.S., relates to mobile home park lot tenancies. In these communities, the homeowner does not own the real estate upon which the mobile home is located; the homeowner leases the mobile home lot from the mobile home park owner. Homeowners in these communities may form a homeowners' association.[11]

The mobile home park owner may pass on, at any time during the term of the lot rental agreement, ad valorem property taxes, non-ad valorem assessments, and utility charges, or increases of either, to the mobile home owner if such costs are not otherwise collected in the lot rental amount and passing on the costs was disclosed prior to tenancy.[12]

Swimming Pools Serving Community Associations

The DOH is responsible for the oversight and regulation of water quality and safety of certain swimming pools in Florida under ch. 514, F.S.

Inspections for swimming pools are conducted by the DOH and the county health departments. In order to operate or continue to operate a public swimming pool, a valid operating permit from the DOH must be obtained.[13] If the DOH determines that the public swimming pool is, or may reasonably be expected to, operate in compliance with state laws and rules, the DOH will issue an operating permit.[14] However, if it is determined that the pool is not in compliance with state laws and rules, the application for a permit will be denied.[15]

The operating permits must be renewed annually and must be posted in a conspicuous place by the owner or operator of the swimming pool.[16] The owner or operator of the public swimming pool must also post in a prominent position the most recent pool inspection report issued by the DOH pertaining to the health and safety conditions of such facility.[17]

Public swimming pools and spas must have certain safety features, including an anti-entrapment system or device. Pools or spas built before January 1, 1993 with a main drain must have

[11] See ss. 723.075 through 723.0791, F.S.
[12] Section 723.031(5)(c), F.S.
[13] Section 514.031(1), F.S.
[14] Section 514.031(1)(c), F.S.
[15] Section 514.031(1)(d), F.S.
[16] Section 514.031(4), F.S.
[17] Section 514.031(5), F.S.

systems or devices that protect against evisceration and body-and-limb suction entrapment and systems that cease the operation of the pump when a blockage is detected.[18]

The DOH may suspend or revoke a permit for failure to comply with the provisions of ch. 514, F.S., or rules of the DOH. The DOH may also impose fines of up to $500 per violation.[19]

Section 514.06, F.S., provides that any public swimming pool or public bathing place presenting a significant risk to public health by failing to meet sanitation and safety standards established pursuant to ch. 514, F.S., is declared to be a public nuisance, dangerous to health or safety. The county health department or the DOH may bring an action to abate or enjoin as a nuisance a public swimming pool or public bathing place.

Public swimming pools must meet water quality standards.[20] Public swimming pools are subject to additional standards, including standards for the manual addition of chemicals, cleanliness standards, a prohibition against food, beverages, glass containers, and animals in the pool, the operation of the pool circulation system, and water level.[21] A public pool must also keep a daily record of information regarding pool operations using a form required by the DOH.[22]

Pools serving condominiums or cooperatives with no more than 32 units and which are not operated as public lodging establishments are exempt from the DOH's requirements for public pools.[23] Pools serving homeowners' associations are not exempt from supervision by the DOH.

The annual fee for an operating permit is $250 for swimming pools greater than 25,000 gallons and $125 for swimming pools of 25,000 gallons or less. The permit fee for a swimming pool in an "exempted" condominium or cooperative with over 32 units is $50.[24]

III. Effect of Proposed Changes:

The bill creates s. 514.0115(3), F.S., to exempt from supervision by the DOH swimming pools serving homeowners' associations and other property associations that have no more than 32 units or parcels and are not being operated as public lodging establishments. Under the bill, swimming pools in such communities are not be required to have a permit issued by the DOH. Under the bill, such pools would not be required to obtain a permit from the DOH and would not be inspected.

The bill authorizes the DOH to supervise homeowners' association and other property association pools when necessary to ensure water quality. Under the bill, the DOH may also supervise such swimming pools under s. 514.0315, F.S., relating to required safety features, s. 514.05, F.S., providing administrative penalties, including fines of up to $500 per violation, and

[18] *See* s. 514.0315, F.S.
[19] Section 514.05, F.S.
[20] *See* Fla. Admin. Code R. 64E-9.004.
[21] *Id*.
[22] *Id.*
[23] Section 514.0115(2), F.S.
[24] Fla. Admin. Code R. 64E-9.015. It is not clear why the DOH rule refers to pools in condominium or cooperative with over 32 units as exempted.

s. 514.06, F.S., authorizing the county health department or the DOH to bring an action to abate or enjoin a nuisance the use of a public swimming pool or public bathing place that presents a significant risk to public health by failing to meet sanitation and safety standards.

The bill amends s. 553.77(7), F.S., to correct a cross-reference.

The bill takes effect July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under the bill, owners and operators of a swimming pool serving a homeowners' association or other property association that has no more than 32 units or parcels would be saved the expense of annual operating permit for the swimming pool. The annual fee for an operating permit is $250 for swimming pools greater than 25,000 gallons and $125 for pools of 25,000 gallons or less. The annual permit fee for a swimming pool in an exempted condominium or cooperative with over 32 units is $50.[25]

[25] *Supra* n. 22.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 514.0115 and 553.77.

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 30, 2021:
The committee substitute:

- Changes the title of the bill from an act relating to "public pool regulations" to an act relating to "community association pools."
- Does not amend s. 514.0115(2)(a), F.S.
- Creates s. 514.0115(3), F.S., to exempt from supervision by the DOH swimming pools serving homeowners' associations and other property associations that have no more than 32 units or parcels and are not operated as public lodging establishments from permitting and inspection requirements.
- Permits the DOH to supervise pools in such communities when necessary to ensure water quality and under ss. 514.0315, 514.05, and 514.06, F.S.
- Amends s. 553.77(7), F.S., to correct a cross-reference.

B. Amendments:

None.

110370

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/30/2021	.	
	.	
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	.	

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

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

Section 1. Present subsections (3) through (8) of section 514.0115, Florida Statutes, are redesignated as subsections (4) through (9), respectively, and a new subsection (3) is added to that section, to read:

514.0115 Exemptions from supervision or regulation; variances.—

110370

(3) Pools serving homeowners' associations and other property associations that have no more than 32 units or parcels and are not operated as public lodging establishments are exempt from supervision under this chapter, except for supervision necessary to ensure water quality and under ss. 514.0315, 514.05, and 514.06.

Section 2. Subsection (7) of section 553.77, Florida Statutes, is amended to read:

553.77 Specific powers of the commission.—

(7) Building officials shall recognize and enforce variance orders issued by the Department of Health under s. 514.0115(9) ~~pursuant to s. 514.0115(8)~~, including any conditions attached to the granting of the variance.

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

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

And the title is amended as follows:

Delete everything before the enacting clause and insert:

A bill to be entitled

An act relating to community association pools; amending s. 514.0115, F.S.; exempting certain homeowners' association pools from supervision by the Department of Health; providing exceptions; amending s. 553.77, F.S.; conforming a cross-reference; providing an effective date.

By Senator Rodrigues

27-00993-21 2021902__

A bill to be entitled

An act relating to public pool regulations; amending s. 514.0115, F.S.; exempting pools serving condominium, cooperative, homeowners', and other property associations from public pool regulations under certain circumstances, with an exception; providing an effective date.

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

Section 1. Paragraph (a) of subsection (2) of section 514.0115, Florida Statutes, is amended to read:

514.0115 Exemptions from supervision or regulation; variances.—

(2)(a) A pool that serves a condominium, cooperative, or homeowners' association or any other property association, any of which has 32 or fewer ~~Pools serving no more than 32 condominium or cooperative~~ units or parcels and is ~~which are~~ not operated as a public lodging establishment, is ~~shall be~~ exempt from supervision under this chapter, except for water quality.

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

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

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Agriculture, Environment, and General Government, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Finance and Tax
Judiciary
Regulated Industries

JOINT COMMITTEES:
Joint Select Committee on Collective Bargaining, *Alternating Chair*
Joint Committee on Public Counsel Oversight

SENATOR RAY WESLEY RODRIGUES
27th District

February 4, 2021

The Honorable Travis Hutson
Senate Regulated Industries, Chair
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

RE: SB 902 – Public Pool Regulations

Dear Mr. Chair:

Please allow this letter to serve as my respectful request to place SB 902, relating to public pool regulations, on the next committee agenda.

Your kind consideration of this request is greatly appreciated. Please feel free to contact my office for any additional information.

Sincerely,

Ray Rodrigues

Ray Rodrigues
Senate District 27

Cc: Booter Imhof, Staff Director
Susan Datres, Administrative Assistant

REPLY TO:
❒ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
❒ 305 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

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

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

Datres, Susan

From: Imhof, Booter
Sent: Monday, March 29, 2021 3:48 PM
To: Morris, Timothy; Datres, Susan
Subject: RE: SB 902 Presentation

Thanks Tim. This email will do it.

Booter

From: Morris, Timothy <Morris.Timothy@flsenate.gov>
Sent: Monday, March 29, 2021 3:46 PM
To: Imhof, Booter <Imhof.Booter@flsenate.gov>; Datres, Susan <Datres.Susan@flsenate.gov>
Subject: SB 902 Presentation

Good afternoon Booter and Susan,

Senator Hutson has agreed to present SB 902 Public Pool Regulations during tomorrow's Regulated Industries meeting. Do you need a letter or anything authorizing him to present the bill for Senator Rodrigues?

Thank you,

Tim Morris

Legislative Aide
Senator Ray Rodrigues
Senate District 27
District: 239-338-2570
Tallahassee: 850-487-5027

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 1358
INTRODUCER:	Senator Gruters
SUBJECT:	Valuation of Timeshare Real Property
DATE:	March 29, 2021
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Oxamendi	Imhof	RI	**Favorable**
2.			FT	
3.			AP	

I. Summary:

SB 1358 revises the method of determining the value timeshare property by the county property appraiser. In current law, there are two statutory methods for determining the valuation of timeshare property. The county property appraiser must first look at the resale market. If the property appraiser finds an inadequate number of resales to determine a valuation, the county property appraiser must determine the valuation by deducting "usual and reasonable fees and costs of the sale" from the original purchase price.

The bill requires the county property appraiser to defer to the taxpayer for the determination of whether the number of resales is adequate. Under the bill, if the taxpayer in a tax appeal of timeshare real property asserts that there is an adequate number of resales to provide a basis for arriving at value conclusions, the number of resales is deemed to be adequate when a reasonable number of resales is provided by the taxpayer as supported by the Uniform Standards of Professional Appraisal Practice.

The bill may reduce local government revenue by at least $169.9 million beginning in Fiscal Year 2022-2023. See Section V., Fiscal Impact Statement.

The bill is effective July 1, 2021.

II. Present Situation:

Timeshares

A timeshare interest is a form of ownership of real and personal property.[1] In a timeshare, multiple parties hold the right to use a condominium unit or a cooperative unit. Each owner of a

[1] *See* s. 721.05(36), F.S.

timeshare interest is allotted a period of time (typically one week) during which the owner has the exclusive right to 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.[2] 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.[3] Part I of ch. 721, F.S., relates to vacation plans and timesharing, and Part II of chapter 721, F.S., relates to multisite vacation and timeshare plans that are also known as vacation clubs.

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.[4]

A "timeshare estate" is 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 or a specified portion thereof.[5] The term also includes an interest in a condominium unit, a cooperative unit, or a trust. Whether the term includes both direct and indirect interests in trusts is not specified. An example of an indirect interest in a trust is the interest of a trust beneficiary's spouse or other dependent.

The "managing entity" for a timeshare property is the person who operates or maintains the timeshare plan pursuant to s. 721.13(1), F.S., which defines the managing entity as either the developer, a separate manager or management firm, or an owners' association.[6]

Tax Assessments

Section 192.037, F.S., governs the ad valorem taxation[7] of fee timeshare real property.[8] The managing entity responsible for operating and maintaining fee timeshare real property is considered the taxpayer as an agent of the timeshare period titleholder.[9]

The managing entity responsible for operating and maintaining the timesharing plan and each person having a fee interest in a timeshare unit or timeshare period may contest or appeal ad valorem tax assessment in the same manner as other property owners under ch. 194, F.S., which relates to the administrative and judicial review of property taxes assessed by the property appraiser.[10]

---

[2] Section 721.02(2) and (3), F.S.
[3] Section 721.03, F.S.
[4] *See* ss. 721.05(41) and 718.103(26), F.S.
[5] Section 721.05(34), F.S.
[6] *See* s. 721.02(22), F.S., defining the term "managing entity."
[7] Section 192.001(1), F.S., defines the term "ad valorem tax" to mean a tax based upon the assessed value of property.
[8] Section 192.001(14), F.S., defines the term "fee timeshare real property" to mean "the land and buildings and other improvements to land that are subject to timeshare interests which are sold as a fee interest in real property."
[9] Section 192.001(15), F.S., defines the term "timeshare period titleholder" to mean "the purchaser of a timeshare period sold as a fee interest in real property, whether organized under ch. 718, F.S., relating to condominium associations, or ch. 721, F.S, relating to timeshares and vacation plans.
[10] Section 192.037(4), F.S.

The managing entity is required to collect and remit the taxes and special assessments due on fee timeshare real property. In allocating taxes, special assessments, and common expenses to individual timeshare period titleholders, the managing entity must clearly label the portion of any amounts due which are attributable to ad valorem taxes and special assessments.[11]

There are two statutory methods for determining the valuation of timeshare property by a county property appraiser. The county property appraiser must first look at the resale market.[12] If the property appraiser finds an inadequate number of resales to determine a valuation, the county property appraiser must determine the valuation by deducting "usual and reasonable fees and costs of the sale" from the original purchase price.[13]

The term "usual and reasonable fees and costs of the sale" for timeshare real property includes all marketing costs, atypical financing costs, and those costs attributable to the right of a timeshare unit owner or user to participate in an exchange network of resorts.[14] For timeshare real property, the "usual and reasonable fees and costs of the sale" is presumed to be 50 percent of the original purchase price, but that presumption is rebuttable.[15]

III. Effect of Proposed Changes:

The bill amends s. 192.037, F.S., to require the property appraiser to defer to the taxpayer for the determination of whether the number of resales is adequate. Under the bill, if the taxpayer in a tax appeal of timeshare real property asserts that there is an adequate number of resales to provide a basis for arriving at value conclusions, the number of resales is deemed to be adequate when a reasonable number of resales is provided by the taxpayer as supported by the Uniform Standards of Professional Appraisal Practice.[16]

The bill provides that the method revised by the bill meets the requirement of just valuation of all property, including timeshare real property, as required under s. 4, Art. VII of the State Constitution.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

[11] Section 192.037(5), F.S.
[12] Section 192.037(10), F.S.
[13] Section 192.037(11), F.S.
[14] *Id.*
[15] *Id.*
[16] The Uniform Standards of Professional Appraisal Practice provide ethical and performance standards for the appraisal profession in the United States. See The Appraisal Foundation, What is UPAP?, available at: https://www.appraisalfoundation.org/imis/TAF/Standards/Appraisal_Standards/Uniform_Standards_of_Professional_Appraisal_Practice/TAF/USPAP.aspx (last visited Mar. 26, 2021).

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Persons having an interest in a timeshare unit or timeshare period may benefit from a reduction in assessed ad valorem taxes.

C. Government Sector Impact:

The Revenue Estimating Conference determined that the bill will reduce local government revenue by at least $169.9 million beginning in Fiscal Year 2022-2023. The REC noted that fiscal impact may likely be greater because the Uniform Standard of Professional Appraisal Practice appears to provide minimal guidance regarding the adequate number of timeshare property resales.[17]

VI. Technical Deficiencies:

None.

VII. Related Issues:

Two recent appeals of a property appraiser's valuation of timeshare properties highlight that the timeshare resale market may not be sufficiently robust to use as the basis of an appraisal for ad valorem valuation.[18]

[17] Office of Economic and Demographic Research, *2021 Revenue Estimating Conference for HB 1007 and SB 1358* (Mar. 12, 2021).
[18] *Id.*

The appeals involved four timeshare developments. For each development, the county property appraiser determined that the resale market for the timeshare developments was insufficient to produce an adequate number of resales for valuation purposes. Consequently, the property appraiser utilized the original purchase price method of valuation in which the usual and reasonable fees and costs of the sale are deducted from the sale are deducted from the original sales price. The property appraiser prevailed in both appeals.[19] There may be additional, related appeals pending that challenge the property appraiser's valuation of time share properties.[20]

The resale valuation and the original purchase price valuation may produce significantly different results. In recent court cases, the resale price valuation method resulted in values that were between 75 percent and 40 percent lower than the purchase price method.[21]

VIII. Statutes Affected:

This bill substantially amends section 192.037 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.

[19] *See Cypress Palms Condominium Association, Inc. v. Scarborough*, Final Judgment, case no. 2012-CA-1293-OC (Fla. 9th Jud. Cir. 2016) (on file with the Senate Committee on Regulated Industries); and *Star Island Vacation Ownership Association, Inc. v. Scarborough*, Final Judgment, case no. 2016-CA-1006-OC (Fla. 9th Jud. Cir. 2019), *aff'd per curiam* 2021 WL 646806 (Fla. 5th DCA) (on file with the Senate Committee on Regulated Industries).
[20] *See Star Island Vacation Ownership Association, Inc.*, n. 1.
[21] *Supra* n. 16.

By Senator Gruters

23-00872B-21 20211358__

A bill to be entitled

An act relating to valuation of timeshare real property; amending s. 192.037, F.S.; providing a condition for the adequacy of the number of resales for the purposes of certain tax appeals; providing that this condition meets the constitutional mandate for just valuation; providing an effective date.

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

Section 1. Present subsection (12) of section 192.037, Florida Statutes, is redesignated as subsection (13) and amended, and a new subsection (12) is added to that section, to read:

192.037 Fee timeshare real property; taxes and assessments; escrow.—

(12) In all tax appeals regarding timeshare real property where the taxpayer asserts that there is an adequate number of resales to provide a basis for arriving at value conclusions, the number of resales is deemed to be adequate when a reasonable number of resales is provided by the taxpayer as supported by the Uniform Standards of Professional Appraisal Practice. This meets the requirement of just valuation of all property, including timeshare real property, as required under s. 4, Art. VII of the State Constitution.

(13)~~(12)~~ Subsections (10), ~~and~~ (11), and (12) apply to fee and non-fee timeshare real property.

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

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR OSCEOLA COUNTY, FLORIDA

Consolidated Case Nos: **2012-CA-1293-OC**
2013-CA-1748-OC

CYPRESS PALMS CONDOMINIUM ASSOCIATION, INC., a Florida non-profit corporation, and **WYNDHAM VACATION MANAGEMENT, INC.**, a foreign corporation,

Plaintiffs,

vs.

KATRINA S. SCARBOROUGH, as Property Appraiser; et al.,

Defendants.
_____/

FINAL JUDGMENT

This consolidated case involves a challenge to the assessed value of the Cypress Palms timeshare resort, which is located just off U.S. 192 in Osceola County. The plaintiffs are Cypress Palms Condominium Association, Inc. (association), which is the homeowner's association, and Wyndham Vacation Management, Inc. (WVM), which is the management company retained by the association. Wyndham Vacation Resorts, Inc. (WVR), is the entity responsible for the sale of timeshare ownership interests within the subject property. The association and WVM are the authorized parties to file suit as agents of the fee timeshare period titleholders pursuant to section 192.037(1), Florida Statutes (2015). The tax years involved are 2011 and 2012.

The plaintiffs retained the services of Michael McElveen, who owns Urban Economics, Inc., to prepare an appraisal of the timeshare resort. His opinion of value for each of the tax years is as follows:

2011	**$24,755,700**
2012	**$16,763,600**

The property appraiser's assessments for the Cypress Palms timeshare resort are as follows:

2011	**$92,853,150**
2012	**$92,853,100**

The property appraiser also retained the services of Steven Marshall, with Clayton, Roper & Marshall, to prepare an appraisal of the timeshare resort. His opinion of value for each of the tax years is as follows:

2011	**$109,500,000**
2012	**$113,700,000**

Background

Both parties have provided pretrial briefs discussing the appellate court decisions addressing the assessment of timeshare developments and the legislature's passage of section 192.037 and amendment thereof in response to these decisions in the late 1980's. The pretrial briefs discuss the same appellate court decisions and, for the most part, are fairly consistent in the analysis of those decisions.

In Florida, a timeshare unit is a form of multiple fee ownership of one parcel of real property where the rights of use, occupancy, and possession of a timeshare unit have been sold and transferred by deed to each of the timeshare owners. Each individual owns an

undivided interest in the property but, regardless of the number of owners, there remains only one parcel and one assessment. *Day v. High Point Condo. Resorts, Ltd.,* 521 So.2d 1064 (Fla. 1988); § 192.037(2), Fla. Stat. (2015). "Without question, the fee time-share concept establishes administrative assessment and collection problems for taxing authorities." *Id.* at 1066. The legislature lawfully addressed these issues with the passage of section 192.037. *See Southards v. Motel Mgmt. Co.*, 610 So.2d 524, 525 (Fla. 3d DCA 1992) (rejecting challenge to constitutionality of section 192.037 as applied); *Day*, 521 So.2d at 1066-67 (rejecting challenges to facial constitutionality of section 192.037).

The earliest decision regarding the assessment of timeshare resorts involved the Orange County Property Appraiser. *Hausman v. VTSI, Inc.*, 482 So.2d 428 (Fla. 5th DCA 1985). For the 1982 tax year, the property appraiser assessed the property on the combined value of each of the timeshare weeks instead of the ordinary condominium unit. Of that total amount, a deduction of five percent was made to reflect the household furnishings and other items of personal property in the sales price. An additional deduction of 25 percent was not specifically supported by evidence at trial but was explained as an effort to be fair. *Id.* at 429.

The district court held that the assessment was invalid because the existing statutes did not authorize the assessment of the timeshare interests created in the condominium interests. The court, however, observed that the decision would have limited precedential value because the legislature amended section 192.037(2) in 1983 to require the assessment of each timeshare resort to be "the value of the combined individual time-share periods or time share estates contained therein." *Id.* at 430.

The district court further held that the assessment exceeded the just value of the property because the evidence at trial indicated that at least 45 percent of the gross sales price

consisted of the usual and reasonable sales and merchandising costs. The court also recognized atypical and unconventional financing added another seven percent to the cost of the timeshare units. Accordingly, the property appraiser's "conclusory" 25 percent reduction was not a valid exercise of discretion under section 193.011(8), Florida Statutes, which requires consideration of the usual and reasonable fees and costs of the sale, including the costs and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. *Id.* at 431.

The next cases involving timeshare resorts were decisions from the Fourth District Court. *Spanish River Resort Corp. v. Walker*, 497 So.2d 1299 (Fla. 4th DCA 1986); *Oyster Pointe Resort Condo. Ass'n., Inc. v. Nolte*, 497 So.2d 1306 (Fla. 4th DCA 1986); *Driftwood Mgmt. Co. v. Nolte*, 497 So.2d 740 (Fla. 4th DCA 1986). The lead decision was *Walker*.

Similar to *Hausman*, the question presented in *Walker* was whether a property appraiser should assess the combined value of the individual timeshare interests or whether the assessment must be limited to the value of an ordinary condominium unit not subject to timesharing. For example, a condominium in which no timeshare estates had been created was assessed at $25,000, while a physically identical adjoining unit, in which 51 timeshare estates had been created, was assessed at $236,634. *Walker*, 497 So.2d at 1301.

The district court held that the assessment under the 1983 version of section 192.037 was to reflect the sum of the individual assessments of each timeshare unit. Quoting from the trial court's final judgment, the court stated as follows:

> *The interval owner at Spanish River has all of the 'sticks' which constitute the 'bundle of rights' that is fee ownership of real estate:* the complete right to use (or not to use) the property during the period of ownership; the right to exclude others during that period, and the right to mortgage, lease, sell, bequeath or give away the time-share estate. Every time share period is a unique ownership,

> even if it is located in part within the same physical space as the other time share estates in the same apartment. *In short, it is a parcel of real estate.*

Id. at 1302 (emphasis added); *accord* § 721.05(34), Fla. Stat. (2015) (timeshare estate is a parcel of real property under the laws of this state).

The district court also rejected the developer's argument that the "excessive costs of sale totaling 55% of the purchase price" must be taken into consideration to reach fair market value under section 193.011(8). As the court stated:

> *Arrival at the value of property is a matter of administrative discretion to be exercised by a property appraiser which the courts should not disturb unless it has been fraudulently or illegally exercised.* Here the appraisal was largely based on the purchase prices of the original sales—a time honored approach consistent with the requirement that all property must be assessed at '100% valuation rate.' As yet, the assessments of these time-share units are not based on resales because there have been very few, if any. *If a pattern of lower resale prices emerges, the appraiser will have to react accordingly and reassess downwards.* No such pattern has been established in the record now before us and speculation as to the possible purchase price of future resales is hardly 'probative of present value.'

Id. at 1303-4 (emphasis added, citations omitted).

In 1988, the Florida Supreme Court issued three decisions involving timeshare condominiums. *Spanish River Resort Corp. v. Walker*, 526 So.2d 677 (Fla. 1988); *Oyster Pointe Resort Condo. Ass'n, Inc. v. Nolte*, 524 So.2d 415 (Fla. 1988); *Day v. High Point Condo. Resorts, Ltd.*, 521 So.2d 1064 (Fla. 1988).

Day held that the method for assessment of timeshare developments set forth in section 192.037 was facially constitutional. No valuation issue was involved. *Id.* at 1065.

In *Nolte*, the Court addressed the arguments regarding valuation under the 1983 statute. The Court observed that the uncontroverted testimony at trial was that the sales price of

timeshare units included not only the costs attributable to real property and tangible personal property, "but many other cost components typical of and peculiar to time-share estates (i.e., marketing costs and other intangible values such as the right to participate in an exchange network of resorts and a reservation and front-desk system, together with other services and amenities ordinarily associated with a hotel)." *Id.* at 416.

As in *Hausman* and *Walker*, the developer argued that the assessment should not reflect the combined value of the timeshare estate periods. The Florida Supreme Court rejected the argument, quoting with approval from *Walker* that section 192.037 "is an unmistakable expression of the legislature's intent to bring individual time-share units or 'weeks' within the ambit of ad valorem taxation." *Nolte*, 524 So.2d at 417.

Nolte next addressed whether the property appraiser was required to net from the sales price all elements of the purchase price other than the real property component when valuing time-share units under a market value approach. The developer argued "only the real property component of the sales price (i.e. the land, buildings and improvements thereon) should be used to determine" just valuation and that the excessive marketing costs, atypical financing costs, and other extraordinary costs associated with fee timeshare estates are part of the reasonable fees and costs of sale to be deducted from the sales price under section 193.011(8). *Id.* at 418. Those excessive costs comprised approximately 75-80 percent of the purchase price of the timeshare units. *Id.*

Citing *Walker* again, the Court rejected the argument that such costs were required to be deducted under section 193.011(8). "Until the legislature modifies section 193.011(8), the costs cited by petitioners cannot be deducted from the purchase price of the time-share units as 'reasonable fees and costs of sale.'" *Id.* The Court commented that it was

"mindful of the petitioner's point that an appraisal based on the original purchase price of the units includes the unusually high marketing costs necessary to attract potential buyers" and that those costs are alleged "to never be recouped upon resale." *Id.* at 419. If a pattern of lower resale prices emerges, the property appraiser will have to adjust his appraisals accordingly and reassess the timeshare units. *Id.*[1]

Later that same year, the legislature adopted the assessment mechanism still in effect today. Ch. 88-216, § 15, Laws of Fla. (1988). The following provisions were added to section 192.037:

> *(10) In making his or her assessment of timeshare real property, the property appraiser shall look first to the resale market.*
> *(11) If there is an inadequate number of resales to provide a basis for arriving at value conclusions, then the property appraiser shall deduct from the original purchase price 'usual and reasonable fees and costs of the sale.'* For purposes of this subsection, 'usual and reasonable fees and costs of the sale' for timeshare real property shall include all marketing costs, atypical financing costs, and those costs attributable to the right of a timeshare unit owner or user to participate in an exchange network of resorts. For timeshare real property, such 'usual and reasonable fees and costs of the sale' shall be presumed to be 50 percent of the original purchase price; provided, however, such presumption shall be rebuttable.
> (12) Subsections (10) and (11) apply to fee and non-fee timeshare real property.

§§ 192.037(10)-(12), Fla. Stat. (2015) (emphasis added).

It is a well-settled principle of statutory construction that the "Legislature is presumed to be acquainted with judicial decisions on the subject concerning which it subsequently enacts a statute." *Adler-Built Indus., Inc. v. Metropolitan Dade County*, 231 So.2d 197, 199 (Fla. 1970); *Opperman v. Nationwide Mut. Fire Ins. Co.*, 515 So.2d. 263, 266 (Fla. 5th

[1] The Florida Supreme Court's decision in *Walker* merely cited *Day* and *Nolte*.

DCA 1987) ("The legislature is presumed to know the existing law at the time it enacts a statute."). The legislature, accordingly, is presumed to have been acquainted with the numerous judicial decisions concerning the assessment of fee timeshare real property in existence at the time of the adoption of the assessment mechanism set forth in section 192.037(10)-(11). Moreover, legislation enacted shortly after a controversy arises should be viewed as the legislature's intent to clarify the law. *G.E.L. Corp., v. Dep't of Envtl. Prot.*, 875 So.2d 1257 (Fla. 5th DCA 2004). The proximity of the legislature's response to the numerous judicial decisions concerning the assessment of fee timeshare real property can be considered a clarification that the property appraiser shall initially determine whether a pattern of resale prices has emerged or, restated, whether an adequate number of resales exists to provide a basis for arriving at credible value conclusions. The legislature's enactment of section 192.037(11) clarified that, in the absence of such a pattern in the resale market, the property appraiser shall deduct from the original purchase price certain enumerated categories of expenses, which constituted the *usual and reasonable fees and costs associated with the sale*. These issues were argued and discussed in the judicial decisions in existence at the time the legislature adopted the language addressing the assessment of fee timeshare real property and reflected its policy decisions regarding the appropriate assessment methodology.

The subject property

The Cypress Palms timeshare resort was constructed in phases between 1995 and 2001. Prior to offering any timeshare plan for sale, the developer must submit a registered public offering statement (POS) to the Department of Business Regulation. § 721.07, Fla. Stat. (2015). The POS is the written explanation of the timeshare plan. § 721.05(29), Fla. Stat. (2015). Until approval is given, a timeshare estate cannot exist and the property may not be assessed as a

timeshare under section 192.037. *Gilreath v. Westgate Daytona, Ltd.*, 871 So.2d 961, 965 (Fla. 5th DCA 2004).

The POS for Cypress Palms was entered into evidence and indicates that the developer is offering for sale undivided tenant-in-common fee interests in each of the units of the condominium coupled with a right to reserve and occupy a living space. (Plaintiff #12) Each of the 15 buildings at Cypress Palms constitutes a "unit" and a "living space" is an area within that unit consisting of at least one bedroom and one bathroom. There are a total of 366 living spaces within the 15 buildings.

For purposes of determining occupancy rights in a unit, each unit is allocated a specific number of points that symbolize the annual occupancy rights in that unit. The ownership interest of purchasers is measured as a fraction of the total occupancy rights for that unit. For example, an annual ownership interest is reflected as follows:

$$\frac{\text{Annual Points Purchased}}{\text{Total Number of Points Allocated to the Unit}}$$

In no event shall the total number of points allocated for ownership interests in a unit exceed 100 percent of the total number of points allocated to that unit for the purposes of symbolizing annual occupancy rights. *Id.* at III.1(1). The timeshare resort is authorized for a total of 2,286,594 points. For comparison purposes, the total weeks are 18,666 (366 x 51 weeks) because one week is reserved for maintenance. The purchaser's ownership interest as a tenant-in-common is conveyed by warranty deed. *Id.*

According to the POS, purchasers have the opportunity to participate in two exchange programs. Exchange programs are defined as "any method, arrangement, or procedure

for the voluntary exchange of the right to use and occupy accommodations and facilities among purchasers." § 721.05(16), Fla. Stat. (2015).

RCI, LLC is the external exchange program affiliated with the timeshare resort. The developer and RCI are both subsidiaries of a common parent company, i.e., Wyndham Worldwide Company. *Id.* at III(8) Owners may not be able to exchange an ownership interest through RCI, however, if the points allocated to that interest are less than the points necessary to reserve a seven-day week. Testimony elicited at trial from Mark Novell, Vice-President of Sales & Marketing for WVR, and the property appraiser's expert, Mr. Marshall, was that owners were charged an additional fee to participate in the RCI exchange program.

In addition, each purchaser of an ownership interest had the *option* of assigning the use and occupancy rights appurtenant to that interest to Club Wyndham Plus, which is an internal exchange company operated by WVR. *Id.* at III(8). The purchaser is responsible for the payment of an annual membership fee to the plan manager for Club Wyndham Plus along with a program fee. *Id.* The POS includes a disclosure that owners not electing to exercise their option "to assign the use rights appurtenant to their ownership interest into Club Wyndham Plus" will "be assigned an available period of occupancy equivalent to such owner's ownership interest" if they did not make reservation requests in a timely manner or receive one of their requested choices of occupancy. *Id.* at IIA.

The property appraiser introduced into evidence answers to interrogatories reflecting that WVR owned 109,388,250 points in Cypress Palms as of January 1, 2011. For 2012, WVR owned 89,055,750 points.

Discussion

Section 192.037(10) commands the property appraiser to "look first to the resale market" in her annual assessment of timeshare real property. If there is an "inadequate number of resales to provide a basis for arriving at value conclusions," the property appraiser is to deduct from the original purchase price "all marketing costs, atypical financing costs, and those costs attributable to the right of a timeshare unit owner or user to participate in an exchange network of resorts" pursuant to section 192.037(11).

I. Whether an adequate number of resales exists to provide a basis for arriving at a value conclusion?

At trial, the principal area of disagreement among the parties was whether there were an adequate number of resales to provide a basis for arriving at a value conclusion for the Cypress Palms timeshare resort. Importantly, both parties agree that those resales must constitute arms length transactions to meet the definition of fair market value, i.e., "the price at which a property, if offered for sale in the open market, with a reasonable time for the seller to find a purchaser, would transfer for cash or its equivalent, under prevailing market conditions between parties who have knowledge of the uses to which the property may be put, both seeking to maximize their gains and neither being in a position to take advantage of the exigencies of the other." Fla. Admin. Code R. 12D-1.002(2) (2015). The parties further agree that resales were best described as individual-to-individual sales.

(a) The plaintiffs' evidence regarding resales.

The plaintiffs presented the testimony of Mr. McElveen and Joshua Harris, who has a Ph.D. in Finance and serves as the Director of the Dr. P. Phillips Institute for Research & Education at the University of Central Florida. They opined that there was an active and reliable

resale market to allow for a credible valuation of the Cypress Palms timeshare resort for the 2011 and 2012 tax years.

Dr. Harris testified that he reviewed active Internet listings for timeshare resales in the Orlando market area, which included Orange and Osceola County. His sources included craigslist, ebay, redweek, and the TUG timeshare marketplace, among others. In his opinion, the presence of the active internet listings of resales proved the existence of a resale market for timeshare interests regardless of whether those listings resulted in closed transactions.

Dr. Harris also based his opinion on a spreadsheet containing 4,464 qualified individual transaction records of timeshare resales provided by Mr. McElveen and occurring between January 1, 2008 and December 31, 2013. Dr. Harris utilized this data to prepare charts admitted into evidence depicting the quantity of resales occurring in each quarter during this six-year time period and the volume of those resales in terms of dollars exchanged. (Plaintiff #19-#23) He compared the data relating to timeshare resales with single-family home sales in the same market area and time period. He concluded that, because the property appraiser relied upon single-family home data for assessment purposes, she also should have relied upon timeshare resales for valuation of the Cypress Palms timeshare resort.

Dr. Harris opined that a minimum of three comparable timeshare resales would be reasonable to value the Cypress Palms timeshare resort provided that the selected comparables were close economic substitutes. He based this opinion on the Fannie Mae Selling Guide and the Uniform Residential Appraisal Report.

Mr. McElveen's testimony and analysis of the resale market was far more extensive. He began his analysis by gathering all timeshare sales – developer and resales – within Orange and Osceola counties from January 1, 2007, through June 1, 2014, which

consisted of over 700,000 sales transactions. He then removed all developer sales, all resales of "points-based" timeshare interests, and all resales for nominal documentary stamps. The removal of resales of points-based timeshare interests deleted any resales from the Cypress Palms timeshare resort from his consideration. As a result, he had roughly 8,000 resales of week intervals occurring during this 7½ year time period. For those resales, his staff further reviewed the individual deeds in an effort to qualify the transactions per the Department of Revenue (DOR) sales qualification standards. In his opinion, however, the DOR standards were a lower standard than the verified arms length transactions necessary to establish just value. In the end, his dataset included 3,575 qualified but not verified resale transactions.

To assist him in verifying the 3,575 resales as arms length transactions, Mr. McElveen hired two telephone survey companies. A questionnaire was developed with questions regarding each facet of an arms length transaction. The qualified resale transactions were provided to the survey companies, who researched and obtained telephone numbers for sellers, and eventually buyers, to contact. Responses to each of the questions were recorded in a spreadsheet format as a 1 or a 2, which reflected a yes or no answer to the question. Where the response to a question indicated that it failed the test for an arms length transaction, the survey questionnaire directed the employee conducting the telephone interview to thank the participant and terminate the interview. (Plaintiff #27)

The survey work began with the Survey Research Center (SRC) at the University of Florida. Because of public records requests submitted by the property appraiser's counsel to the University, however, Mr. McElveen terminated the project. The final disposition records were admitted into evidence and revealed that SRC attempted to contact 2,080 individuals and

eventually completed 241 surveys. (Defendant #17) Of that number, Mr. McElveen testified that 32 passed the test for an arms length transaction.

Mr. McElveen subsequently retained SSRS, a firm located in Pennsylvania. SSRS began contacting sellers and, when it was concerned that the qualified resales database would not be sufficient to obtain the necessary number of responses, it obtained permission from Mr. McElveen to contact buyers. Eventually, SSRS provided a spreadsheet containing 72 completed surveys. (Defendant #18)

Mr. McElveen utilized all of the SSRS survey responses that, when added to the 32 verified sales from SRC, totaled 104 verified arms length transactions. (Defendant #20) The next step in his analysis involved the utilization of an "equivalency test" to determine whether the mean sales price of the 104 verified sales fell within an appropriate margin of error as compared to the mean sales price of the 3,575 qualified sales to support a conclusion that both datasets reflected arms length transactions. In the days before trial, Mr. McElveen removed resales between related parties that should not have been included and, as a result, reduced the number to 97 verified sales. (Defendant #19) He recalculated the equivalency test, utilizing a higher margin of error, and concluded that it had been passed. (Defendant #13, #14) He testified that he had to adopt a "more flexible approach" to arms length transactions in reviewing the SSRS survey data because many of the surveys were terminated after the participant responded that the timeshare interest had not been exposed to the open market, a facet of an arms length transaction.

Having deemed the 3,575 resales as verified arms length transactions, Mr. McElveen concluded that an adequate number of resales existed to develop a credible valuation of the timeshare interests at Cypress Palms. He then developed a multiple regression model to

determine just value. For the 2011 tax year, the model included sales from two years prior to January 1 and six months into that year. For the 2012 tax year, the model included sales from three years prior to January 1 and six months into that year. Mr. McElveen testified at length regarding his multiple regression model and the variables impacting the ultimate opinion of value. Because of his opinion that an adequate number of resale transactions existed, Mr. McElveen did not develop an opinion of value utilizing developer sales reflecting the original purchase prices and deductions pursuant to section 192.037(11).

(b) The property appraiser's evidence regarding resales.

Diana Breitenbruck is a Commercial Appraiser in the property appraiser's office and has been responsible for the assessment of timeshare developments since 2003. Based upon her analysis of the resale market, Ms. Breitenbruck concluded that there were an inadequate number of resales to provide a basis for arriving at a value conclusion for the Cypress Palms timeshare resort.

Ms. Breitenbruck testified that there were 32-34 timeshare resorts in Osceola County during 2011 and 2012, comprising approximately 370,000 unit weeks. During each of the calendar years 2010 and 2011, which immediately proceeded January 1 of each tax year, there were approximately 75,000 total sales transactions. Of that total, around 70,000 were developer sales and 5,000 were classified as resales. Significantly, approximately 4,000 of those resales were transacted for nominal documentary stamps. As such, they could not even be considered for valuation purposes. The remaining number of resales constituted less than 1.5 percent of the total timeshare sales market each year. She anecdotally described conversations with buyers that did not understand what they had bought, why they could not use their

timeshare interests, or difficulties accessing certain amenities of the resort because they had purchased on the resale market.

Ms. Breitenbruck further testified regarding her analysis of the resales within the Cypress Palms timeshare resort. In particular, she expressed her concerns regarding the limited number of resales within the resort, both standing alone and as compared to the developer sales. She repeatedly stated that the sales were "all over the place" and showed no consistent trend in pricing per point. Her VAB packets included spreadsheets detailing those resales and was admitted into evidence. (Plaintiff #16, #17; Defendant #11, #12) For the 2011 tax year, she included raw data relating to 27 resales on both an annual and biannual basis occurring during the calendar year 2010. For 2012, there were 23 resales during the calendar year 2011. In her opinion, it was extremely difficult and impracticable to accurately determine which, if any, of those sales could be considered arms length transactions. By comparison, there were hundreds of developer sales each year that clearly qualified as arms length transactions reflective of just value.

Ms. Breitenbruck also testified regarding the volume of resale transactions within the Cypress Palms timeshare resort. For the 2011 tax year, there was $11,368,126 in developer sales but only $79,656 in resales. For 2012, there was only $65,897 in resales. Comparatively, the total sales volume attributable to developer sales far exceeded the value attributable to resales transactions.

In sum, Ms. Breitenbruck believed that there simply were not an adequate number of reliable resale transactions to support an accurate value conclusion. Accordingly, she utilized the developer sales occurring within the timeshare resort, deducting the items set forth in section

192.037(11) from the original purchase price along with a deduction for tangible personal property.

The property appraiser's expert witness, Mr. Marshall, testified regarding his analysis of the resale market. His appraisals for 2011 and 2012 also discussed the resale market and were admitted into evidence. (Defendant #7, #8) During the 2010 calendar year preceding January 1, 2011, there were a total of 3,746 annual resales in Osceola County.[2] Of that number, 3,419 were for $500 or less and constituted 92 percent of the overall resale market. The next year, there were a total of 7,151 annual resales. Of that number, 6,629 were for $500 or less and constituted 93 percent of the overall resale market.

Similar percentages were reflected in the resales occurring within the Cypress Palms timeshare resort. For the 2010 tax year, 93 percent of the total resales were for less than $500. There were only 23 annual resales exceeding $500. The next year, 94 percent of the total resales were for less than $500. There were only 26 resales exceeding $500. Mr. Marshall testified that he obtained telephone numbers of sellers and/or buyers by matching the addresses on the deeds with internet searches and attempted to contact these individuals to ascertain whether a given transaction could be considered an arms length transaction. He was unable to obtain any helpful responses.

Like Ms. Breitenbruck, he observed that resale prices were all over the place. In his opinion, it would be inappropriate to "cherry pick" sales for use in an appraisal. A high price may be just as uninformed as a low price.

Mr. Marshall testified that the exceedingly large number of resales at nominal amounts reflected significant financial distress in the overall market. Distressed sales fail to

[2] Mr. Marshall eliminated biannual sales from both his resale data and developer sales used in his comparable sales analysis.

qualify as arms length transactions and cannot be used to determine just value. He observed that calendar year 2010 was the "worst real estate market of his career" and that 2011 only was slightly better. In addition to the distress in the resale market, he was aware of rampant criminal fraud by timeshare resellers during this time period. These companies and individuals would solicit and obtain an upfront fee to sell a timeshare interest on behalf of an individual owner but take no further action to sell the interest. The Attorney General was investigating these fraudulent activities and news stories of the arrests of individuals involved in these fraudulent schemes were regular events.

Mr. Marshall explained that, in his opinion, it would be inappropriate to use resales from Orange County to appraise timeshare resorts in Osceola County. In his experience, the west U.S. 192 corridor, beginning at SR 535 and extending west until U.S. 27, was a unique submarket. The characteristics and amenities of the submarket were significantly different from Orange County in terms of proximity to the theme parks, types of restaurants, shopping, and outlet malls.

II. Whether the property appraiser complied with section 192.037(11)?

The next area of disagreement between the parties related to the necessary and appropriate deductions from the developer sales used in the property appraiser's assessments for each year pursuant to section 192.037(11). This provision of the statute requires the property appraiser to deduct the usual and reasonable fees and costs of the sale, which are defined as "all marketing costs, atypical financing costs, and those costs attributable to the right of a timeshare unit owner or user to participate in an exchange of network of resorts." § 192.037(11), Fla. Stat. (2015). The statute provides a rebuttable presumption that such costs are 50 percent of the original purchase price. *Id.*

Because Mr. McElveen did not utilize the methodology set forth in section 192.037(11), he did not provide testimony regarding the appropriate sales to consider or the appropriate amount of deductions. He also did not testify as a rebuttal witness and critique the work product of either Ms. Breitenbruck or Mr. Marshall. Rather, his limited testimony regarding the subject was that resales of timeshare interests measured by points inherently involved intangible aspects so that he removed such resales from the database used in determining whether an adequate resale market sufficient for credible valuations existed and from his multiple regression model.

Ms. Breitenbruck testified that her calculation of the appropriate deductions from the developer sales prices under section 192.037(11) began with the statutory presumption of 50 percent. To that figure, she added five percent for tangible personal property, five percent for any miscellaneous costs not captured within the 50 percent, and three percent for the costs attributable to the exchange network. Her deductions totaled 63 percent. In addition, she deducted $2395 from the developer sales prices based upon representations from Wyndham employees in earlier years that the amount was the fee charged owners of timeshare interests to participate in its internal exchange program, CLUB WYNDHAM Plus

Mr. Marshall's appraisal reflected deductions from the developer sales prices, both within the Cypress Palms timeshare resort and in comparable properties, totaling 63.26 percent. However, he benefited from the litigation discovery process and received actual expense information from Wyndham Vacation Ownership, Inc. (WVO), for both its North America operations and its timeshare resorts within the Orlando area for calendar years 2010 and 2011. The financial statements obtained during discovery were discussed during the testimony

of Dean Smith, who is the Accounting Director with WVO, and were admitted into evidence. (Defendant #1-4)

Mr. Marshall also relied upon expense information reported by ARDA, which is a timeshare industry group, in its annual publication for 2010 and 2011. He utilized 18 percent for sales expenses, 23 percent for marketing expenses, and 15 percent for atypical financing expenses, which totaled 56 percent.

Mr. Marshall utilized an additional three percent for closing costs to account for recording fees, attorney's fees, and title insurance fees. Another .25 percent was attributable to tangible personal property and .0062 percent was attributable to the costs related to the participation in the external exchange program through RCI. Lastly, Mr. Marshall attributed four percent to the costs of the right to participate in the internal exchange program with CLUB WYNDHAM Plus. That amount was based on a comparison of the franchise fee (royalty) for a full service hotel as documented in the Host Study published by Smith Travel Research and was intended to reflect the reservation system and staff necessary to facilitate the Club Wyndham program.

Mr. Marshall, however, did not deduct the $2395 fee. Based on his attendance at the deposition of Mr. Novell and review of documents discussed at that deposition, his conclusion was that $2395 was not the fee charged to owners of timeshare interests to participate in CLUB WYNDHAM Plus. Rather, it was a fee to convert unit weeks owned at other, non-Wyndham resorts into points within CLUB WYNDHAM Plus. Accordingly, his opinion was that the fee would not be an appropriate deduction under section 192.037(11).

Findings of Fact and Conclusions of Law

The burden of proof applicable to ad valorem assessment challenges is set forth in section 194.301, Florida Statutes (2015). The statute was extensively revised in 2009 and is applicable to the challenges to the 2011 and 2012 tax years. The statute provides that an assessment will be presumed correct if the property appraiser "proves by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, any other applicable statutory requirements relating to classified use values or assessment caps, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate." § 194.301(1), Fla. Stat. (2015). Although section 194.301 does not specifically mention section 192.037, the property appraiser has accepted the burden of proof for demonstrating compliance with sections 192.037(10) and (11) in her assessment, reasoning that these provisions should be read in pari materia with section 193.011, Florida Statutes (2015). The plaintiffs have not disputed this position.

The court finds that the property appraiser has established, by a preponderance of the evidence, that her assessment complied with sections 192.037(10) and (11) along with section 193.011 and professionally accepted appraisal practices.[3] The property appraiser, consistent with section 192.037(10), looked first to the resale market in establishing her assessment. After concluding that there were an inadequate number of resales to support a credible valuation, the property appraiser used the developer sales as the original purchase price and applied the deductions for personal property and costs attributable to marketing, atypical financing, and the right of a timeshare unit owner to participate in an exchange network of

[3] The plaintiffs have not challenged the property appraiser's consideration of section 193.011 or use of professionally accepted appraisal practices. When sales of comparable properties are used to determine just value, the property appraiser performs a standard appraisal and considers all and uses some of the factors in section 193.011. *Nolte*, 524 So.2d at 418.

resorts as set forth in section 192.037(11) from those original purchase prices. The assessments for 2011 and 2012, therefore, are entitled to the presumption of correctness under section 194.301(1).

I. Whether an adequate number of resales exists to provide a basis for arriving at a value conclusion.

With regard to whether an adequate number of resales existed to provide a basis for arriving at a value conclusion for the Cypress Palms timeshare resort, the court finds the testimony elicited by the property appraiser through Ms. Breitenbruck and Mr. Marshall to be more credible and entitled to greater weight than the testimony elicited by the plaintiffs through Dr. Harris and Mr. McElveen. Their research and analysis of the resale market within Osceola County and the Cypress Palms timeshare resort established that vast majority of resale transactions occurred at nominal values and were reflective of a market in distress. The plaintiffs did not challenge Mr. Marshall's testimony regarding the fraudulent activities occurring in the timeshare resale market, the Attorney General's investigation of those activities, and the criminal prosecutions resulting therefrom.

The remaining resale transactions above a nominal value consisted of only a miniscule portion, between one and two percent, of the total sales activity for timeshare interests in either the county or the Cypress Palms timeshare resort. When the sales volume by dollars are considered, the resale activity within the resort was significantly smaller. The evidence demonstrated that there was less than $80,000 in resale transactions in 2011 or 2012 but $11.3 million and $19.8 million in developer sales. (Defendant #7, #8, #11, #12) By way of reference, the bar charts presented by Dr. Harris and discussed during his testimony reflected $5 million in total resale volume for Osceola and Orange County for calendar years 2010 and 2011. (Plaintiff

#19) In that same time period, there was $31.3 million in developer sales at Cypress Palms alone. (Defendant #7, #8)

The court also has considered the prices paid per point for resales within Cypress Palms and reviewed those sales as compared with the similar unit of comparison for the developer sales as the parties requested during closing argument. The court finds that the pricing for resales is quite disparate and gives weight to Mr. Marshall's testimony that it would be inappropriate to select transactions reflecting a low or high price per point as reflecting arms length transactions sufficient for a credible valuation.

The court, moreover, is mindful of the administrative difficulties that would be imposed upon the property appraiser's office if it were to adopt the plaintiffs' approach to determining whether an adequate number of resales existed to support a credible valuation of the Cypress Palms timeshare resort. The application of appraisal principles to any given property requires an exercise of appraisal judgment. "Determination of 'just value' inherently and necessarily requires the exercise of appraisal judgment and broad discretion by Florida property appraisers." *Dep't of Revenue v. Howard*, 916 So.2d 640, 643 (Fla. 2005).

Mr. McElveen testified that his staff expended thousands of hours in researching the resale market transactions occurring during a time period spanning 7½ years. In addition, he retained two survey companies, paying them over a combined $20,000, to conduct telephone surveys involving several thousand calls to sellers and buyers of resales.

The property appraiser is required to assess all property in Osceola County on an annual basis. Although counsel for the plaintiffs briefly argued that the property appraiser should have done something more in researching the resale market, he did not present any expert testimony regarding what action was necessary short of the analysis provided by Dr. Harris and

Mr. McElveen or what useful information would have been revealed. The court rejects the plaintiffs' argument that the property appraiser's diligence in analyzing the resale market was deficient or somehow constituted an abuse of the administrative discretion necessary to accomplish the annual assessment of the timeshare resorts in Osceola County.

There are other more fundamental concerns regarding the validity of the plaintiffs' approach to determining whether an adequate number of resales existed to perform a credible valuation of the Cypress Palms timeshare resort, i.e., the use of resale transactions occurring after the tax years at issue, the reliance upon resales from Orange County, and the failure to analyze the resales occurring within Cypress Palms. As such, very little weight can be placed on the plaintiffs' analysis of the resale market.

To begin with, it is well settled that all real property shall be assessed according to its just value, i.e., fair market value, as of January 1st of each year. § 192.042, Fla. Stat (2015); *Gilreath,* 871 So.2d at 967. Implicit in the just valuation of each parcel on January 1st is the closing of a hypothetical sale transaction on that date. *See Security Mgmt. v. Markham*, 516 So.2d 959 (Fla. 4th DCA 1987) (property appraiser may consider sale after assessment date provided that it is relevant to valuation on January 1); *Bystrom v. Equitable Life Assurance Society*, 416 So.2d 1133 (Fla. 3d DCA 1982) (comparable sale in March of taxable year utilized because sale negotiations had begun prior to January 1); *ITT Cmty. Dev. Corp. v. Seay*, 347 So.2d 1024 (Fla. 1977) (declaring "Pope's law" unconstitutional because, in part, it attempts to value property at least 10 months after the January 1st valuation date).

To support their conclusions that adequate resales existed to support a credible valuation of the Cypress Palms timeshare resort, Dr. Harris and Mr. McElveen relied upon resales that occurred long after January 1 of the respective tax years. When section 192.037(10)

instructs the property appraiser to "look first to the resale market" in her annual assessment of timeshare resorts, such a market must exist as of the January 1 valuation date. The plaintiffs' experts, however, utilized sales as long as 3½ years after the valuation dates. It appears incongruous for the court to find that the property appraiser was deficient in her analysis of the resale market by failing to consider resale activity that had not even occurred, and the plaintiffs' reliance upon these sales is non-compliant.

In a similar manner, reliance upon resale activity occurring in Orange County is problematical. Although section 192.037(10) and (11) does not include any geographic boundary to the existence of the resale market, it stands to reason that the legislature would not task the property appraiser with determining whether a resale market sufficient to support a credible valuation of a timeshare resort exists in another county. The court declines to conclude, as a matter of law, that the resale market must be confined to the county in which the property at issue is located. Instead, the court gives greater weight to the testimony of Mr. Marshall regarding the significant market differences between Osceola and Orange counties. Mr. Marshall has been appraising property in the central Florida area for 40 years and discussed his lengthy experience appraising timeshare developments for lending institutions. His testimony regarding the submarket between U.S. 192 beginning at SR 535 and extending west to U.S. 27 and the reasons for not considering resales of timeshare interests in Orange County is more credible and persuasive than that of the plaintiffs' experts. Location is one of the assessment criteria of section 193.011 and was properly considered by Mr. Marshall.

Lastly, the plaintiffs did not endeavor to conduct any analysis of the resale activity occurring within the Cypress Palms timeshare resort.[4] Since the passage of section 192.037(10)-(12) in 1988, the only case discussing it is the Fifth District Court's decision in *Gilreath*. That case involved whether a condominium could be assessed as a timeshare if the POS was not recorded prior to January 1. The district court answered in the negative. In reaching its decision, the court stated as follows:

> We conclude that the Legislature has clearly expressed its intent that timeshare property be assessed in accordance with section 193.011. *We also conclude, based on our analysis of these provisions, that when the Legislature directed that 'the resale market' be the basis for a proper assessment, it intended that the resale of timeshare properties in the same building be considered as part of the resale market.* Obviously, this requires that the timeshare property be legally established as timeshare property in order to effect a valid resale and hence a resale market.

Id. at 966 (emphasis added). By eliminating all points-based projects from his dataset, Mr. McElveen's analysis failed to address the resale activity occurring within the timeshare resort. The Court finds it rather curious that Mr. McElveen would expend such extreme efforts in verifying resales in two counties over multiple years as arms length transactions but not make any attempt to verify a single resale occurring within the subject property.

II. Whether the property appraiser complied with section 192.037(11)?

The court further finds that property appraiser established that her assessments for 2011 and 2012 complied with section 192.037(11). Ms. Breitenbruck's deductions of 63 percent began with the statutory presumptive 50 percent and included another 13 percent for tangible personal property, miscellaneous costs, and costs attributable to the exchange program. She then

[4] Mr. McElveen acknowledged that only three of his 97 verified sales even occurred in Osceola County.

deducted an additional amount of $2395 based on her conversations with Wyndham's representatives. Mr. Marshall's deductions totaled almost the same amount at 63.26 percent and were based, in part, on actual expense data reported by WVO and industry data.

The court rejects the plaintiffs' argument that the "original purchase price," as contemplated under section 192.037(11), requires use of the sales that occurred when the timeshare resort was initially offered for sale in the late 1990's and early 2000's. Such an argument relies upon a strained reading of the statute that is inconsistent with the annual assessment responsibilities of the property appraiser under section 192.042, Florida Statutes (2015), which requires all property to be assessed according to its just value on January 1 of each year. Ms. Breitenbruck's and Mr. Marshall's use of developer sales of timeshare interests occurring in the calendar years proceeding each January 1 as the original purchase price are appropriate under the statute and reflect the reality that essentially only two types of sales are occurring; developer sales and resales from individual to individual.

The court further rejects the plaintiffs' argument that the deductions from the developer sales inadequately reflect the intangible value inherent in the sale of timeshare interests measured by points as opposed to week intervals. In short, the plaintiff asserts that purchasers of such timeshare interests are buying a vacation experience and the right to exchange points for cruises, airline tickets, housekeeping credits, and even to offset their annual maintenance fees. The real property interest is asserted to be only a small part of the total price with the remainder ascribed to the "nuts, cherries, and whipped cream on top" as described by plaintiffs' counsel. Other than the limited testimony of Mr. McElveen regarding rejection of points-based timeshare resales in his analysis, however, the plaintiffs have not presented any probative evidence on this point.

The ownership of a points-based timeshare interest is simply another way of describing the interval purchased and right to use the accommodation. According to the POS for the Cypress Palms timeshare resort, points reflect the percentage of the tenancy-in-common ownership interest with other owners of timeshare interests. Contrary to the argument of plaintiffs' counsel, purchasers are not buying an interest in a vacation club, which is separately addressed in sections 721.50 through 721.58, Florida Statutes (2015). Rather, they are acquiring an interest in real property as a tenant-in-common with other owners, which is transferred by a warranty deed.

The POS clearly describes that purchasers of such interests have the *option* of "assigning the use and occupancy rights appurtenant to such Ownership Interest into CLUB WYNDHAM Plus, which is an exchange company operated by the Developer." (Plaintiff #12 at III(8)) As the district court observed in *Walker*, the bundle of rights attributable to a timeshare ownership interest is a fee interest in real property and includes the complete right to use or not use the property and the right to mortgage, lease, sell, bequeath, or give away the timeshare estate. A timeshare estate is defined as a parcel of real property. § 721.05(34), Fla. Stat. (2015). A timeshare period titleholder means "the purchaser of a timeshare period sold as a fee interest in real property, whether organized under chapter 718 or chapter 721." § 192.001(15), Fla. Stat. (2015).

Thus, the purchaser's decision to assign the use and occupancy rights appurtenant to his or her ownership interest is the exercise of one of the bundle of rights attributable to real property. Section 192.037(11) does not require a deduction for the exercise of this right. Rather, it requires a deduction for the "costs attributable to the right of a timeshare unit owner or user to participate in an exchange network or resorts." Both Ms. Breitenbruck and Mr. Marshall

included such deductions in their calculations. Mr. Marshall specifically attributed four percent to the costs attributable to CLUB WYNDHAM Plus, and based that amount on the franchise fee or royalty paid by a full service hotel for the central reservation system. In this regard, his deduction comports with the position of the parties in the *Nolte* decision that the "sales price of the time-share units included not only the costs attributable to real property and tangible personal property, but many other cost components typical of and peculiar to time-share estates (i.e., marketing costs and other intangible values such as the right to participate in an exchange network of resorts and a reservation and front-desk system, together with other services and amenities ordinarily associated with a hotel)." 524 So.2d at 416. The legislature essentially codified that position in section 192.037(11).

The legislature has taken similar action regarding the issue of "intangibles," present in the valuation of apartment complexes participating in the Low-Income Housing Tax Credit Program and computer software. *See* §§ 192.001(19), 193.017, Fla. Stat. (2015); *Holly Ridge Ltd. Partnership v. Pritchett*, 936 So.2d 694, 698 (Fla. 5th DCA 2006) (statute reflected "an effort by the legislature to define these tax credits as intangible personal property and thereby exempt from ad valorem taxation"); *Gilreath v. General Elec. Co.*, 751 So.2d 705 (Fla. 5th DCA 2000) (definition of computer software as intangible personal property was constitutional).

The plaintiffs argue that affiliation with the Wyndham brand creates intangible value that must be deducted so that only the real property interest created by the sale of the tenant-in-common ownership interest is valued. That argument, however, is belied by the multiple regression model utilized by their own expert. Mr. McElveen's analysis concluded that the Wyndham brand actually had a negative .0003 impact on sales prices. While other hotel

brands, such as Marriott and Hilton, had positive impacts on sales prices, such was not the case with the Wyndham brand.

Mr. Marshall's comparable sales included in his appraisal report were from the non-branded type timeshare resorts, Silver Lake and Calypso Cay. Only Westgate had any brand influence in his opinion. Accordingly, the court finds that there is no evidence of intangible value present in the sales prices of timeshare interests in the Cypress Palms timeshare resort due to the Wyndham brand.

III. Whether the assessment exceeds just value?

The court finds that the plaintiffs have failed to establish, by a preponderance of the evidence, that the assessments exceed just value for 2011 and 2012. Mr. McElveen's appraisal was solely based on the resale market, and the plaintiffs presented no other testimony or evidence regarding additional deductions necessary under section 192.037(11). Mr. Marshall's testimony and appraisals, which the court finds credible and well reasoned, easily support the property appraiser's assessments.

NOW THEREFORE, it is hereby **ORDERED** and **ADJUDGED** that;

1. The property appraiser has proven, by a preponderance of the evidence, that the assessments of the Cypress Palms timeshare resort complied with section 192.037(10) and (11), section 193.011, and professionally accepted appraisal practices. Therefore, her assessments for 2011 and 2012 are entitled to a presumption of correctness.

2. The plaintiffs have failed to establish, by a preponderance of the evidence, that the assessments exceeded just value for 2011 or 2012.

3. The property appraiser's assessments of $92,853,150 for 2011 and $92,853,100 for 2012 are hereby upheld.

4. Final judgment is hereby entered in favor of the property appraiser and against the plaintiffs.

5. Plaintiffs shall take nothing by this action and the property appraiser shall go hence without day.

6. The court reserves jurisdiction to consider a timely motion to tax costs.

DONE and **ORDERED** in Chambers at Kissimmee, Osceola County, Florida on this 25 day of July 2016.

SCOTT POLODNA, Circuit Judge

Copies furnished via Email to:

Robert E. V. Kelley, Jr., Esquire	*rob.kelley@hwhlaw.com; relitrevk@hwhlaw.com*
Patrick J. Risch, Esquire	*prisch@hwhlaw.com; val@hwhlaw.com*
Loren E. Levy, Esquire	*levytorres@me.com; geri.smith@comcast.net*
Jon F. Morris, Esquire	*jfm.levylaw@comcast.net*

on this 25 day of July 2016.

Lauren Burrows, Judicial Assistant

REVENUE ESTIMATING CONFERENCE

Tax: Ad Valorem
Issue: Valuation of Timeshares
Bill Number(s): HB 1007/SB 1358

☒ **Entire Bill**
☐ **Partial Bill:**
Sponsor(s): Representative Killebrew/Senator Gruters
Month/Year Impact Begins: July 1, 2021
Date of Analysis: 03/12/2021

Section 1: Narrative

a. **Current Law:** ss. 192.037 currently states in part:
"(10) In making his or her assessment of timeshare real property, the property appraiser shall look first to the resale market.

(11) If there is an inadequate number of resales to provide a basis for arriving at value conclusions, then the property appraiser shall deduct from the original purchase price "usual and reasonable fees and costs of the sale." For purposes of this subsection, "usual and reasonable fees and costs of the sale" for timeshare real property shall include all marketing costs, atypical financing costs, and those costs attributable to the right of a timeshare unit owner or user to participate in an exchange network of resorts. For timeshare real property, such "usual and reasonable fees and costs of the sale" shall be presumed to be 50 percent of the original purchase price; provided, however, such presumption shall be rebuttable.

(12) Subsections (10) and (11) apply to fee and non-fee timeshare real property."

b. **Proposed Change:** ss. 192.037 (12) is inserted (SB 1358) or replaced (HB1007): "In any tax appeal regarding a timeshare unit, if the taxpayer asserts that there is an adequate number of resales to provide a basis for arriving at value conclusions, the number of resales shall be considered adequate if the taxpayer provides a reasonable number of resales and such number is supported by the most recent standards adopted by the Uniform Standards of Professional Appraisal Practice. This valuation methodology for timeshare units meets the requirement of just valuation as provided in s. 4, Art. VII of the State Constitution."

Section 2: Description of Data and Sources

2020 NAL Tax Rolls
03/19 Ad Valorem Assessment Estimating Conference
Consolidated Case Nos: 2012-CA-1293-OC
Consolidated Case Nos: 2016-CA-1006-OC

Section 3: Methodology (Include Assumptions and Attach Details)

The cases referenced above highlight that the resale market does not appear robust enough to use as the basis of an appraisal. The property appraiser's office involved in both cases argued that the more appropriate method of valuation is to look to developer sales as the original purchase price. There is a significant difference between the resale value and the purchase price valuation. Based on the above court cases, the resale price valuation method results in values that are between 75% or 40% lower than the purchase price method.

The proposed change directs the property appraiser to defer to the taxpayer for determination of whether the number of resales is adequate. The proposed change does not provide a lower bound on what constitutes an adequate number. One resale might be an adequate number under the proposed change. It appears that the taxpayer could select whichever resale(s) generates the most advantageous valuation.

Timeshare properties are not assigned a unique use code in the NAL (real property) tax roll. Therefore, three counties (Orange, Osceola, and Palm Beach) with the largest number of timeshare properties were contacted. Each provided a list of parcel numbers for timeshare properties in their county. These parcel identification numbers were then matched with the 2020 October Final NAL tax roll and the school and non-school assessed values were extracted. These parcels reflect a significant portion of the population of timeshare parcels in the state.

Total 2020 Final non-school assessed value for the properties was $13,093,978,153 and school assessed value was $13,209,400,547.

REVENUE ESTIMATING CONFERENCE

Tax: Ad Valorem
Issue: Valuation of Timeshares
Bill Number(s): HB 1007/SB 1358

Future year impacts were derived by using the December, 2020 Ad Valorem Assessment Estimating Conference Non-Residential Appreciation Rates. It was assumed the millage rates would stay constant across the forecast period.

The high, medium and low forecasts were derived from using recent court decisions to determine the most common reduction claimed when small numbers of resale transactions were used to protest the current property appraiser's assessments. These changes ranged from a forty percent reduction (low) to nearly seventy-five percent (high). The middle is presented as a 60% reduction.

The effective date is July 1, 2021 and would first impact protests for the 2022 tax year.

Section 4: Proposed Fiscal Impact

	High		Middle		Low	
	Cash	Recurring	Cash	Recurring	Cash	Recurring
2021-22		(170.1M)		(136.0M)		(90.7M)
2022-23	(169.9M)	(169.9M)	(135.9M)	(135.9M)	(90.5M)	(90.5M)
2023-24	(179.5M)	(179.5M)	(143.6M)	(143.6M)	(95.7M)	(95.7M)
2024-25	(182.3M)	(182.3M)	(145.9M)	(145.9M)	(97.2M)	(97.2M)
2025-26	(182.7M)	(182.7M)	(146.2M)	(146.2M)	(97.5M)	(97.5M)

List of affected Trust Funds: Ad Valorem

Section 5: Consensus Estimate (Adopted: 03/12/2021): The Conference adopted the high estimate as the minimum impact of the bill, but notes that the impact is likely larger given that the Uniform Standard of Professional Appraisal Practice appears to provide minimal guidance regarding the adequate number of resales.

	School		Non-School		Total Local/Other	
	Cash	Recurring	Cash	Recurring	Cash	Recurring
2021-22	0.0	(63.4)	0.0	(106.7)	0.0	(170.1)
2022-23	(63.3)	(63.3)	(106.5)	(106.5)	(169.9)	(169.9)
2023-24	(66.9)	(66.9)	(112.6)	(112.6)	(179.5)	(179.5)
2024-25	(68.0)	(68.0)	(114.3)	(114.3)	(182.3)	(182.3)
2025-26	(68.1)	(68.1)	(114.6)	(114.6)	(182.7)	(182.7)

	GR		Trust		Local/Other		Total	
	Cash	Recurring	Cash	Recurring	Cash	Recurring	Cash	Recurring
2021-22	0.0	0.0	0.0	0.0	0.0	(170.1)	0.0	(170.1)
2022-23	0.0	0.0	0.0	0.0	(169.9)	(169.9)	(169.9)	(169.9)
2023-24	0.0	0.0	0.0	0.0	(179.5)	(179.5)	(179.5)	(179.5)
2024-25	0.0	0.0	0.0	0.0	(182.3)	(182.3)	(182.3)	(182.3)
2025-26	0.0	0.0	0.0	0.0	(182.7)	(182.7)	(182.7)	(182.7)

	A	B	C	D	E	F	G	H
1	Identified Timeshare Values							
2	County	Non-School Assessed Value of Timeshares 2020	School Assessed Value of Timeshares 2020					
3	Orange	$ 9,868,895,524	$ 9,902,921,858					
4	Osceola	$ 2,880,708,481	$ 2,935,465,305					
5	Palm Beach	$ 344,374,148	$ 371,013,384					
6	Total	$ 13,093,978,153	$ 13,209,400,547					
7								
8	Non-residential Assessed Values December 2020 Ad Valorem Conference							
9	Calendar	Total	Growth Rates					
10	2019	727,195						
11	2020	777,908	6.97%					
12	2021	756,105	-2.80%					
13	2022	733,906	-2.94%					
14	2023	752,880	2.59%					
15	2024	784,365	4.18%					
16	2025	819,065	4.42%					
17	2026	856,981	4.63%					
18								
19		Assessed Value of Timeshares 2021	Assessed Value of Timeshares 2022	Assessed Value of Timeshares 2023	Assessed Value of Timeshares 2024	Assessed Value of Timeshares 2025	Assessed Value of Timeshares 2026	
20	Growth Rate	2.80%	2.94%	2.59%	4.18%	4.42%	4.63%	
21	Non-School Assessed Value 2020 adjusted by Growth Rate	$ 12,726,983,591	$ 12,709,543,159	$ 13,432,502,625	$ 13,641,560,639	$ 13,673,250,611	$ 13,700,122,080	
22	School Assessed Value 2020 adjusted by Growth Rate	$ 12,839,170,957	$ 12,821,576,789	$ 13,550,909,086	$ 13,761,809,930	$ 13,793,779,247	$ 13,820,887,585	
23								
24								

	A	B	C	D	E	F	G	H
25	**Adjustment - High**	75%						
26	Non-School	$ 9,545,237,693	$ 9,532,157,369	$ 10,074,376,969	$ 10,231,170,479	$ 10,254,937,959	$ 10,275,091,560	
27	School	$ 9,629,378,218	$ 9,616,182,592	$ 10,163,181,815	$ 10,321,357,447	$ 10,345,334,435	$ 10,365,665,689	
28	**Adjustment -Medium**	60%						
29	Non-School	$ 7,636,190,155	$ 7,625,725,895	$ 8,059,501,575	$ 8,184,936,383	$ 8,203,950,367	$ 8,220,073,248	
30	School	$ 7,703,502,574	$ 7,692,946,073	$ 8,130,545,452	$ 8,257,085,958	$ 8,276,267,548	$ 8,292,532,551	
31	**Adjustment - Low**	40%						
32	Non-School	$ 5,090,793,436	$ 5,083,817,264	$ 5,373,001,050	$ 5,456,624,256	$ 5,469,300,245	$ 5,480,048,832	
33	School	$ 5,135,668,383	$ 5,128,630,715	$ 5,420,363,634	$ 5,504,723,972	$ 5,517,511,699	$ 5,528,355,034	
34								
35	**Millage Rates**							
36	Non-School	10.7629						
37	School	6.996						
38								
39	**Impact - High**							
40	Non-School	$ 102,734,439	$ 102,593,657	$ 108,429,512	$ 110,117,065	$ 110,372,872	$ 110,589,783	
41	School	$ 67,367,130	$ 67,274,813	$ 71,101,620	$ 72,208,217	$ 72,375,960	$ 72,518,197	
42	**Impact -Medium**							
43	Non-School	$ 82,187,551	$ 82,074,925	$ 86,743,610	$ 88,093,652	$ 88,298,297	$ 88,471,826	
44	School	$ 53,893,704	$ 53,819,851	$ 56,881,296	$ 57,766,573	$ 57,900,768	$ 58,014,558	
45	**Impact - Low**							
46	Non-School	$ 54,791,701	$ 54,716,617	$ 57,829,073	$ 58,729,101	$ 58,865,532	$ 58,981,218	
47	School	$ 35,929,136	$ 35,879,900	$ 37,920,864	$ 38,511,049	$ 38,600,512	$ 38,676,372	
48								
49		High		Middle		Low		
50		Cash	Recurring	Cash	Recurring	Cash	Recurring	
51	2021-22		$ (170.1 M)		$ (136.1 M)		$ (90.7 M)	
52	2022-23	$ (169.9 M)	$ (169.9 M)	$ (135.9 M)	$ (135.9 M)	$ (90.6 M)	$ (90.6 M)	
53	2023-24	$ (179.5 M)	$ (179.5 M)	$ (143.6 M)	$ (143.6 M)	$ (95.7 M)	$ (95.7 M)	
54	2024-25	$ (182.3 M)	$ (182.3 M)	$ (145.9 M)	$ (145.9 M)	$ (97.2 M)	$ (97.2 M)	
55	2025-26	$ (182.7 M)	$ (182.7 M)	$ (146.2 M)	$ (146.2 M)	$ (97.5 M)	$ (97.5 M)	

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR OSCEOLA COUNTY, FLORIDA

CASE NO: 2016-CA-1006-OC
DIVISION: 20

STAR ISLAND VACATION OWNERSHIP ASSOCIATION, INC., a Florida non-profit corporation, and **WYNDHAM VACATION MANAGEMENT, INC.**, a foreign corporation,

Plaintiffs,

vs.

KATRINA S. SCARBOROUGH, as Property Appraiser; **PATSY HEFFNER,** as Tax Collector; and **LEON M. BIEGALSKI**, as Executive Director of the Florida Department of Revenue,

Defendants.
_____/

FINAL JUDGMENT

This ad valorem tax case involves a challenge to the assessed value for the 2015[1] tax year of the Wyndham Star Island Resort, which consists of four buildings within a larger timeshare resort development located just off US 192 in Osceola County. Plaintiffs are Star Island Vacation Ownership Association, Inc., (Star Island), the homeowner's association, and Wyndham Vacation Management, Inc. (WVM), the management company retained by the Association. Plaintiffs are the authorized parties to file suit as agents of the fee timeshare period titleholders pursuant to

[1] There are other pending lawsuits challenging the 2011-2014 and 2016-2017 assessments of Star Island. *Star Island Vacation Ownership Ass'n, Inc. vs. Katrina Scarborough, etc., et al.*, Case Nos. 2012-CA-1292, 2013-CA-1745, 2014-CA-697, 2015-CA-558, 2017-CA-657 and 2018-CA-752.

section 192.037(1), Florida Statutes (2018). The Property Appraiser's assessment of the Wyndham Star Island Resort for tax year 2015 is $71,451,000.

I. Background – The Law

Both parties provided pretrial memoranda discussing key appellate court decisions regarding the assessment of timeshare developments and the legislature's passage of section 192.037, and amendments thereto, in response to these decisions in the 1980's. The memoranda discuss the same appellate court decisions and are generally fairly consistent in the analysis of those decisions.

In Florida, a timeshare unit is a form of multiple fee ownership of one parcel of real property where the rights of use, occupancy, and possession of a timeshare unit have been sold and transferred by deed to each of the timeshare owners. A timeshare estate is a parcel of real property under Florida law. § 721.05(34), Fla. Stat. (2018). Each individual owns an undivided interest in the property but, regardless of the number of owners, there remains only one parcel and one assessment. *Day v. High Point Condo. Resorts, Ltd.,* 521 So.2d 1064 (Fla. 1988); § 192.037(2), Fla. Stat. (2018). The time-share concept presented administrative assessment and collection problems for taxing authorities that the legislature addressed in section 192.037. *See Day*, 521 So.2d at 1066-67 (rejecting challenges to facial constitutionality of section 192.037); *Southards v. Motel Mgmt. Co.*, 610 So.2d 524, 525 (Fla. 3d DCA 1992) (rejecting challenge to constitutionality of section 192.037 as applied).

In 1981, Florida was one of the first jurisdictions in the United States to regulate timeshare ownership by passing Chapter 721, Florida Statutes. R. Freedman, *Timeshare Condominiums*, The Fla. Bar, FL-CLE § 6.1 (2011). A "timeshare plan" is defined as:

> any arrangement, plan, scheme, or similar device, other than an exchange program, whether by membership, agreement, tenancy in

> common, sale, lease, deed, rental agreement, license, or right-to-use agreement or by any other means, whereby 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 'timeshare plan' includes:
>
> (a) 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
>
> *(b) 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.*

§ 721.05(39), Fla. Stat. (2018) *(emphasis added)*. Under a timeshare plan, buyers are conveyed a "timeshare estate," which is defined 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 or a specified portion thereof, or coupled with an ownership interest in a condominium unit pursuant to s. 718.103, an ownership interest in a cooperative unit pursuant to s. 719.103, or a direct or indirect beneficial interest in a trust that complies in all respects with s. 721.08(2)(c)4. or s. 721.53(1)(e), provided that the trust does not contain any personal property timeshare interests. *A timeshare estate is a parcel of real property under the laws of this state.*

§ 721.05(34), Fla. Stat. (2018) *(emphasis added)*.

Prior to offering any timeshare plan for sale, the developer must submit a registered Public Offering Statement (POS) for approval by the Department of Business & Professional Regulation (DBPR). § 721.07, Fla. Stat. (2018). The POS is the documentation of the timeshare plan. §721.05(29), Fla. Stat. (2018).

In the ad valorem tax context, "fee timeshare real property" is defined as "the land and buildings and other improvements to land that are subject to timeshare interests which are sold as a fee interest in real property." § 192.001(14), Fla. Stat. (2018). "Timeshare period titleholder"

means the "purchaser of a timeshare period sold as a fee interest in real property, whether organized under chapter 718 or chapter 721." § 192.001(15), Fla. Stat. (2018).

The earliest decision discussing the proper assessment of timeshare developments involved the Orange County Property Appraiser. *Hausman v. VTSI, Inc.*, 482 So.2d 428 (Fla. 5th DCA 1985). For the 1982 tax year, the property appraiser assessed the property on the aggregate value of each of the timeshare weeks instead of the actual condominium unit. Of that total amount, a deduction of five percent was made to reflect the household furnishings and other items of personal property in the sales price. An additional deduction of 25 percent was not specifically supported by evidence at trial but was explained as an effort to be fair. *Id.* at 429.

The district court held that the assessment was invalid because the existing statutes did not authorize the assessment of the timeshare interests created in the condominium interests. The court, however, observed that the decision would have limited precedential value because the legislature amended section 192.037(2) in 1983 to require the assessment of each timeshare development to be "the value of the combined individual time-share periods or time share estates contained therein." *Id.* at 430.

The district court further held that the trial court correctly overturned the assessment because it exceeded the just value of the real property. The trial court found that at least 45 percent of the gross sales price consisted of the usual and reasonable sales and merchandising costs. The court also recognized atypical and unconventional financing added another seven percent to the cost of the timeshare units. Accordingly, the property appraiser's "conclusory" 25 percent reduction was not a valid exercise of discretion under section 193.011(8), Florida Statutes, which requires consideration of the usual and reasonable fees and costs of the sale, including the costs

and expenses of financing, and allowance for unconventional or atypical terms of financing arrangements. *Id.* at 431.

The next cases involving timeshare developments were three decisions from Florida's Fourth District Court of Appeal: *Spanish River Resort Corp. v. Walker*, 497 So.2d 1299 (Fla. 4th DCA 1986); *Oyster Pointe Resort Condo. Ass'n., Inc. v. Nolte*, 497 So.2d 1306 (Fla. 4th DCA 1986); *Driftwood Mgmt. Co., Inc. v. Nolte*, 497 So.2d 740 (Fla. 4th DCA 1986). The lead decision was *Walker*.

Similar to *Hausman*, the question presented in *Walker* was whether a property appraiser could assess each individual timeshare interest or whether the assessment must be limited to the value of an ordinary condominium unit not subject to timesharing. For example, a condominium in which no timeshare estates had been created was assessed at $25,000, while a physically identical adjoining unit, in which 51 timeshare estates had been created, was assessed at $236,634. 497 So.2d at 1301.

The district court held that the assessment under the 1983 version of section 192.037 was to reflect the sum of the individual assessments of each timeshare unit. Quoting from the trial court's final judgment, the court stated:

> *The interval owner at Spanish River has all of the 'sticks' which constitute the 'bundle of rights' that is fee ownership of real estate:* the complete right to use (or not to use) the property during the period of ownership; the right to exclude others during that period, and the right to mortgage, lease, sell, bequeath or give away the time-share estate. Every time share period is a unique ownership, even if it is located in part within the same physical space as the other time share estates in the same apartment. *In short, it is a parcel of real estate.*

Id. at 1302 *(emphasis added)*.

The district court also rejected the developer's argument that the "excessive costs of sale totaling 55% of the purchase price" must be taken into consideration to reach fair market value. The court concluded that these exorbitant internal expenditures in marketing timeshare properties were not the type of reasonable fees and costs of sale contemplated by section 193.011(8). As the court stated:

> Further, one reason given by the developers for the unfairness of the assessments is hardly the fault of the property appraiser. *In the time-share unit owners' brief, it is argued that upon resale the 'week' unit owners will never be able to recoup the original purchase price which latter '[did] not represent fair market value but may [have been] inflated by the developer's cost of attracting potential buyers.'* To be sure, the promotional material did not advise the potential buyers of this dismal forecast when they were being persuaded to purchase their time-share 'weeks.' *Regardless, the property appraiser can hardly be faulted for taking the original sales prices prominently into account when assessing the time-share units. That the developers overcharged the purchasers does not make the latter unwilling buyers and most certainly does not cause the developers to be unwilling sellers.* Arrival at the value of property is a matter of administrative discretion to be exercised by a property appraiser which the courts should not disturb unless it has been fraudulently or illegally exercised. Here the appraisal was largely based on the purchase prices of the original sales—a time honored approach consistent with the requirement that all property must be assessed at '100% valuation rate.' *As yet, the assessments of these time-share units are not based on resales because there have been very few, if any. If a pattern of lower resale prices emerges, the appraiser will have to react accordingly and reassess downwards.* No such pattern has been established in the record now before us and speculation as to the possible purchase price of future resales is hardly 'probative of present value.'

Id. at 1303-4 *(emphasis added, citations omitted).*

In 1988, the Florida Supreme Court issued three decisions involving timeshare condominiums. The first of these, released on January 28, 1988, involved the Osceola County Property Appraiser and held that the method for assessment of timeshare developments set forth

in section 192.037 was facially constitutional. No valuation issue was involved. *Day v. High Point Condominium Resorts, Ltd.,* 521 So.2d 1064, 1065 (Fla. 1988).

In the second case, released on March 31, 1988, the Florida Supreme Court addressed the arguments regarding valuation under the 1983 statute. *Oyster Pointe Resort Condominium Assoc., Inc. v. Nolte,* 524 So.2d 415 (Fla. 1988). The Florida Supreme Court observed that the uncontroverted testimony at trial was that the sales price of timeshare units included not only the costs attributable to real property and tangible personal property, "but many other cost components typical of and peculiar to time-share estates (*i.e.*, marketing costs and other intangible values such as the right to participate in an exchange network of resorts and a reservation and front-desk system, together with other services and amenities ordinarily associated with a hotel)." *Id.* at 416.

As in *Hausman* and *Walker*, the developer argued that the assessment should not reflect the combined value of the timeshare estate periods. The Florida Supreme Court rejected that argument, quoting with approval from *Walker* that section 192.037 "is an unmistakable expression of the legislature's intent to bring individual time-share units or 'weeks' within the ambit of ad valorem taxation." *Nolte*, 524 So.2d at 417.

Nolte next addressed whether the property appraiser was required to "net from the sales price all elements of the purchase price other than the real property component when valuing time-share units under a market value approach." *Id.* The developer argued that the excessive marketing costs, atypical financing costs, and other extraordinary costs associated with fee timeshare estates are part of the reasonable fees and costs of sale to be deducted from the sales price under section 193.011(8). These excessive costs comprised approximately 75-80 percent of the purchase price of the timeshare units. *Id.* at 418.

Citing *Walker* again, the Florida Supreme Court rejected the argument that such excessive costs were required to be deducted under section 193.011(8). "Until the legislature modifies section 193.011(8), the costs cited by petitioners cannot be deducted from the purchase price of the time-share units as 'reasonable fees and costs of sale.'" *Id.* The Court commented that it was "mindful of the petitioner's point that an appraisal based on the original purchase price of the units includes the unusually high marketing costs necessary to attract potential buyers" and that those costs are alleged "to never be recouped upon resale." *Id.* at 419. If a pattern of lower resale prices emerged, the property appraiser will have to adjust his appraisals accordingly and reassess the timeshare units.

The third decision released by the Florida Supreme Court in 1988 involving timeshare condominiums was *Spanish River Resort Corporation v. Walker,* 526 So.2d 677 (Fla. 1988), wherein the Supreme Court approved the decision of the 4th DCA in *Walker* on the authority of *Nolte* and *Day*, and answered the two questions certified to the Florida Supreme Court, finding that is was correct for the property appraiser to assess individual time-share weeks (relying on *Nolte*) and that section 192.037, Florida Statutes (1983) was constitutional (relying on *Day).*

Later that same year, the legislature adopted the assessment mechanism still in effect today. Ch. 88-216, § 15, Laws of Fla. (1988). The following provisions were added to section 192.037:

> *(10) In making his or her assessment of timeshare real property, the property appraiser shall look first to the resale market.*
> *(11) If there is an inadequate number of resales to provide a basis for arriving at value conclusions, then the property appraiser shall deduct from the original purchase price 'usual and reasonable fees and costs of the sale.'* For purposes of this subsection, 'usual and reasonable fees and costs of the sale' for timeshare real property shall include all marketing costs, atypical financing costs, and those costs attributable to the right of a timeshare unit owner or user to participate in an exchange network of resorts. For timeshare real property, such 'usual and reasonable fees and costs of the sale' shall

> be presumed to be 50 percent of the original purchase price; provided, however, such presumption shall be rebuttable.
> (12) Subsections (10) and (11) apply to fee and non-fee timeshare real property.

§§ 192.037(10)-(12), Fla. Stat. (2018) *(emphasis added)*. Since 1988, there has not been another significant appellate court decision regarding the assessment of timeshare developments. The statutory assessment language remains unchanged.

The single appellate case even discussing section 192.037 is *Gilreath v. Westgate Daytona, Ltd.*, 871 So.2d 961, 965 (Fla. 5th DCA 2004). That case, however, addressed whether a condominium could be assessed as a timeshare if the POS was not recorded prior to January 1 of the tax year at issue. The district court answered in the negative. In reaching its decision, the court stated as follows:

> We conclude that the Legislature has clearly expressed its intent that timeshare property be assessed in accordance with section 193.011. *We also conclude, based on our analysis of these provisions, that when the Legislature directed that 'the resale market' be the basis for a proper assessment, it intended that the resale of timeshare properties in the same building be considered as part of the resale market. Obviously, this requires that the timeshare property be legally established as timeshare property in order to effect a valid resale and hence a resale market. Moreover, the alternative of deducting the appropriate fees and costs from the sales price effectively requires a valid sale of the timeshare property.* As we have discussed, any contract entered into between a developer and a prospective purchaser is voidable at the option of the purchaser until the POS is approved. Until that time, any title documents and deposit money must be held in escrow on behalf of the purchaser. Once the POS is approved and the contract is no longer voidable at the will of the purchaser, the contract becomes binding and a sale may be closed by releasing the title documents and deposit money. This establishes a valid basis for assessing timeshare property under section 193.011.

Id. at 966-67 *(emphasis added)*.

II. Findings of Fact

The Star Island Resort is located at 5064 Avenue of the Stars, off the south side of U.S. Highway 192, east of Interstate-4 in unincorporated Osceola County, Florida. The Star Island Resort is comprised of three (3) separate condominium developments, all of which have been converted to the timeshare form of ownership. There are a total of 17 buildings and a clubhouse complex located on 85 acres of land. Within the Star Island Resort, there are common areas such as a guest reception area, swimming pools, spa, and tennis courts. A guest within any of the three timeshare developments is entitled to use all portions of the common areas. The three timeshare developments are more particularly described as follows:

- **Vacation Break at Star Island (Vacation Break).** Vacation Break consists of four buildings containing 123 condominium units and 6,396 timeshare estates. The appraisal report of Plaintiffs' expert, Frank Catlett, delineated the assessment per timeshare estate for Vacation Break at $2,403. (PL. Exh. #17 at p. 13)
- **Star Island Resort and Country Club (Star Island).** Star Island consists of nine buildings containing 159 units and 8,268 timeshare estates. The appraisal report of Plaintiffs' expert, Frank Catlett, delineated the assessment per timeshare estate for Star Island at $2,433. (PL. Exh. #17 at p. 13)
- **Wyndham Star Island Resort.** There are four buildings (20, 21, 23 and 25) at Wyndham Star Island Resort and a total of 184 units within the four buildings. The mix of accommodations includes 18 two-bedroom Deluxe units, 148 two-bedroom Plus units, and 18 three-bedroom units. (Def. Exh. #15, p. 36 of 120) The total weeks are 9,384 (184 x 51 weeks) because one week is reserved for maintenance purposes. (*Id.* at p. 98 of 120; Def. Exh. #1 p. 37 of 48). The units in both Vacation Break and Star Island are sold on a

fixed week basis as opposed to the tenant-in-common ownership interest at the Wyndham Star Island Resort. The Wyndham Star Island Resort was assessed in tax year 2015 in the aggregate amount of $71,451,000, equating to an average of $7,800 for a two bedroom plus unit for one week, $6.100 for a two bedroom deluxe unit for one week, and $7,600 for a three bedroom unit for one week. The overall assessment for Wyndham Star Island Resort equates to an average of $7,468 per week equivalent. (PL. Exh. #17 at p. 13)

The POS for Wyndham Star Island Resort indicates that the developer is offering for sale undivided tenant-in-common fee interests in each of the units of the condominium coupled with a right to reserve and occupy a unit. As the POS provides in pertinent part:

> The developer is offering for sale and by deed of conveyance ("Deed") Timeshare Estates *each consisting of an interest in real estate which shall be identified as an undivided tenant-in-common fee interest* in a Phrase of the Resort Facility committed to the Vacation Ownership Plan, whereby such real estate interest is coupled with the right to reserve and occupy a Unit. *The undivided tenant-in-common fee interest of each Owner shall be expressed as a fraction and shall be known as a Vacation Ownership Interest.*
>
> For the purposes of determining both the extent of ownership interest and occupancy rights, each Phase of the Resort Facility shall be allocated a specific total number of Points. *An Owner does not purchase Points as such, but rather Points are allocated to an Owner as a result of the purchase of the Vacation Ownership Interest ("VOI").*

(Def. Exh. #6, § III, 1.a.(1), *emphasis added*) The buyers' purchase of a tenant-in-common fee interest in a phase (building) in the Wyndham Star Island Resort also is reflected in the Purchase and Sale Agreement and the numerous deeds introduced into evidence. (PL. Exh. #3; Def. Exhs. #9-#14)

For purposes of determining occupancy rights, each building is allocated a specific number of points that symbolize the annual occupancy rights in that building. The points are symbolic of

the value of the owner's use rights in the property. (PL. Exh. #3, #4) Points are defined as the "units of symbolic value used as the basis for determining the Valuation Ownership Interest of an Owner and the Owner's occupancy rights in the Resort Facility in a particular Resort Year." (Def. Exh. #1, p. 8 of 191)

The ownership interest is measured as a fraction of the total occupancy rights for the phase (building). For example, an annual ownership interest is reflected as follows:

$$\frac{\text{Points Annually Allocated with the Vacation Ownership Interest Purchased}}{\text{Total Number of Points Allocated to all Units in the subject phase at the Resort Facility}}$$

(*Id.* at p. 16 of 191)

In no event shall the total number of points allocated for ownership interests in a unit exceed 100 percent of the total number of points allocated to that unit. (*Id.* at § III.1.a.(1)) The development is authorized for a total of 1,891,857,000 points. The purchaser's ownership interest is conveyed by warranty deed. *Id.*

The breakdown of the total points allocated to each building, and the number of points, *i.e.*, inventory, still owned by the developer, is as follows:

Phase	**Building**	**Total Points**	**Inventory**
Phase I	Building 21	420,960,000	46,036,000
Phase II	Building 22	490,299,000	47,965,000
Phase III	Building 23	490,299,000	53,004,500
Phase IV	Building 25	490,299,000	52,721,500

(*Id.* at § III.5.a; Def. Exh. 19)

According to the POS, purchasers have the opportunity to participate in two exchange programs. RCI, LLC is the external exchange program affiliated with the condominium. The developer[2] and RCI are both subsidiaries of a common parent company, *i.e.*, Wyndham Worldwide Company. (*Id.* at § III.8.) In addition, each purchaser of an ownership interest has the option of assigning the use and occupancy rights appurtenant to that interest to Club Wyndham Plus, which is an internal exchange company operated by the developer. (*Id.*) The purchaser is responsible for the payment of an additional annual membership fee to the plan manager for Club Wyndham Plus. *Id.* The POS describes these exchange programs as follows:

> An owner has the opportunity to participate in two (2) exchange programs as further described below.
>
> *RCI, LLC ("RCI") is the external exchange program that is affiliated with this Project. Owners may not be able to exchange a VOI through RCI if the points allocated to the Ownership Interest purchased are less than the points necessary to reserve a seven-day week.* The mailing address of RCI is 9998 North Michigan Road, Carmel, Indiana 46032. The Developer and RCI are both subsidiaries of a common parent company; however, Developer makes no representations or warranties as to an Owner's ability to obtain any particular exchange or as to any services, rates or charges of RCI.
>
> *In addition to providing purchasers with the opportunity to join RCI, each purchaser of a VOI will have the option of assigning the use and occupancy rights appurtenant to such VOI to the CLUB WYNDHAM Plus, which is an exchange company operated by the Developer.* The mailing address of CLUB WYNDHAM Plus is 6277 Sea Harbor Drive, Orlando, Florida 32821. *An Owner who elects to join CLUB WYNDHAM Plus will be responsible for the payment of an annual membership fee payable to the CLUB WYNDHAM PLUS Plan Manager, which annual membership fee may include the anticipated amount of the annual Association Fee attributable to the Ownership Interest purchased. The annual membership fee shall also include payment of an annual CLUB WYNDHAM Plus Program Fee ("Program Fee") which is subject to change from time to time.* The Fairshare Vacation Owners Association has entered into an agreement with RCI whereby RCI

[2] Wyndham Vacation Resorts, Inc. is a successor developer to Fairfield Communities, Inc.

> will provide external exchange services to the CLUB WYNDHAM Plus Members. As the RCI membership fee is included in the Program Fee, CLUB WYNDHAM Plus Members are not charged separately for the annual RCI membership fee; however, CLUB WYNDHAM Plus Members are charged for applicable exchange and/or services fees for the RCI services used.

(*Id.*, emphasis added) The option to assign the tenant-in-common use and occupancy rights also is reflected in the Club Wyndham Plus Vacation Ownership Assignment Agreement and Use Restriction and the Buyers Acknowledgment. (PL. Exh. #4, #5)

The POS further notifies purchasers of timeshare estates that their right to reserve or use their timeshare period is subject to the Reservation System Rules and Regulations for the Plan. The reservation system "is a method established by the Association to enable each Owner to utilize his allocated Points to secure a period of occupancy in their applicable Unit." (*Id.* at ¶ 7.c.)

Diana Breitenbruck, the Commercial Appraiser responsible for the assessments of timeshare developments with the Osceola County Property Appraiser's office, testified that she had reduced the assessments for Vacation Break and Star Island because of a meeting with their representatives and information provided at a 2015 meeting showing very little sales activity. For 2015, there were only 3 developer annual sales at Vacation Break and 15 developer annual sales at Star Island. (Def. Exh. #15, p. 3 of 7) By way of comparison, there were 666 developer sales of annual interests at Wyndham Star Island Resort. Ms. Breitenbruck testified that the 2015 assessments for each development was based upon the original purchase prices from the developer occurring within the respective development.

Ms. Breitenbruck further testified that, several years later, she learned that Vacation Break and Star Island had reached an agreement with Wyndham whereby it had the exclusive right to market to owners and visitors at the resort on-site. Her testimony was confirmed by Mark Novell, Vice President for Sales & Marketing, Orlando One World locations. He testified that a

"gentleman's agreement" with the developer for Vacation Break and Star Island had been made whereby Wyndham paid these entities for the exclusive right to market onsite.

A. Whether an adequate number of resales exists to provide a basis for arriving at a value conclusion?

At trial, the principal area of disagreement among the parties was whether there were an adequate number of resales to provide a basis for arriving at a value conclusion for the Wyndham Star Island Resort. Importantly, both parties agree that those resales must constitute arms-length transactions to meet the definition of "fair market" value, *i.e.*, "the price at which a property, if offered for sale in the open market, with a reasonable time for the seller to find a purchaser, would transfer for cash or its equivalent, under prevailing market conditions between parties who have knowledge of the uses to which the property may be put, both seeking to maximize their gains and neither being in a position to take advantage of the exigencies of the other." Fla. Admin. Code R. 12D-1.002(2) (2018). The parties generally agree that resales were best described as individual-to-individual sales.[3]

(1) The Plaintiffs' evidence regarding resales.

The Plaintiffs presented their evidence regarding the resale market through the testimony of (i) Frank Catlett (their appraisal expert) and (ii) Judi Kozlowski (a licensed real estate broker specializing in timeshare resales for the past 20 years). Mr. Catlett testified there were an adequate number of resales to utilize in developing his opinion of value. Ms. Kozlowski testified there was an active resale market as of January 1, 2015.

Mr. Catlett described his process in reviewing the resale data for calendar years 2012-2014. In his opinion, owner to owner resales was the best available information for valuation purposes.

[3] The Property Appraiser excluded sales from non-user owners, which were individuals or entities selling more than seven timeshare interests per year. *See* § 721.05(33), Fla. Stat. (2018). The Plaintiffs' appraisal expert made no such distinction.

(PL. Exh. #17, p. 63) He began by reviewing the resales occurring within the Vacation Break, Star Island, and Wyndham Star Island Resorts. He did not go outside of the Star Island development to find additional resales because he believed that he had sufficient data for determining value based solely on the resales occurring within the three resorts.

Mr. Catlett initially reviewed thousands of resales, many of which were for nominal amounts. He utilized a threshold of $1500 in reviewing resales to determine whether they constituted an arms-length transaction. Mr. Catlett did not consider or further research resales at amounts less than $1500 as, in his opinion, those resales were not potential arms-length transactions.

For those resales within the Star Island development, Mr. Catlett and his associate attempted to determine whether they were arms-length transactions by reviewing the face of the deed. After eliminating resales that were disqualified on the face of the deed because of a familial relationship or some other reason, they attempted to contact either the buyer or seller of the remaining resales via telephone and interview them in an effort to qualify the resale as an arms-length transaction. Ultimately, Mr. Catlett was able to qualify a total of seven resales. Of those seven resales, only three involved timeshare interests in Wyndham Star Island Resort. Two of the resales occurred in calendar year 2012, three in 2013, and two in 2014. In arriving at his opinion of value, Mr. Catlett did not make any effort to adjust the resales occurring in 2012 and 2013 to reflect the passage of time and any changing market conditions existing as of January 1, 2015.

Mr. Catlett's opinion was that the determination of an adequate number of resales necessary to provide a basis for arriving at value conclusions was a matter of appraisal judgment. He testified that seven resales were sufficient for his appraisal. Utilizing these resales, Mr.

Catlett's opinion of value for the combined timeshare interests at Wyndham Star Island Resort for the 2015 tax year was $43,085,440.

Ms. Kozlowski described her lengthy experience as a timeshare resale broker, beginning in 1994 when she attempted to sell a timeshare interest owned with her husband. At that time, the entity she approached requested an upfront fee to broker her timeshare interest, which she believed was inappropriate.

Ms. Kozlowski testified that the biggest reason owners of timeshare interests want to sell their interest was the annual, ongoing maintenance fees, which were approximately $1000. Ms. Kozlowski testified that her office had over 500 resales in calendar year 2014 totaling approximately $2.5 million. In calendar year 2015, her office had over 700 resales totaling $3.5 million. These resales were of timeshare properties all over the world and, when asked, she could not specify how many involved resorts in Osceola or Orange counties. The vast majority of these resales were cash transactions as there was very little opportunity to obtain financing. Ms. Kozlowski did not express an opinion as to whether there were an adequate number of resales to provide a basis for arriving at value conclusions or as to the value of the timeshare interests at Wyndham Star Island Resort. Ms. Kozlowski's opinion as to how Wyndham would rank as far as the "sellability" or the attractiveness to a potential buyer was, in general, as follows: (1) Disney Vacation Club; (2) Marriott; (3) Hilton; and (4) Wyndham.

On cross-examination, Ms. Kozlowski thoroughly discussed the significant extent of illegal activity and "scams" occurring in the timeshare resale market. She had devoted half of her career to combating illegitimate activities in the timeshare resale market. She described her assistance to the DBPR, the Florida Attorney General, the City of Orlando police, the Federal Bureau of Investigation (FBI), and the American Resort Development Association (ARDA), which is a trade

group of timeshare developers. She acknowledged that her efforts were not entirely altruistic, as she believed that fewer scammers in the timeshare resale market would result in more resale clients for her.

Ms. Kozlowski testified about the "Viking Ship" scam, whereby the timeshare interest would be conveyed to a homeless or deceased person or "dummy corporation." She testified about the "upfront fee" scam, the vacation club scam, and the private presentation scam made to persuade owners to execute a power of attorney for a timeshare reseller to attempt to convey their timeshare interest for a fee. She identified Project Philanthropy and its principals, Sandy and Sandra Staudenmayer, as being involved in the "charitable contribution scam" in which the owner would donate their timeshare interest to a non-profit organization for the tax write-off. The organization would subsequently convey that timeshare interest on the resale market to an individual buyer.[4]

Ms. Kozlowski testified that for every reputable broker like herself, there were ten (10) scammers. When asked how an owner of a timeshare interest would be able to avoid becoming involved with a scammer instead of obtaining the services of a reputable broker, she replied that it would be very difficult. Ms. Kozlowski even admitted that she had become personally involved in efforts by developers to conceal that they were willing to "take back" timeshare interests from owners that no longer wanted to utilize their property. She was the preferred broker for Wyndham for several years before and after January 1, 2015. In that capacity, she formed Viva Vacation Club at Wyndham's request. Owners were referred to her by Wyndham, and she served as the transactional broker. She would facilitate the sale of the timeshare interest to Viva Vacation Club, which would later convey the interest back to Wyndham. The amount negotiated to be paid by Viva Vacation Club, and the funds necessary to close the transaction, were decided and provided

[4] One of the resales relied upon by Mr. Catlett was from Staudenmayer via Project Philanthropy.

by Wyndham. Ms. Kozlowski received a commission for the closed transaction. She did not inform the owner of her relationship with Viva Vacation Club or Wyndham's involvement.

For a period of time, Ms. Kozlowski had a similar arrangement with Westgate. Specifically, she would acquire the timeshare interest in her own name and later convey it back to Westgate. For each transaction, she received a $500 fee. Westgate used this method so the general public would not know that it was taking back timeshare interests from owners.

(2) The Property Appraiser's evidence regarding resales.

Diana Breitenbruck has been responsible for the assessment of timeshare developments since 2003. Based upon her analysis of the resale market, Ms. Breitenbruck concluded that there were an inadequate number of resales to provide a basis for arriving at a value conclusion for the Wyndham Star Island Resort for the 2015 tax year. In fact, she testified that she had never utilized resales in the assessment of timeshare resorts in her career.

Ms. Breitenbruck testified that there were 36 timeshare resorts in Osceola County during 2015, comprising approximately 375,000 unit weeks. During the calendar year 2014, which immediately proceeded January 1 of the 2015 tax year, there were approximately 25,000 total sales transactions. Of that total, 21,880 were developer sales and 3,790 were classified as resales. Approximately 90 percent of those resales were transacted for nominal documentary stamps. As such, they could not even be considered for valuation purposes. The remaining number of resales constituted less than 1.7 percent of the total timeshare sales market each year. (Def. Exh. #5)

Ms. Breitenbruck testified that when the 2014 county-wide sales were evaluated from the viewpoint of total sales consideration, there were $430,427,468 in developer sales and $3,662,750 in resales. Accordingly, the resale market constituted less than one percent of the total sales.

The data for sales activity within the Wyndham Star Island Resort was similar to the county-wide sales data. For 2014, there were 680 developer sales and 135 resales. (Def. Exh. #4) Again, approximately 90 percent of the resales were transacted for nominal consideration. There were eight resales over $1,000 included in her report prepared for the Value Adjustment Board in 2015. Of those, only four resales were potentially qualified as an arms-length transaction based on a review of the face of the deed. (Def. Exh. #18) In her opinion, it was extremely difficult and impracticable to accurately determine which, if any, of those resales could be considered arms-length transactions.

When viewed by reference to total sales consideration, there was $13,446,520 in developer sales and only $38,393 in resales. Thus, the resale market constituted less than one-half of a percent of the total sales. Ms. Breitenbruck expressed her concerns regarding the limited number of resales within the Wyndham Star Island Resort. By comparison, there were hundreds of developer sales each year that clearly qualified as arms-length transactions reflective of just value. She stated that the resales showed no consistent trend in pricing. The developer sales reflected a far more consistent pricing. In sum, Ms. Breitenbruck believed that there simply were not an adequate number of arms-length transactions to support an accurate, credible, and reliable value conclusion.

The Property Appraiser's expert witness, Steve Marshall, also testified regarding his analysis of the resale market. His appraisal for 2015 discussed the resale market and was admitted into evidence. (Def. Exhs. #14, #15) During the calendar year 2014, preceding January 1, 2015, there were a total of 2,869 annual resales in Osceola County.[5] Of that number, 2,571 were for

[5] Mr. Marshall eliminated biannual sales from both his resale data and developer sales used in his comparable sales analysis.

nominal consideration. There were only 145 resales for greater than $1,000, constituting approximately five percent of the total resales.

Similar percentages were reflected in the resales occurring within the Wyndham Star Island Resort. For the 2014 calendar year, there were a total of 170 resales. Of that number, 142, or 84 percent, were for nominal consideration. There were only 7 annual resales exceeding $1,000. Mr. Marshall testified that he obtained telephone numbers of sellers and/or buyers by matching the addresses on the deeds with internet searches and attempted to contact these individuals to ascertain whether a given transaction could be considered an arms-length transaction. He was unable to obtain any helpful responses.

Mr. Marshall also evaluated the resale activity occurring within Vacation Break and Star Island along with the Wyndham Star Island Resort. For 2013 and 2014, there were a total of 65 resale transactions greater than $1,000 in the three resorts. Of that, 45 transactions (69 percent) could be disqualified from review based on the face of the deed. The remaining 20 could not be qualified or unqualified.

Mr. Marshall testified that the exceedingly large number of resales at nominal amounts reflected significant financial distress in the overall market. Distressed sales fail to qualify as arms-length transactions and cannot be used to determine just value. In addition to the distress in the resale market, he was aware of pervasive criminal fraud and illegitimate scams by timeshare resellers during this time period. The Attorney General was investigating these fraudulent activities and news stories of the arrests of individuals involved in these fraudulent schemes were regular events. He viewed the resale market in Osceola County as the "Wild, Wild West."

Like Mr. Catlett, Mr. Marshall opined that whether an adequate number of resales existed to provide a basis for arriving at value conclusions was a matter of appraisal judgment. In his 25

years of appraising timeshare developments and observing the resale market, Mr. Marshall's conclusion was that the entire market was illegitimate and corrupt and tainted any isolated sales data that may be available. In his opinion, there simply were an inadequate number of resales to provide a basis for arriving at credible and reliable value conclusions.

Upon review of the conflicting evidence presented by the parties, this Court finds that the Property Appraiser's depiction of the resale market in general, and the resale activity within the Wyndham Star Island Resort in particular, is credible, accurate, and based upon reliable data. Mr. Catlett failed to fully consider the impact of illegal and illegitimate activity occurring in the resale market in Osceola and Orange County. At best, Mr. Catlett was able to find a total of seven resales with only 2-3 resales per year capable of being used in his appraisal. It is inescapable that the vast majority of resales occurred at nominal prices and that there was significant illegal and illegitimate activity occurring in the years preceding the 2015 tax year. The Plaintiffs' own expert, Ms. Kozlowski, testified at length about the illegal activity and scams that was imbedded in the resale market.

Although the determination of whether an adequate number of resales existed to provide a basis for arriving at value conclusions may be considered a matter of appraisal judgment, such judgment should be the result of due diligence and fact finding. The testimony of Ms. Breitenbruck and Mr. Marshall reflects their substantial efforts to analyze and understand the resale market and determine whether it could be relied upon to produce a credible and reliable opinion of value. Their opinion that the resale market could not be relied upon to produce an adequate number of resales for valuation purposes is well founded, well explained, and reflects their many years of experience in the valuation of timeshare developments and in-depth understanding of the

difficulties of attempting to use data from the resale market to produce credible and reliable valuations.

B. Whether the Property Appraiser complied with section 192.037(11)?

The next issue relates to whether the Property Appraiser made the necessary and appropriate deductions (pursuant to section 192.037(11)) from the original purchase price from the developers in the Property Appraiser's assessments for each year. Section 192.037(11) requires the Property Appraiser to deduct the usual and reasonable fees and costs of the sale, which are defined as "all marketing costs, atypical financing costs, and those costs attributable to the right of a timeshare unit owner or user to participate in an exchange of network of resorts." § 192.037(11), Fla. Stat. (2015). The statute provides a rebuttable presumption that such costs are 50 percent of the original purchase price. *Id.*

(1) The Plaintiffs' evidence.

Plaintiffs contend the Property Appraiser's deductions under section 192.037(11) fail to account for all extraordinary sales and marketing costs and intangible value inherent in the sale of a timeshare interest. By way of example, Plaintiffs cite to bonus points, which are a one-time award of points to be used within the 18 months following the purchase of a timeshare interest to encourage the purchase of additional timeshare interests. Plaintiffs assert that these intangibles include the right of the owner to exchange the occupancy and use rights for stays at other resorts, airline tickets, cruises, and amenities associated with the Club Wyndham Plus exchange program and the Wyndham brand.

Plaintiffs did not provide any expert testimony utilizing the methodology set forth in section 192.037(11) – either regarding appropriate sales to consider or the appropriate type and amount of deductions to be made. Plaintiff's expert, Mr. Catlett, did testify that the potential

intangible impacts on the real property value were limited to the exchange network, atypical financing, excess marketing fees, and Wyndham branding. He acknowledged that he had no opinion as to the amount of these items and had not investigated whether a timeshare interest at a Wyndham branded resort would sell for more or less than a non-Wyndham timeshare interest. In fact, he relied upon resales of the non-Wyndham timeshare interests at Vacation Break and Star Island to support his opinion of value of the combined timeshare interests for the Wyndham Star Island Resort without any adjustment as it related to brand.

(2) The Property Appraiser's evidence.

Ms. Breitenbruck testified that she deducted sixty percent (60%) from the original purchase price from the developer under section 192.037(11). That figure included fifty-five percent (55%) for the costs delineated in the statute, three percent (3%) for tangible personal property, and two percent (2%) for any miscellaneous costs not otherwise captured. In addition, she deducted $2,395 based upon representations from Wyndham employees in earlier years that the amount was the fee charged to owners of timeshare interests to participate in its internal exchange program, Club Wyndham Plus. After the assessment was completed, and as part of the discovery process, she learned that this information was incorrect. These deductions, along with smaller adjustments to account for the relative square footage size of the units, resulted in a total deduction of sixty-five and one-half percent (65.5%) from the original purchase price from the developer. (Def. Exh. #1, p. 37 of 48)

Mr. Marshall's appraisal reflected deductions from the original purchase price from the developer totaling sixty-three and one-quarter percent (63.25%). However, he benefited from the litigation discovery process and received actual expense information from Wyndham Vacation Ownership, Inc. (WVO), for both its North America operations and its timeshare resorts within

the Orlando area for calendar years 2012-2014. Mr. Marshall also relied upon expense information reported by ARDA, which is a timeshare industry group, in its annual publication for 2011-2014. Based on this data, he utilized eighteen percent (18 %) for sales expenses, twenty-three percent (23%) for marketing expenses, and fifteen percent (15%) for atypical financing expenses, which totaled fifty-six percent (56%).

Mr. Marshall utilized an additional three percent (3%) for closing costs to account for recording fees, attorney's fees, and title insurance fees. Another one-quarter percent (.25 %) was attributable to tangible personal property and .0047 percent was attributable to the costs related to the participation in the external exchange program through RCI. Lastly, Mr. Marshall attributed four percent (4%) to the costs of the right to participate in the internal exchange program with Club Wyndham Plus. That amount was based on a comparison of the franchise fee (royalty) for a full service hotel and was intended to reflect the reservation system and staff necessary to facilitate the Club Wyndham program and any impact of the Wyndham brand.[6]

The Property Appraiser presented the testimony of Dean Smith, Vice President of Accounting for the Wyndham North America operations. Mr. Smith explained the Wyndham VOI Sales income and expense statements introduced as evidence. (Def. Exh. #16, #17) The statements reflected the income and expenses attributable to the sales of VOI interests in the Orlando area for the calendar years ending 2012-2014.

Mr. Smith testified that the cost of any bonus points were included in the Discounts from the Total Vacation Ownership sales to produce Net VOI Sales. The total sales overhead reflected the expense of the sales staff and depreciation of any buildings or property associated with the

[6] Mr. Marshall's comparable sales included in his appraisal report were from the non-branded type timeshare resorts, Silver Lake and Calypso Cay. Only Westgate had any other locations available with the Westgate name and those locations were for less than the Wyndham family of resorts.

sales staff. The cancellation provision reflected the anticipated expense for bad debt resulting from the financing of purchases of timeshare interests. Guest Generation included all marketing and promotional expenses associated with encouraging individuals to attend presentations attempting to sell timeshare interests, such as park tickets, VISA gift cards, and other items. The comissions expense was attributable to the sales staff for closed transactions.

Upon review of the testimony, this Court finds that Ms. Breitenbruck and Mr. Marshall have established they made the necessary deductions from the original purchase price from the developer to account for the items set forth in section 192.037(11). As with their testimony regarding the resale market, the work of Ms. Breitenbruck and Mr. Marshall is well researched and reflects an in-depth understanding of the extraordinary costs associated with selling timeshare interests. Their deductions are supported by industry publications and Wyndham's own data specific to the Orlando market.

III. Conclusions of Law

Section 192.037(10) commands the Property Appraiser to "look first to the resale market" in her annual assessment of timeshare real property. If there is an "inadequate number of resales to provide a basis for arriving at value conclusions," the Property Appraiser is to deduct from the original purchase price "all marketing costs, atypical financing costs, and those costs attributable to the right of a timeshare unit owner or user to participate in an exchange network of resorts" pursuant to section 192.037(11).

A. Whether an adequate number of resales exists to provide a basis for arriving at a value conclusion.

The comparable sales approach analyzes the recent sales of similar properties to arrive at the probable market price of the property being appraised. "Prior to using this approach, the appraiser must determine if there is an active market for the property from which *reliable sales*

data can be obtained." *Havill v. Scripps Howard Cable. Co.*, 742 So.2d 210, 212-3 (Fla. 1998) *(emphasis added)*. The parties agree that the sales data must reflect an arms-length transaction, which means a sale "where the parties involved are not affected by undue stimuli from family, business, financial, or personal factors." Dep't of Revenue, *Fla. Real Property Appraisal Guidelines*, § 3.1.8 (Nov. 2002). "Just value" or "fair market value" is defined as "the price at which a property, if offered for sale in the open market, with a reasonable time for the seller to find a purchaser, would transfer for cash or its equivalent, under prevailing market conditions between parties who have knowledge of the uses to which the property may be put, both seeking to maximize their gains and neither being in a position to take advantage of the exigencies of the other." Fla. Admin. Code R. 12D-1.002(2) (2018).

Appraisal is an art, not a science. *Powell v. Kelly*, 223 So.2d 305, 309 (Fla. 1969). The determination of just value necessarily involves the exercise of appraisal judgment. *Dep't of Revenue v. Howard*, 916 So.2d 640, 643 (Fla. 2005). Appraisal judgment is defined as "the process, using imperfect information, of reaching a reasoned conclusion within a reasonable range of alternatives by differentiating between and comparing alternatives." Dep't of Revenue, *Fla. Real Property Appraisal Guidelines*, § 3.2.6 (Nov. 2002).

This Court concludes that the Property Appraiser has proven, by a preponderance of the evidence, that there are an inadequate number of resales to provide a basis for arriving at value conclusions. The resale market does not provide a sufficient basis for obtaining reliable sales data. The Property Appraiser's appraisal judgment in concluding that reliable and credible valuations could not be obtained from the resale market was well researched and supported the evidence adduced at trial.

B. Whether the Property Appraiser complied with section 192.037(11)?

This Court finds the Property Appraiser has proven, by a preponderance of the evidence, that her assessment for 2015 complied with section 192.037(11). This Court rejects the Plaintiffs' argument that the "original purchase price," as contemplated under section 192.037(11), requires use of the sales that occurred when the timeshare resort was initially offered for sale in the late 1990's and early 2000's. Such an argument relies upon a reading of the statute that is inconsistent with the annual assessment responsibilities of the Property Appraiser under section 192.042, Florida Statutes (2018), which requires all property to be assessed according to its just value on January 1st of each year. Ms. Breitenbruck's and Mr. Marshall's use of the original purchase prices from the developer in calendar year 2014 is appropriate under the statute and reflects the reality that essentially only two types of sales are occurring; developer sales and resales from individual to individual.

This Court finds that Plaintiffs' have failed to establish that the deductions from the original purchase price from the developer inadequately reflect the intangible value inherent in the sale of timeshare interests. The ownership of a points-based timeshare interest is simply another way of describing the interval purchased and right to use the accommodation. According to the POS for the Wyndham Star Island Resort, points symbolically reflect the percentage of the tenancy-in-common ownership interest in the building with other owners of timeshare interests.

The POS clearly describes that purchasers of such interests have the *option* of "assigning the use and occupancy rights appurtenant to such Ownership Interest into Club Wyndham Plus, which is an exchange company operated by the Developer." (PL. Exh. #4, Def. Exh. #6 at 35, 36 of 191) As the district court observed in *Walker*, the bundle of rights attributable to a timeshare

ownership interest is a fee interest in real property and includes the complete right to use or not use the property and the right to mortgage, lease, sell, bequeath, or give away the timeshare estate.

A purchaser's decision to assign the use and occupancy rights appurtenant to his or her ownership interest is the exercise of one of the bundle of rights attributable to real property. Section 192.037(11) does not require a deduction for the exercise of this right. Rather, it requires a deduction, among other items, for the "costs attributable to the right of a timeshare unit owner or user to participate in an exchange network or resorts." Both Ms. Breitenbruck and Mr. Marshall included such deductions in their calculations. Mr. Marshall specifically attributed four percent (4%) to the costs attributable to Club Wyndham Plus, and based that amount on the franchise fee or royalty paid by a full service hotel for the central reservation system. In this regard, his deduction comports with the position of the parties in the *Nolte* decision that the "sales price of the time-share units included not only the costs attributable to real property and tangible personal property, but many other cost components typical of and peculiar to time-share estates (*i.e.*, marketing costs and other intangible values such as the right to participate in an exchange network of resorts and a reservation and front-desk system, together with other services and amenities ordinarily associated with a hotel)." 524 So.2d at 416. The legislature essentially codified that position in section 192.037(11). *See also* §§ 192.001(19), 193.017, Fla. Stat. (2015); *Holly Ridge Ltd. P'ship v. Pritchett*, 936 So.2d 694, 698 (Fla. 5th DCA 2006) (statute reflected "an effort by the legislature to define these tax credits as intangible personal property and thereby exempt from ad valorem taxation"); *Gilreath v. General Elec. Co.*, 751 So.2d 705 (Fla. 5th DCA 2000) (definition of computer software as intangible personal property was constitutional).

IV. Burden of Proof

The burden of proof applicable to ad valorem assessment challenges is set forth in section 194.301, Florida Statutes (2018). The statute provides that an assessment will be presumed correct if the Property Appraiser "proves by a preponderance of the evidence that the assessment was arrived at by complying with s. 193.011, any other applicable statutory requirements relating to classified use values or assessment caps, and professionally accepted appraisal practices, including mass appraisal standards, if appropriate." § 194.301(1), Fla. Stat. (2018). Although section 194.301 does not specifically mention section 192.037, the Property Appraiser has accepted the burden of proof for demonstrating compliance with sections 192.037(10) and (11) in her assessment, reasoning that these provisions should be read *in pari materia* with section 193.011, Florida Statutes (2018). The Plaintiffs have not disputed this position.

This Court concludes that the Property Appraiser has established, by a preponderance of the evidence, that her assessment complied with sections 192.037(10) and (11) along with section 193.011 and professionally accepted appraisal practices.[7] The Property Appraiser, consistent with section 192.037(10), looked first to the resale market in establishing her assessment. After concluding that there were an inadequate number of resales to support a credible valuation, the Property Appraiser used the original purchase price from the developer and applied the deductions for personal property and costs attributable to marketing, atypical financing, and the right of a timeshare unit owner to participate in an exchange network of resorts as set forth in section

[7] The Plaintiffs have not challenged the Property Appraiser's consideration of section 193.011 or use of professionally accepted appraisal practices. When sales of comparable properties are used to determine just value, the property appraiser performs a standard appraisal and considers all and uses some of the factors in section 193.011. *Nolte*, 524 So.2d at 418. The Plaintiffs' expert, Frank Catlett, testified that use of a comparable sales approach by relying upon the original purchase price from the developer would constitute a professionally accepted appraisal practice if the appropriate deductions were made under section 192.037(11).

192.037(11). The assessment for 2015, therefore, is entitled to the presumption of correctness under section 194.301(1).

This Court finds that the Plaintiffs have failed to establish, by a preponderance of the evidence, that the assessment exceeds just value for 2015. Mr. Catlett's appraisal was solely based on the resale market, and the Plaintiffs presented no other testimony or evidence regarding additional deductions necessary under section 192.037(11).[8] Mr. Marshall's testimony and appraisal, which the court finds credible and well-reasoned, concluded a fair market value of $95,200,000 easily supports the Property Appraiser's assessment of $71,451,000.

This Court rejects the Plaintiffs' position that the assessment of the Wyndham Star Island Resort should be reduced because of the lower assessment of the timeshare interests at Vacation Break and Star Island. This Court is cognizant of case law concluding that it is "fundamental that property in Florida is legally required to be assessed at 100% of its actual fair market value and a court may not reduce a taxpayer's assessment below 100% on a mere showing that parcels of some other taxpayers are assessed at a lesser amount." *Deltona Corp. v. Bailey*, 336 So.2d 1163, 1167 (Fla. 1976); *see Ozier v. Seminole Cty. Property Appraiser*, 585 So.2d 357, 358 (Fla. 5th DCA 1991) (taxpayer had standing to challenge assessment by relying upon systemic undervaluation of

[8] The Plaintiffs also rely upon Florida Administrative Code Rule 12D-6.006 (2018), as support for their argument that the accuracy of the Property Appraiser's assessment should be evaluated by reference to prices occurring in the resale market. The rule provides that resales should be used as the basis for determining the extent of any deductions and allowances that may be appropriate under section 193.011(8). Fla. Admin. Code R. 12D-6.006(3)(d) (2018). Review of the rule in its entirety, however, reveals that no reference is made to the operative sections 192.037(10) and (11). The rule initially was adopted in 1985, which was prior to passage of sections 192.037(10) and (11) in 1988. An administrative rule is operative until it is modified or superseded by subsequent legislation. *Hulmes v. Div. of Retirement*, 418 So.2d 269 (Fla. 1st DCA 1982). In the event of a conflict between a statute and an administrative rule, the statute governs. *Dep't of Revenue v. A. Duda & Sons, Inc.*, 608 So.2d 881, 884 (Fla. 5th DCA 1992); *see also Garcia v. Andonie*, 101 So.3d 339, 352 (Fla. 2012) (Department of Revenue administrative rule was not controlling authority relative to the constitutional issue of permanent residency). It appears that the rule has been effectively superseded by the intervening statutory enactment.

a substantial number of homes). This Court is not persuaded, however, that the assessment of the Wyndham Star Island Resort should be reduced because of the assessments at Vacation Break and Star Island.

The Plaintiffs' appraisal expert, Mr. Catlett, testified that he had no opinion as to the fair market value of the combined timeshare interests at either Vacation Break or Star Island. In addition, he had no opinion as to whether the timeshare interests at Vacation Break and Star Island should have the same value as the timeshare interests at Wyndham Star Island Resort. The evidence adduced at trial included discussion of an agreement between Wyndham and the developer of Vacation Break and Star Island whereby Wyndham had the exclusive right to market to owners and visitors to the resort. There was an obvious and appreciable difference in the sales activity within the three resorts. In calendar year 2014, there was a total of 18 annual sales of timeshare interests within Vacation Break and Star Island compared to 666 annual sales within Wyndham Star Island Resort. Ms. Breitenbruck testified that she relied upon the original purchase prices from the developer occurring in the respective resorts in 2014 to arrive at the assessment for the 2015 tax year.

This Court declines to speculate that the differences in assessments, number of sales, and consideration paid is caused by the difference between a "fixed week" and "points-based" timeshare interests, the impact of the exclusive marketing agreement, the presence of intangibles, or a difference in the quality or condition of the respective properties. The plaintiff has simply failed to present any evidence or expert opinion that the assessments should be the same or, restated, that the assessment of Wyndham Star Island Resort is excessive.[9]

[9] After review all of the evidence and arguments presented by the parties, this Court's decision is aligned with the prior decision in *Cypress Palms Condo. Ass'n, Inc. v. Scarborough*, No. 2012-CA-1293 (Fla. 10th Jud. Cir. Ct. Jul. 25, 2016), which is considered persuasive.

Based upon the foregoing, it is **ORDERED** and **ADJUDGED** as follows:

1. Defendant Property Appraiser has proven, by a preponderance of the evidence, that the assessment of the Wyndham Star Island Resort for the 2015 tax year complied with section 192.037(10) and (11), section 193.011, and professionally accepted appraisal practices. Therefore, Defendant's assessment for 2015 is entitled to a presumption of correctness.

2. Plaintiffs have failed to establish, by a preponderance of the evidence, that the 2015 assessment exceeded just value for 2015.

3. The Property Appraiser's assessment of $71,451,000 for 2015 is hereby upheld.

4. Final Judgment is hereby entered in favor of Defendant Property Appraiser and against the Plaintiffs.

5. Plaintiffs shall take nothing by this action and shall go hence without day.

6. The Court reserves jurisdiction for a period of one hundred eighty (180) days to consider a timely motion to tax costs.

DONE and **ORDERED** in Chambers at Kissimmee, Osceola County, Florida on this 21ST day of August, 2019.

MARGARET H. SCHREIBER
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by electronic filing by using the Florida Courts E-Filing Portal System on this 21st day of August, 2019, to the following:

Robert E. V. Kelley, Jr., Esquire	*rob.kelley@hwhlaw.com*
Patrick J. Risch, Esquire	*prisch@hwhlaw.com*
Loren E. Levy, Esquire	*service.levylaw@comcast.net*
R. Stephen Miles, Esquire	*smiles@kisslawyer.com*
Timothy E. Dennis, Esquire	*timothy.dennis@myfloridalegal.com*

Wendy Blair
Judicial Assistant

THE FLORIDA SENATE

APPEARANCE RECORD

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

3/30/2024
Meeting Date

1358
Bill Number (if applicable)

Topic _____

Amendment Barcode (if applicable)

Name Loren Levy

Job Title General Counsel, Property Appraisers' Assn of Fla.

Address 1828 Riggins Rd
Street

Tallahassee FL 32308
City *State* *Zip*

Phone 850-219-0220

Email llevy@levylawfirm.com

Speaking: ☐ For ☑ Against ☐ Information

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

Representing Property Appraisers' Assn of Florida

Appearing at request of Chair: ☐ Yes ☑ No

Lobbyist registered with Legislature: ☑ Yes ☐ No

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

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

S-001 (10/14/14)

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

THE FLORIDA SENATE

APPEARANCE RECORD

3/30/21
Meeting Date

1358
Bill Number (if applicable)

Amendment Barcode (if applicable)

Topic _____

Name Gary K. Hunter, Jr.

Job Title Attorney

Address 119 S. Monroe Street, Suite 300
Street

Tallahassee FL 32301
City *State* *Zip*

Phone 850.222.7500

Email garyh@hgslaw.com

Speaking: ☐ For ☐ Against ☐ Information

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

Representing American Resort Development 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

Tallahassee, Florida 32399-1100

COMMITTEES:
Appropriations Subcommittee on Agriculture, Environment, and General Government, *Chair*
Children, Families, and Elder Affairs, *Vice Chair*
Appropriations
Environment and Natural Resources
Health Policy
Regulated Industries
Rules

JOINT COMMITTEE:
Joint Administrative Procedures Committee, *Alternating Chair*

SENATOR BEN ALBRITTON
26th District

March 30, 2021

Chairman Travis Hutson,

Please let this letter serve as my request for excusal from the Regulated Industries Committee meeting on 3/30/21. I was called to a meeting with the president.

Please let me know if you need any additional information.

Best regards,

Sen. Ben Albritton
District 26

REPLY TO:
❒ 150 North Central Avenue, Bartow, Florida 33830 (863) 534-0073
❒ 410 Taylor Street, Suite 106, Punta Gorda, Florida 33950 (941) 575-5717
❒ 314 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5026

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

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

COMMITTEES:
Governmental Oversight and Accountability, *Chair*
Appropriations Subcommittee on Agriculture, Environment, and General Government, *Vice Chair*
Appropriations Subcommittee on Health and Human Services
Banking and Insurance
Finance and Tax
Judiciary
Regulated Industries

JOINT COMMITTEES:
Joint Select Committee on Collective Bargaining, *Alternating Chair*
Joint Committee on Public Counsel Oversight

SENATOR RAY WESLEY RODRIGUES
27th District

March 30, 2021

The Honorable Travis Hutson
Senate Regulated Industries, Chair
525 Knott Building
404 South Monroe Street
Tallahassee, FL 32399

Dear Chair Hutson,

I am writing to request an excused absence from the Committee on Regulated Industries meeting on March 30, 2021. I was unable to attend due to a bill presentation in the Committee on Ethics and Elections.

Sincerely,

Ray Rodrigues

Senator Ray Rodrigues
Senate District 27

REPLY TO:
❒ 2000 Main Street, Suite 401, Fort Myers, Florida 33901 (239) 338-2570
❒ 305 Senate Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5027

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

WILTON SIMPSON
President of the Senate

AARON BEAN
President Pro Tempore

CourtSmart Tag Report

Room: KB 412 **Case No.:** - **Type:**
Caption: Regulated Industries Committee **Judge:**

Started: 3/30/2021 12:30:02 PM
Ends: 3/30/2021 1:09:39 PM Length: 00:39:38

12:30:01 PM Meeting called to order and roll call
12:30:19 PM Pledge of Allegiance
12:31:31 PM Opening comments and Covid-19 precautions by Chair Hutson
12:31:37 PM Tab 2, SB 1836, Public Records/Lottery Winners, by Senator Polsky
12:31:41 PM Senator Polsky presenting SB 1836
12:32:18 PM Barcode 267086 by Senator Polsky
12:33:20 PM Amendment 267086 adopted
12:33:31 PM Senator Polsky closes on SB 1836
12:33:51 PM Roll call on CS/SB 1836
12:34:02 PM CS/SB 1836 is reported Favorably
12:34:15 PM Tab 1, SB 332, Unlicensed Contracting by Senator Perry
12:34:23 PM Senator Perry presenting SB 332
12:35:17 PM Late filed amendment barcode 869056 by Senator Perry
12:35:42 PM Question by Senator Rouson
12:36:14 PM
12:36:26 PM Amendment 869056 adopted
12:36:51 PM Edward Briggs with Cotney Construction Law, waives in support
12:37:00 PM Senator Rouson in debate
12:37:29 PM Senator Perry closes on the bill
12:37:33 PM Roll call on CS/SB 332
12:37:38 PM CS/SB 332 is reported Favorably
12:37:59 PM Tab 3, SB 1966, Department of Business and Professional Regulation by Senator Diaz
12:38:06 PM Senator Diaz presenting SB 1966
12:40:54 PM Amendment Barcode 361442 by Senator Diaz
12:41:35 PM Amendment 361442 adopted
12:41:45 PM Amendment Barcode 640586 by Senator Diaz
12:42:00 PM Amendment 640586 adopted
12:42:30 PM Colton Madill, DBPR waives in support
12:42:44 PM Eric Prutsman, Alarm Association of Florida, waives in support
12:42:48 PM Senator Stewart in debate
12:43:01 PM Senator Diaz closes
12:43:09 PM Roll call on CS/SB 1966
12:43:16 PM CS/SB 1966 is reported favorably
12:43:32 PM Tab 4, SB 902, Public Pool Regulations by Senator Rodrigues
12:43:41 PM Chair turned over to Vice Chair Book, Senator Hutson presenting for Senator Rodrigues
12:43:57 PM Amendment Barcode 110370 Delete-all
12:44:35 PM Senator Rouson for a question
12:45:03 PM Response by Senator Hutson
12:45:54 PM Amendment 110370 adopted
12:46:02 PM Senator Hutson waives close
12:46:27 PM Roll call on CS/SB 902
12:46:35 PM CS/SB 902 is reported favorably
12:46:51 PM Chair turned back to Chair Hutson
12:46:58 PM Tab 5, SB 1358, Valuation of Timeshare Real Property by Senator Gruters
12:46:59 PM Senator Gruters explains the bill
12:49:22 PM Question by Senator Rouson
12:49:31 PM Response by Senator Gruters
12:50:34 PM Follow-up question Senator Rouson
12:50:41 PM Response by Senator Gruters
12:51:08 PM Follow up question by Senator Rouson
12:51:53 PM Response by Senator Gruters
12:52:05 PM Follow-up question by Senator Rouson

12:52:52 PM Response by Senator Gruters
12:53:05 PM Senator Hooper for a question
12:53:54 PM Response by Senator Gruters
12:54:43 PM Follow-up question by Senator Hooper
12:55:03 PM Response by Senator Gruters
12:55:39 PM Question from Senator Stewart
12:55:44 PM Response by Senator Gruters
12:56:58 PM Loren Levy, Property Appraisers' Association of Florida, speaking against the bill
1:03:07 PM Question from Senator Gruters
1:03:11 PM Response by Loren Levy (mic issue)
1:03:29 PM Repeat question from Senator Gruters
1:03:38 PM Response by Loren Levy (still have sound issue)
1:03:59 PM Chair Hutson repeats question for Senator Gruters
1:04:06 PM Response from Loren Levy
1:04:49 PM Senator Stewart in Debate
1:05:48 PM Senator Hooper in Debate
1:06:57 PM Senator Gruters closes on SB 1358
1:08:01 PM Roll call on SB 1358
1:09:05 PM SB 1358 is reported favorably
1:09:26 PM Senator Hooper moves to adjourn