

**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.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: CS/SB 610

INTRODUCER: Criminal Justice Committee and Senator Pizzo

SUBJECT: Condominium Associations

DATE: March 25, 2019

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Erickson	Jones	CJ	Fav/CS
2.			IT	
3.			ACJ	
4.			AP	

**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 610 amends s. 718.111, F.S., relating to condominium associations, to:

- Provide that it is a third degree felony for an officer, director, or manager of a condominium association to knowingly solicit, offer to accept, or accept any thing or service of value or kickback;
- Relocate or revise the current offenses relating to forgery of a ballot or voting certificate used in a condominium association election, theft or embezzlement of funds of an association, and destruction of or refusal to allow inspection or copying of certain official records of an association;
- Provide that it is a second degree misdemeanor for any director or member of the board or association to knowingly, willfully, and “repeatedly” violate (two or more violations within a 12-month period) any specified requirements relating to inspection and copying of official records of an association;
- Provide that it is a first degree misdemeanor to knowingly or intentionally deface or destroy required accounting records or knowingly and intentionally fail to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members;
- Provide that it is a third degree felony to willfully and knowingly refuse to release or otherwise produce association records, with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape; and

- Provide that a person commits theft by use of a debit card, if the person uses a debit card issued in the name of an association, or billed directly to an association, for any expense that is not a lawful obligation of the association.

The bill also creates s. 718.129, F.S., which specifies acts constituting fraudulent voting activities related to an association election and acts in furtherance of such fraudulent voting activities, and provides that commission of any of those acts is a third degree felony.

Some of the changes made by the bill regarding condominium association records and elections are similar to changes recommended in a 2017 report by a Miami-Dade County grand jury.

The Legislature's Office of Economic and Demographic Research preliminarily estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds). See Section V. Fiscal Impact Statement.

The bill is effective October 1, 2019.

## II. Present Situation:

### Condominium Association

Chapter 718, F.S., titled "The Condominium Act," "give[s] statutory recognition to the condominium form of ownership of real property and establish[es] procedures for the creation, sale and operation of condominiums."<sup>1</sup> A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements.<sup>2</sup>

A condominium association, which is a Florida corporation for profit or a Florida corporation not for profit,<sup>3</sup> "manages and operates the condominium community, maintains the common elements, and provides services in furtherance of its duties to the members. Each purchaser, by accepting title to his or her unit, automatically becomes an association member, and is bound by the association rules and regulations."<sup>4</sup>

"The board of directors, initially appointed by the developer and subsequently elected by the unit owners, is responsible for managing the affairs of the association. The board may appoint

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<sup>1</sup> *Citizen Property Insurance Corp. v. River Manor Condominium Assoc., Inc.*, 125 So.3d 846, 850 (Fla. 4th DCA 2013) (citation omitted).

<sup>2</sup> Section 718.103(11), F.S. "Common elements" are the portions of the condominium property not included in the units. Section 718.103(8), F.S. "The structure of the building including the roof, walls, conduit and hallways, and recreation facilities are examples of items that are usually part of the common elements. Common elements are legally attached to each unit and are transferred with the unit when it is sold." *Condominium Living in Florida* (Revised Jan. 2018), Department of Business and Professional Regulation, Division of Florida Condominiums, Timeshares, and Mobile Homes, available at <http://www.myfloridalicense.com/dbpr/lsc/documents/CondominiumLiving.pdf> (last visited on March 18, 2019). This document is further cited in this analysis as "*Condominium Living in Florida*."

<sup>3</sup> Section 718.111(1)(a), F.S.

<sup>4</sup> *Condominium Living in Florida, supra*. Owners of units are shareholders or association members. Section 718.111(1)(a), F.S.

committees to assist with the various duties of the association.”<sup>5</sup> “It is the board’s duty and responsibility to determine the association’s needs, limited by the association’s fiscal resources. An association may be self-managed or hire professional management.”<sup>6</sup>

“The Division of Florida Condominiums, Timeshares, and Mobile Homes within the Department of Business and Professional Regulation (DBPR) is the agency charged with the responsibility of ensuring that condominium associations comply with the requirements of the Condominium Act. The DBPR also promulgates administrative rules necessary to implement, enforce, and interpret these laws.”<sup>7</sup>

### **Miami-Dade County Grand Jury Report “Addressing Condo Owners’ Pleas for Help: Recommendations for Legislative Action”**

The increasing numbers of condominiums in this state, the increasing numbers of problems for people living in them, and the increasing numbers of complaints against the DBPR, motivated a Miami-Dade County grand jury to conduct an investigation of complaints by condominium residents and the DBPR’s responses to their complaints.<sup>8</sup> The grand jury’s report contains numerous findings and recommendations. Findings and recommendations relevant to provisions of the bill are discussed in this analysis, *infra*.

### **Regulation of Condominium Associations (s. 718.111, F.S.)**

Section 718.111, F.S., regulates the activities of a condominium association. “The statute, for example, establishes how the association shall be constituted, *see* s. 718.111(1)(a)-(c); the powers and duties of the association, *see* s. 718.111(2)-(14), including the association’s rights to own and convey property, *see* s. 718.111(7)(a); and the association’s right to purchase land, leases, and condominium units. *See* s. 718.111(8)-(9).”<sup>9</sup>

### ***Breaches of a Fiduciary Duty and Prohibited Acts (s. 718.111(1)(a) and (d), F.S.)***

Officers and directors of a condominium association have a fiduciary relationship to the unit owners, and may be sanctioned for breach of their fiduciary duty.<sup>10</sup> An officer, director, or manager may not solicit, offer to accept, or accept any thing or service of value or kickback for which consideration has not been provided for his or her own benefit or that of his or her immediate family, from any person providing or proposing to provide goods or services to the association.<sup>11</sup>

<sup>5</sup> *Condominium Living in Florida, supra*.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* The rules are chs. 61B-15 through 61B-24, F.A.C. (condominiums) and chs. 61B-45 and 61B-50, F.A.C. (arbitration of certain disputes between unit owners and their association).

<sup>8</sup> *Final Report of the Miami-Dade County Grand Jury (Addressing Condo Owner’s Pleas for Help: Recommendations for Legislative Action)* (Filed Feb. 6, 2017), Eleventh Judicial Circuit, available at <http://www.miamisao.com/wp-content/uploads/2017/02/Grand-Jury-Report-Final.pdf> (last visited on March 18, 2019). This document is further cited in this analysis as “*Final Report of the Miami-Dade County Grand Jury*.”

<sup>9</sup> *Citizen Property Insurance Corp. v. River Manor Condominium Assoc., Inc.*, *supra*, 125 So.3d at 850.

<sup>10</sup> Section 718.111(1)(a), F.S.

<sup>11</sup> Section 718.111(1)(a), F.S., does not prohibit an officer, director, or manager from accepting services or items received in connection with trade fairs or education programs.

Any such officer, director, or manager who knowingly solicits, offers to accept, or accepts any thing or service of value or kickback is subject to a civil penalty pursuant to s. 718.501(1)(d), F.S., and, if applicable, a criminal penalty as provided in s. 718.111(1)(d), F.S.<sup>12</sup> Section 718.111(1)(d), F.S., requires an officer, director, or agent to discharge his or her duties in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the interests of the association. This paragraph further provides that an officer, director, or agent is liable for monetary damages as provided in s. 617.0834, F.S., if such officer, director, or agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes:

- A violation of criminal law as provided in s. 617.0834, F.S.;
- A transaction from which the officer or director derived an improper personal benefit, either directly or indirectly; or
- Recklessness or an act or omission that was in bad faith, with malicious purpose, or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Section 718.111(1)(d), F.S., also criminalizes the following acts:

- Forgery of a ballot envelope or voting certificate used in a condominium association election is punishable as provided in s. 831.01, F.S.;
- Theft or embezzlement of funds of a condominium association is punishable as provided in s. 812.014, F.S.; and
- Destruction of or refusal to allow inspection or copying of an official record of a condominium association that is accessible to unit owners within the time periods required by general law in furtherance of any crime is punishable as tampering with physical evidence as provided in s. 918.13, F.S., or as obstruction of justice as provided in ch. 843, F.S.

Finally, s. 718.111(1)(d), F.S., provides that an officer or director charged by information or indictment with any crime referenced in this paragraph<sup>13</sup> must be removed from office, and the vacancy must be filled as provided in s. 718.112(2)(d)2., F.S., until the end of the officer's or director's period of suspension or the end of his or her term of office, whichever occurs first.<sup>14</sup> If a criminal charge is pending against the officer or director, he or she may not be appointed or elected to a position as an officer or a director of any association and may not have access to the official records of any association, except pursuant to a court order. However, if the charges are resolved without a finding of guilt, the officer or director must be reinstated for the remainder of his or her term of office, if any.

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<sup>12</sup> *Id.* All information in this paragraph of the analysis is from s. 718.111(1)(a), F.S.

<sup>13</sup> The only crimes specifically referenced in s. 718.111(1)(d), F.S., are the previously-described offenses relating to forgery of a ballot envelope or voting certificate, theft or embezzlement of association funds, and destruction of or refusal to allow inspection or copying of association records. Additionally, s. 718.111(1)(d), F.S., states that an officer, director, or agent shall be liable for monetary damages as provided in s. 617.0834, F.S., if such officer, director, or agent breached or failed to perform his or her duties and the breach of, or failure to perform, his or her duties constitutes a violation of criminal law as provided in s. 617.0834, F.S. The reference to criminal violations in s. 718.111(1)(d), F.S., is slightly different than the reference to criminal violations in s. 718.112(2)(o), F.S., which provides that a director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property must be removed from office. The latter provision appears to be more limited than the former provision.

<sup>14</sup> All information in this paragraph of the analysis is from s. 718.111(1)(d), F.S.

The Miami-Dade County grand jury found:

Although the directors have a legally mandated fiduciary obligation toward their unit owners, it appears that some of them are more involved in self-dealing and looking out for their own financial interests. The position of board director is not generally a paid position. Yet, some directors appear to view the ability to get into office as an opportunity to cash in. This should not be countenanced.<sup>15</sup>

The grand jury did not make any specific recommendation to criminalize what is currently subject to civil penalty under s. 718.111(1)(a), F.S: An officer, director, or manager knowingly soliciting, offering to accept, or accepting any thing or service of value or kickback for which consideration has been provided for his or her own benefit or that of his or her immediate family, from any person proposing to provide goods or services to the association.

***Records of a Condominium Association and Violations Involving Those Records***  
***(s. 718.111(12)(a),(b), (c), and (g), F.S.)***

Section 718.111(12)(a), F.S., requires a condominium association to maintain numerous records specified in that paragraph, including but not limited to, the association's recorded bylaws and amendments to those bylaws, articles of incorporation and amendments to those articles, bills of sale or transfer for association-owned property, accounting records, voting ballots, contracts for work to be performed, and bids.

Section 718.111(12)(b), F.S., requires that some of these records (e.g., bylaws and articles of incorporation) must be permanently maintained from the inception of the association. All other official records must be maintained within the state for at least 7 years, unless otherwise provided by general law.<sup>16</sup> The records must be made available to a unit owner within 45 miles of the condominium property or within the county in which the condominium property is located within 10 working days after receipt of a written request by the board or its designee. Compliance with this requirement includes having a copy of the records available for inspection or copying on the condominium property or association property or offering the option of making the records available to a unit owner electronically via the Internet or by allowing the records to be viewed in electronic format on a computer screen and printed upon request.

Section 718.111(12)(c)1., F.S., provides that official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times.<sup>17</sup> A renter of a unit has a right to inspect and copy the association's bylaws and rules. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with these requirements. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. The failure

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<sup>15</sup> *Final Report of the Miami-Dade County Grand Jury, supra*, at page 10 (citation omitted).

<sup>16</sup> All information in this paragraph of the analysis is from s. 718.111(12)(b), F.S.

<sup>17</sup> All information in this paragraph of the analysis is from s. 718.111(12)(c)1., F.S. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying.

to permit inspection entitles any person prevailing in an enforcement action to recover reasonable attorney fees from the person in control of the records who, directly or indirectly, knowingly denied access to the records.

Section 718.111(12)(c)2., F.S., provides that any person who knowingly or intentionally defaces or destroys accounting records that are required by ch. 718, F.S., to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d), F.S.

Section 718.111(12)(g), F.S., provides that by January 1, 2019, an association managing a condominium with 150 or more units which does not contain timeshare units must post digital copies of specified records on its website.<sup>18</sup> These documents include, but are not limited to: the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration, the recorded association bylaws and amendments to those bylaws, articles of incorporation of the association and amendments to those articles, the annual and proposed budget, and various contracts, including any contract or document regarding a conflict of interest or possible conflict of interest. The failure of the association to post required information is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

The Miami-Dade County grand jury found that provisions of s. 718,111, F.S., “are not effectively protecting unit owners’ right to access records.”<sup>19</sup> “Under the law, if the association fails to comply with a valid request, monetary damages can be awarded to the unit owner. The problem is that the source of those funds will come from assessments levied against all owners.”<sup>20</sup> The grand jury also found:

It does not seem right to us that a recalcitrant board, acting against the interests of the association, can take willful action and not personally suffer serious consequences. To the extent that the association can engage in these tactics when a unit owner is making record requests for budget, accounting, audit or financial records, is most troubling. The willful failure to provide such documents may be part of a broader scheme to cover up embezzlement or other financial wrongdoing committed by the board or association. In furtherance of possible cover-ups, directors may also chose to intentionally deface or destroy accounting records or knowingly or intentionally create or maintain false accounting records that are required to be maintained by statute. Even such willful action, which again, may be done to cover-up theft of funds from the association, is only punishable by a civil penalty.<sup>21</sup>

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<sup>18</sup> All information in this paragraph of the analysis is from s. 718.111(12)(g), F.S.

<sup>19</sup> *Final Report of the Miami-Dade County Grand Jury, supra*, at page 5.

<sup>20</sup> *Id.* (citation omitted).

<sup>21</sup> *Final Report of the Miami-Dade County Grand Jury, supra*, at page 6 (citation omitted).

The grand jury made three recommendations regarding violations relating to access or destruction of association records that are relevant to directors:

- Section 718.11, F.S., should be amended to provide that directors and members of the board “who willfully and repeatedly fail to comply with their statutory obligation to appropriately and timely respond to written requests for official records of the association (more than two (2) violations within a rolling twelve(12) month period) shall be personally liable for payment of damages to the requesting unit owner(s)[.]”
- “... [D]irectors and members of the board or association who knowingly or intentionally deface or destroy accounting records or fail to create or maintain such records that are required by law shall be criminally liable for such conduct. We recommend that each such act will constitute a 2nd degree misdemeanor for a first offense, and that any subsequent offenses or violations will constitute a first degree misdemeanor[.]”
- “... [A]ny association, board director, management company or management company employee who willfully, knowingly, or intentionally refuses to release or otherwise produce official association records, and such refusal is done to facilitate or cover-up the commission of a crime, shall be criminally liable for such conduct. The violation shall be classified as a 3rd degree felony[.]”<sup>22</sup>

***Sanctions Relating to Unauthorized Use of Association-Related Debit Cards***  
(s. 718.111(15)(b), F.S.)

Section 718.111(15)(b), F.S., provides that use of a debit card issued in the name of the association, or billed directly to the association, for any expense that is not a lawful obligation of the association may be prosecuted as credit card fraud pursuant to s. 817.61, F.S.

**Civil Immunity (ss. 617.0834 and 617.0830, F.S.)**

As previously noted, s. 718.111(1)(d), F.S., provides that an association officer, director, or agent is liable for monetary damages as provided in s. 617.0834, F.S., if such officer, director, or agent breaches or fails to perform his or her duties as provided in that paragraph. Section 617.0834(1), F.S., in part, provides that an officer or director of a nonprofit organization recognized under s. 501(c)(3) or s. 501(c)(4) or s. 501(c)(6) of the Internal Revenue Code of 1986, as amended, is not personally liable for monetary damages to any person for any statement, vote, decision, or failure to take an action, regarding organizational management or policy by an officer or director, unless:

- The officer<sup>23</sup> or director<sup>24</sup> breached or failed to perform his or her duties as an officer or director; and
- The officer’s or director’s breach of, or failure to perform, his or her duties constitutes:
  - A violation of the criminal law, unless the officer or director had reasonable cause to believe his or her conduct was lawful or had no reasonable cause to believe his or her conduct was unlawful. A judgment or other final adjudication against an officer or director in any criminal proceeding for violation of the criminal law estops that officer or

<sup>22</sup> *Final Report of the Miami-Dade County Grand Jury, supra*, at pages 8-9.

<sup>23</sup> “Officer” means a person who serves as an officer without compensation except reimbursement for actual expenses incurred or to be incurred. Section 617.0834(2)(c), F.S.

<sup>24</sup> “Director” means a person who serves as a director, trustee, or member of the governing board of an organization. Section 617.0834(2)(b), F.S.

director from contesting the fact that his or her breach, or failure to perform, constitutes a violation of the criminal law, but does not estop the officer or director from establishing that he or she had reasonable cause to believe that his or her conduct was lawful or had no reasonable cause to believe that his or her conduct was unlawful;

- A transaction from which the officer or director derived an improper personal benefit, directly or indirectly; or
- Recklessness<sup>25</sup> or an act or omission that was committed in bad faith or with malicious purpose or in a manner exhibiting wanton and willful disregard of human rights, safety, or property.

Section 617.0830, F.S., provides general standards for non-profit directors and also specifies when a director is not personally liable for actions he or she takes or fails to take as a director. A director must discharge his or her duties as a director, including his or her duties as a member of a committee, in good faith, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, and in a manner he or she reasonably believes to be in the best interests of the corporation.<sup>26</sup> A director is not liable for any action taken as a director, or any failure to take any action, if he or she performed the duties of his or her office in compliance with s. 617.0830, F.S.<sup>27</sup>

#### **Civil Penalty (s. 718.501(1)(d), F.S.)**

As previously noted, s. 718.111(1)(d), F.S., provides that a condominium association officer, director, or manager who knowingly solicits, offers to accept, or accepts any thing or service of value or kickback is subject to a civil penalty pursuant to s. 718.501(1)(d), F.S. Further, s. 718.111(12)(c)2., F.S., provides that any person who knowingly or intentionally defaces or destroys accounting records as specified in that subparagraph or knowingly or intentionally fails to create or maintain accounting records as specified in that paragraph is personally subject to a civil penalty pursuant to s. 718.501(1)(d), F.S.

Section 718.501(1), F.S., authorizes the Division of Florida Condominiums, Timeshares, and Mobile Homes (Division) to enforce and ensure compliance with the provisions of ch. 718, F.S., and rules relating to the development, construction, sale, lease, ownership, operation, and management of residential condominium units. Section 718.501(1)(d)6., F.S., in part, authorizes the Division to impose a civil penalty individually against an officer or board member who willfully and knowingly<sup>28</sup> violates a provision of ch. 718, F.S., adopted rule, or a final order of the Division.

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<sup>25</sup> “Recklessness” means the acting, or omission to act, in conscious disregard of a risk: known, or so obvious that it should have been known, to the officer or director; and known to the officer or director, or so obvious that it should have been known, to be so great as to make it highly probable that harm would follow from such action or omission. Section 617.0834(2)(a), F.S.

<sup>26</sup> Section 617.0830(1), F.S.

<sup>27</sup> Section 617.0830(4), F.S.

<sup>28</sup> The term “willfully and knowingly” means that the Division informed the officer or board member that his or her action or intended action violates ch. 718, F.S., a rule adopted under ch. 718, F.S., or a final order of the Division and that the officer or board member refused to comply with the requirements of ch. 718, F.S., a rule adopted under ch. 718, F.S., or a final order of the Division. Section 718.501(1)(d)6., F.S.



### **Condominium Association Elections (s. 718.112, F.S.)**

Section 718.112, F.S., relating to condominium association bylaws, addresses condominium association elections. Members of the board of an association are generally selected through elections.<sup>29</sup> However, candidates for election to the board may not include a person who is delinquent in the payment of any monetary obligation due to the association.<sup>30</sup> Similarly, the association may suspend the voting rights of members who are delinquent in paying any monetary obligation to the association by more than 90 days.<sup>31</sup> Section 718.112, F.S., specifies requirements for the association to provide notice of the election date and ballot to unit owners entitled to vote, and for an eligible person to provide notice to the association of his or her intent to be a candidate.<sup>32</sup>

Elections are decided by a plurality of ballots cast.<sup>33</sup> 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.<sup>34</sup> A unit owner may not authorize any other person to vote his or her ballot, and any ballots improperly cast are invalid.<sup>35</sup> The election must be by secret ballot.<sup>36</sup>

The Miami-Dade County grand jury found that “[f]raud in the election process was a major factor impacting unit owners.”<sup>37</sup> Some of the fraudulent activity noted by the jury regarding one condominium association election included:

- The Election Monitor discovered what appeared to be double voting by many unit owners.
- “The candidate realized that some of the double votes were of owners from whom she had collected their ballot personally.”
- “Those owners identified their signatures on the true ballots and saw their names on other ballots, purportedly signed by those owners. The signatures on the other ballots were forged, notarized, and dated[.]”
- “Other owners identified their true ballots and identified forged signatures on ballots containing their names. Those ballots were also notarized and dated[.]”
- “All ballots with forged signatures were notarized by the same notary on the same day[.]”
- “Some unit owners whose names were on forged ballots were not in the country on the date the notary verified their signature and identity[.]”
- “None of the unit owners whose signatures were forged and notarized had ever met the notary[.]”
- The notary “later admitted the ballots were not signed in her presence[.]”<sup>38</sup>

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<sup>29</sup> See s. 718.112(2)(d)4., F.S.

<sup>30</sup> Section 718.112(2)(d)2., F.S.

<sup>31</sup> Section 718.303(5), F.S.

<sup>32</sup> Section 718.112(2)(d)4.a., F.S.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> Section 718.112(2)(d)1., F.S.

<sup>37</sup> *Final Report of the Miami-Dade County Grand Jury, supra*, at page 21.

<sup>38</sup> *Final Report of the Miami-Dade County Grand Jury, supra*, at page 22.

Two recommendations of the grand jury pertained to criminal penalties:

- "... [W]e recommend that any person or entity that engages in any fraudulent activity conducted in connection with the election of board members for the association shall be subject to criminal liability."
- "We further recommend that any director, LCAM,<sup>39</sup> management company, notary, attorney, or any other person who engages in, or conspires with another person to engage in fraudulent election activity shall be subject to criminal charges classified as a 3rd degree felony."<sup>40</sup>

### III. Effect of Proposed Changes:

The bill amends s. 718.111, F.S., relating to condominium associations, to:

- Provide that it is a third degree felony<sup>41</sup> for an officer, director, or manager of a condominium association to knowingly solicit, offer to accept, or accept any thing or service of value or kickback;
- Relocate or revise the current offenses relating to forgery of a ballot or voting certificate used in a condominium association election, theft or embezzlement of funds of an association, and destruction of or refusal to allow inspection or copying of certain official records of an association;<sup>42</sup>
- Require additional financial records (e.g., bank statements and invoices) to be maintained by a condominium association and made available for inspection by association members;
- Provide that maintaining association records includes maintaining them in an orderly manner and obtaining and recreating lost, destroyed, or otherwise unavailable records to the fullest extent possible;
- Relevant to the rebuttable presumption that an association willfully failed to copy inspection records, require that the written request for inspection comply with the association's document inspection rule;
- Provide that the assessment of minimum damages for an association's willful failure to copy inspection records begins on the eleventh working day after receipt of the written request that complies with the association's document inspection rule;
- Provide that the association may fulfill its requirement to provide inspection of association records by posting the records on its website and directing to its website persons authorized to request access to those records;

<sup>39</sup> "LCAM" refers to a licensed condominium association manager.

<sup>40</sup> *Final Report of the Miami-Dade County Grand Jury, supra*, at page 24.

<sup>41</sup> A third degree felony is punishable by up to five years in state prison and a fine of up to \$5,000. Sections 775.082 and 775.083, F.S.

<sup>42</sup> The bill punishes forgery of a ballot or voting certification in s. 718.129, F.S., a new statute created by the bill. The bill punishes theft or embezzlement of funds as theft by use of a debit card, if the person uses a debit card issued in the name of an association, or billed directly to an association, for any expense that is not a lawful obligation of the association. The bill punishes destruction of association accounting records as a first degree misdemeanor. The bill punishes refusal to allow inspection or copying of association records (repeated violations) as a second degree misdemeanor or third degree felony (where there is intent to avoid or escape detection, arrest, etc., for the commission of a crime). The removal of these offenses from s. 771.111(d), F.S., leaves only the current reference in that paragraph to "a violation of criminal law as provided in s. 617.0834" as a specific reference to a criminal violation, which is relevant to removing an officer or director based on a "pending criminal charge." However, as previously noted, s. 718.112(2)(o), F.S., provides that a director or officer charged by information or indictment with a felony theft or embezzlement offense involving the association's funds or property must be removed from office.

- Provide that it is a second degree misdemeanor<sup>43</sup> for any director or member of the board or association to knowingly, willfully, and “repeatedly” violate (two or more violations within a 12-month period) any specified requirements relating to inspection and copying of official records of an association;
- Provide that it is a first degree misdemeanor<sup>44</sup> to knowingly or intentionally deface or destroy required accounting records or knowingly and intentionally fail to create or maintain required accounting records, with the intent of causing harm to the association or one or more of its members;<sup>45</sup>
- Provide that it is a third degree felony to willfully and knowingly refuse to release or otherwise produce association records, with the intent to avoid or escape detection, arrest, trial, or punishment for the commission of a crime, or to assist another person with such avoidance or escape;<sup>46</sup>
- Remove a requirement that an association managing a condominium of 150 or more units (and no timeshare units) provide digital copies of specified documents on the association’s website and substitute a requirement that, by January 1, 2021, an association managing a condominium of 25 or more units (and no timeshare units) provide on its website digital copies of those specified documents and records subject to inspection by tenants or unit owners or their authorized representatives; and
- Provide that a person commits theft<sup>47</sup> by use of a debit card, if the person uses a debit card issued in the name of an association, or billed directly to an association, for any expense that is not a lawful obligation<sup>48</sup> of the association.

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<sup>43</sup> A second degree misdemeanor is punishable by up to 60 days in county jail and a fine of up to \$500. Sections 775.082 and 775.083, F.S.

<sup>44</sup> A first degree misdemeanor is punishable by up to one year in county jail and a fine of up to \$1,000. Sections 775.082 and 775.083, F.S.

<sup>45</sup> This provision is similar to the Miami-Dade County grand jury’s recommendation to criminally punish directors and members of the board or association who knowingly or intentionally deface or destroy accounting records or fail to create or maintain such records. The grand jury recommended a second degree misdemeanor for a first offense, and a first degree misdemeanor for any subsequent offenses. *Final Report of the Miami-Dade County Grand Jury, supra*, at pages 8-9.

<sup>46</sup> This provision is similar to the Miami-Dade County grand jury’s recommendation to make it a third degree felony for any association, board director, management company, or management company employee to willfully, knowingly, or intentionally refuse to release or otherwise produce official association records, if such refusal is done to facilitate or cover-up the commission of a crime. *Final Report of the Miami-Dade County Grand Jury, supra*, at pages 8-9.

<sup>47</sup> Theft is generally punishable based upon the value of the property stolen. Petit theft is generally a second degree misdemeanor or first degree misdemeanor. Section 812.014(3)(a) and (b), F.S. Grand theft is generally a third degree felony, second degree felony, or first degree felony. Section 812.014(1)(a)-(c), F.S. A second degree felony is punishable by up to 15 years in state prison and a fine of up to \$10,000. Sections 775.082 and 775.083, F.S. A first degree felony is generally punishable by up to 30 years in state prison and a fine of up to \$10,000. *Id.*

<sup>48</sup> The bill defines a “lawful obligation of the association” as an obligation that has been properly preapproved by the board and is reflected in the meeting minutes or the written budget.

The bill also creates s. 718.129, F.S., which specifies that the following acts constitute fraudulent voting activities related to an association election and that the commission of any of these acts is a third degree felony:<sup>49</sup>

- Willfully and falsely swearing or affirming any oath or affirmation, or willfully procuring another person to swear or affirm falsely to an oath of affirmation, in connection with or arising out of voting or elections;
- Perpetrating or attempting to perpetrate, or aiding in the perpetration of, any fraud in connection with any vote cast, to be cast, or attempted to be cast;
- Preventing an elector from voting, or preventing an elector from voting as the elector intended, by fraudulently changing or attempting to change a ballot, ballot envelope, vote, or voting certificate of the elector;
- Using bribery, menace, threat, or any other corruption to attempt, directly or indirectly, to influence, deceive, or deter any elector in voting;
- Directly or indirectly giving or promising anything of value to another person with the intent to buy the vote of that person or another person or to corruptly influence that person or another person in casting his or her vote;<sup>50</sup> and
- Directly or indirectly using or threatening to use force, violence, or intimidation or any tactic of coercion or intimidation to induce or compel an individual to vote or refrain from voting in an election or on any particular ballot measure.

Newly-created s. 718.129, F.S., also specifies that the commission of any of the following acts in furtherance of the previously-described fraudulent voting activities is a third degree felony:<sup>51</sup>

- Knowingly aiding, abetting, or advising a person in the commission of a fraudulent voting activity related to association elections;
- Agreeing, conspiring, combining, or confederating with at least one other person to commit a fraudulent voting activity related to association elections; and
- Having knowledge of a fraudulent voting activity related to association elections and giving any aid to the offender with intent that the offender avoid or escape detection, arrest, trial, or punishment.<sup>52</sup>

Some of the changes made by the bill regarding condominium association records and elections are similar to changes recommended in a 2017 report by a Miami-Dade County grand jury.<sup>53</sup>

The bill is effective October 1, 2019.

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<sup>49</sup> This provision is similar to the Miami-Dade County grand jury's recommendation to provide that it is a third degree felony for any director, LCAM, management company, notary, attorney, or any other person to engage in fraudulent election activity. *Final Report of the Miami-Dade County Grand Jury, supra*, at page 24.

<sup>50</sup> The bill provides that this offense does not apply to the serving of food to be consumed at an election rally or meeting or to any item of nominal value which is used as an election advertisement, including a campaign message designed to be worn by a person.

<sup>51</sup> This provision is similar to the Miami-Dade County grand jury's recommendation to provide that it is a third degree felony for any director, LCAM, management company, notary, attorney, or any other person to conspire with another person to engage in fraudulent election activity. *Final Report of the Miami-Dade County Grand Jury, supra*, at page 24.

<sup>52</sup> The bill provides that this offense does not apply to a licensed attorney giving legal advice to a client.

<sup>53</sup> See footnotes, 45, 46, 49, and 51, *supra*.

**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 identified.

**V. Fiscal Impact Statement:**

## A. Tax/Fee Issues:

None.

## B. Private Sector Impact:

None.

## C. Government Sector Impact:

The Legislature's Office of Economic and Demographic Research (EDR) preliminarily estimates that the bill will have a "positive indeterminate" prison bed impact (an unquantifiable increase in prison beds).<sup>54</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

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<sup>54</sup> The EDR estimate is on file with the Senate Committee on Criminal Justice.

**VIII. Statutes Affected:**

This bill substantially amends section 718.111 of the Florida Statutes.

This bill creates section 718.129 of the Florida Statutes.

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

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

**CS by Criminal Justice on March 25, 2019:**

The Committee Substitute:

- Requires additional financial records (e.g., bank statements and invoices) to be maintained by a condominium association and made available for inspection by association members;
- Provides that maintaining association records includes maintaining them in an orderly manner and obtaining and recreating lost, destroyed, or otherwise unavailable records to the fullest extent possible;
- Relevant to the rebuttable presumption that an association willfully failed to copy inspection records, requires that the written request for inspection comply with the association's document inspection rule;
- Provides that the assessment of minimum damages for an association's willful failure to copy inspection records begins on the eleventh working day after receipt of the written request that complies with the association's document inspection rule; and
- Removes a requirement that an association managing a condominium of 150 or more units (and no timeshare units) provide digital copies of specified documents on the association's website and substitutes a requirement that, by January 1, 2021, an association managing a condominium of 25 or more units (and no timeshare units) provide on its website digital copies of those specified documents and records subject to inspection by tenants or unit owners or their authorized representatives.

**B. Amendments:**

None.