Business & Professions Subcommittee

Wednesday, December 11, 2019
12:30 PM – 3:30 PM
Webster Hall (212 Knott)

Meeting Packet

Jose Oliva
Speaker

Heather Fitzenhagen
Chair

The Florida House of Representatives

Commerce Committee

Business & Professions Subcommittee

Jose Oliva
Speaker

Heather Fitzenhagen
Chair

AGENDA

Wednesday, December 11, 2019
Webster Hall (212 Knott)
12:30 PM – 3:30 PM

I. Call to Order & Roll Call

II. Welcoming Remarks

III. Consideration of the following bills(s):

CS/HB 103 by *Civil Justice Subcommittee, Gottlieb, Fernandez-Barquin*
Subpoenas

HB 133 by *Rep. McClain*
Towing and Immobilizing Vehicles and Vessels

HB 283 by *Rep. Toledo*
Liens and Bonds

HB 481 by *Rep. Mariano*
Malt Beverages

HB 583 by *Rep. Sabatini*
Beverage Law

HB 623 by *Rep. Shoaf*
Community Associations

HB 6037 by *Rep. LaMarca*
Individual Wine Containers

IV. Adjournment

303 House Office Building, 402 South Monroe Street, Tallahassee, Florida 32399-1300
(850) 717-4873 Fax: (850) 413-0419

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Business & Professions Subcommittee

Start Date and Time:	Wednesday, December 11, 2019 12:30 pm
End Date and Time:	Wednesday, December 11, 2019 03:30 pm
Location:	Webster Hall (212 Knott)
Duration:	3.00 hrs

Consideration of the following bill(s):

CS/HB 103 Subpoenas by Civil Justice Subcommittee, Gottlieb, Fernandez-Barquin
HB 133 Towing and Immobilizing Vehicles and Vessels by McClain
HB 283 Liens and Bonds by Toledo
HB 481 Malt Beverages by Mariano
HB 583 Beverage Law by Sabatini
HB 623 Community Associations by Shoaf
HB 6037 Individual Wine Containers by LaMarca

Pursuant to rule 7.11, the deadline for amendments to bills on the agenda by non-appointed members shall be 6:00 p.m., Tuesday, December 10, 2019.

By request of Chair Fitzenhagen, all Business & Professions Subcommittee members are asked to have amendments to bills on the agenda submitted to staff by 6:00 p.m., Tuesday, December 10, 2019.

NOTICE FINALIZED on 12/04/2019 4:00PM by Rigas.Amanda

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 103 Subpoenas
SPONSOR(S): Civil Justice Subcommittee, Gottlieb and Fernandez-Barquin
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	12 Y, 0 N, As CS	Frost	Luczynski
2) Business & Professions Subcommittee		Wright	Anstead
3) Judiciary Committee			

SUMMARY ANALYSIS

A subpoena is an order directed to a person requiring attendance at a particular time and place to give testimony as a witness or bring certain documents, records, or other tangible evidence. When a witness is subpoenaed in a criminal case, he or she must remain available for attendance until the case is resolved or he or she is excused by the court. If a witness departs without the court's permission or intentionally fails to produce the required tangible evidence, he or she may be held in contempt of court.

Contempt, which may be civil or criminal and direct or indirect, is a refusal to obey a court's legal order, mandate or decree. A person may commit indirect criminal contempt when he or she intentionally obstructs or interferes with the administration of justice by violating a court order, such as an investigative subpoena.

Section 92.605, F.S., authorizes an assistant state attorney (ASA) to issue an investigative subpoena to obtain information relating to criminal activity which is occurring or has occurred. When investigating criminal activity relating to electronic communications, such as homicide involving electronically stored surveillance footage, internet child pornography, or vehicular homicide due to careless cell phone usage, an ASA may issue an investigative subpoena to an out-of-state corporation (OOSC), and the following guidelines apply:

- An OOSC's registered agent must be properly served with a subpoena.
- An OOSC's response to the subpoena is due within 20 business days of receipt, unless a longer time period is provided.
- If a court finds that failing to produce records within 20 business days will cause an adverse result, a shorter time period may be provided.
- A court may reasonably extend the time period if an extension will not cause an adverse result.
- If an OOSC cannot produce the requested records within the time period provided, it must notify the ASA within the 20-day time period and agree to produce the documents at the earliest possible time.

The law does not specifically provide a remedy for when an OOSC fails to timely comply with a subpoena, and as such, contempt of court is the only available remedy.

CS/HB 103 amends s. 92.605, F.S., providing that service on an OOSC is proper when served:

- On a registered agent in this state;
- As authorized by the state where process is to be served; or
- At a location routinely used to accept service, if the corporation is doing business in Florida through the internet.

The bill authorizes an applicant who sought a subpoena to petition a court to compel compliance through indirect criminal contempt and a daily fine of between $100 and $1,000, for up to 60 days.

The bill does not appear to have a fiscal impact on state or local governments. The bill may have a fiscal impact on Florida businesses and OOSC's that fail to comply with subpoenas. The bill may generate revenues for the Clerks of the Court Trust Fund within the Justice Administrative Commission.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Subpoenas in General

A subpoena is an order directed to a person requiring attendance at a particular time and place. A subpoena ad testificandum requires attendance to testify as a witness, while a subpoena duces tecum orders a witness to appear and bring certain documents, records, or other tangible evidence that may be introduced as evidence in a case.[1] Subpoenas may be issued in a criminal investigation,[2] a criminal prosecution during discovery,[3] or for trial[4] by a defendant, his or her counsel,[5] or the state attorney. Generally, a subpoena must state the name of the court, title of action, and time and place the witness is ordered to give testimony or produce other evidence.[6] When a witness is subpoenaed by either party in a criminal case, he or she must remain available for attendance until the case is resolved or until he or she is excused by the court.[7] If a witness departs without permission of the court or intentionally fails to produce requested tangible evidence, he or she may be held in contempt of court.[8]

Contempt of Court

Contempt is a refusal to obey a court's legal order, mandate or decree.[9] There are two main types of contempt: civil and criminal. Civil contempt occurs when a person intentionally fails to do something ordered by the court in a civil case. Civil contempt is intended to compel a party's compliance or compensate a party for losses resulting from the contemptuous conduct.[10] Criminal contempt results from conduct that tends to intentionally obstruct or interfere with the administration of justice, and its purpose is to punish offensive conduct, vindicate the court's authority, and deter such conduct.[11] Both main types of contempt may also be:

- Direct: when committed in the immediate presence of the court, such as an assault of a testifying witness; or
- Indirect: when committed away from the presence of the court, such as disobeying a court order.

A person commits indirect criminal contempt when he or she intentionally obstructs or interferes with the administration of justice by violating a court order, such as an investigative subpoena.[12] While authorized by statute,[13] criminal contempt is not specifically classified as a felony or misdemeanor, and

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[1] *Black's Law Dictionary* (11th ed. 2019).
[2] Florida law authorizes certain entities to use subpoenas to conduct criminal investigations, including, but not limited to, s. 409.920, F.S. (authorizing the Attorney General to subpoena witnesses or materials, including medical records, during an investigation for Medicaid fraud); s. 415.107, F.S. (authorizing a criminal justice agency investigating a report related to abuse, neglect, or exploitation of a vulnerable adult to subpoena related records); and s. 414.411, F.S. (authorizing the Department of Financial Services to subpoena witnesses and records related to a public assistance fraud investigation).
[3] Fla. R. Civ. P. 3.220(h) allows any party to conduct a deposition by oral examination of any person authorized by the rule, generally including listed witnesses, co-defendants, or unlisted witnesses who have information relevant to the offense charged.
[4] A subpoena for testimony before the court and subpoenas for production of tangible evidence before the court may generally be issued by the clerk of the court or by any attorney of record in the case. Fla. R. Civ. P. 3.361(a).
[5] The United States Constitution guarantees a defendant in a criminal case the right to compulsory processes for obtaining witnesses in his or her favor; U.S. Const. amend. 6.
[6] *Id.*
[7] S. 914.03, F.S.
[8] *Id.*
[9] S. 38.23, F.S.; *See also Black's Law Dictionary*, (11th ed. 2019).
[10] *Elliott v. Bradshaw*, 59 So. 3d 1182 (Fla. 4th DCA 2011); *Bowen v. Bowen*, 471 So. 2d 1274 (Fla. 1985).
[11] *Elliot*, 59 So. 3d at 1184; Berlow *v. Berlow*, 21 So. 3d 81 (Fla. 3d DCA 2009); *In re Steffens*, 988 So. 2d 142 (Fla. 5th DCA 2008).
[12] *Elliot*, 59 So. 3d at 1184; *Sando v. State*, 972 So. 2d 271 (Fla. 4th DCA 2008).
[13] S. 38.22, F.S.

is instead classified as a common law crime,[14] punishable by up to twelve months in county jail and a fine up to $500.[15] [16] Due process of law requires that a party accused of indirect contempt be advised of the charge and provided an opportunity to defend himself or herself.[17]

Investigative Subpoenas in Criminal Cases

Within the criminal justice system, law enforcement is typically responsible for investigating a crime and an assistant state attorney prosecutes the offender. However, the State is often called upon to conduct or assist in an investigation which may lead to the filing of criminal charges. Under these circumstances, an ASA is authorized to issue an investigative subpoena.[18] Specifically, s. 27.04, F.S., allows an ASA to issue a subpoena for records[19] as part of any ongoing investigation.[20] An investigative subpoena allows the State to obtain information necessary to determine whether criminal activity is occurring or has occurred. When issuing an investigative subpoena, the State is not required to prove relevancy or materiality of the records sought,[21] but may only gather information that may lead to criminal charges.[22]

Records Subpoenas to Florida Businesses and Out-Of-State Corporations

When investigating a crime relating the use of electronic communications, such as homicide involving electronically stored surveillance footage, internet child pornography, or vehicular homicide due to careless cell phone usage, ASAs frequently require out-of-state corporations (OOSCs)[23] to produce electronic records under strict time constraints. If such records are not produced timely, electronic records may be destroyed, witnesses' memories may fade, and public safety may be compromised. Under these circumstances, s. 92.605, F.S., permits an ASA, or other qualified law enforcement personnel, to issue an investigative subpoena to an OOSC.[24]

If an ASA issues an investigative subpoena to an OOSC providing electronic communication services or remote computing services to the public, and such records reveal a customer's identity, stored data, or usage of such services, or the destination or recipients of communications sent to or from a customer, the following requirements apply:[25]

- An OOSC's registered agent must be properly served with a subpoena.[26]
- An OOSC's response to the subpoena is due within 20 business days of receipt, unless a longer time period is provided.
    - If a court finds that failing to produce records within 20 business days will cause an adverse result,[27] a shorter time period may be provided.[28]

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[14] A common law crime is one which is not separately reclassified by statute as either a felony or a misdemeanor, See S. 775.01, F.S. (2005).
[15] S. 775.02, F.S.
[16] County courts and circuit courts possess the same power to punish contempt. S. 900.04, F.S.
[17] U.S. Const. amend. 5; Fla. R. Civ. P. 3.840.
[18] *State v. Investigation*, 802 So. 2d 1141, 1144 (Fla. 2d DCA 2001).
[19] *See Imparato v. Spicola*, 238 So. 2d 503 (Fla. 2d DCA 1970).
[20] S. 16.56(3), F.S., provides the same authority to a statewide prosecutor.
[21] *State*, 802 So. 2d 1141 at 1144.
[22] *Morgan v. State*, 309 So. 2d 552 (Fla. 2d DCA 1975).
[23] Out-of-state corporation means any corporation that is qualified to do business in this state under s. 607.1501.; S. 92.605(1)(e).
[24] S. 92.605, F.S. permits service on an OOSC by any law enforcement officer seeking a court order or subpoena under s. 16.56, s. 27.04, s. 905.185, or s. 914.04 or who is issued a search warrant under s. 933.01, or anyone who is authorized to issue a subpoena under the Florida Rules of Criminal Procedure.
[25] S. 92.605(2), F.S.
[26] Properly served means delivery by hand or in a manner reasonably allowing for proof of delivery if delivered by mail or facsimile. S. 92.605(1)(h), F.S.
[27] An adverse result includes the potential: danger to the life or physical safety of an individual; risk of flight from prosecution; destruction of or tampering with evidence; intimidation of potential witnesses; or serious jeopardy to an investigation or undue delay of a trial. S. 92.605(1)(a), F.S.
[28] S. 92.605(2)(c), F.S.

- A court may also reasonably extend the time period provided if an extension will not cause an adverse result.
- If an OOSC cannot produce the requested records within the time period provided, it must notify the ASA within the 20-day time period and agree to produce the documents at the earliest possible time.

While explicitly requiring compliance or notification of inability to comply within 20 days, the law does not specifically provide a remedy for when an OOSC fails to comply with a subpoena issued under s. 92.605, F.S. As such, contempt of court is the only available remedy an ASA may seek.

Effect of Proposed Changes

CS/HB 103 amends s. 92.605, F.S., providing that service on an OOSC is proper when served:
- On a registered agent in this state;
- As authorized by the state where process is to be served; or
- At a location routinely used to accept service, if the corporation is doing business in Florida through the internet.

When an OOSC fails to comply with a subpoena, the bill authorizes an applicant who sought a subpoena to petition a court to compel compliance through indirect criminal contempt and a daily fine of between $100 and $1,000, for up to 60 days.

The bill provides a concrete avenue for applicants to seek compliance with and enforcement of subpoenas issued to businesses and corporations, which may increase compliance with subpoenas issued under strict timelines and aid in preventing the destruction of essential evidence.

B. SECTION DIRECTORY:

Section 1: Amends s. 92.605, F.S., relating to production of certain records by Florida businesses and out-of-state corporations.
Section 2: Provides an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill may generate revenues for the Clerks of the Court Trust Fund within the Justice Administrative Commission.[29]

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

[29] All revenues received by the clerk from court-related fees, fines, costs, and service charges are considered state funds and are remitted monthly to the Department of Revenue for deposit into the Clerks of the Court Trust Fund within the Justice Administrative Commission. S. 142.01(2), F.S.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a fiscal impact on Florida businesses and OOSC's that fail to comply with subpoenas issued under s. 92.605, F.S.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On November 14, 2019, the Civil Justice Subcommittee adopted an amendment and reported the bill favorably as a committee substitute. The amendment:

- Provides that service on an OOSC is proper when served:
  - On a registered agent in this state;
  - As authorized by the state where process is to be served; or
  - At a location routinely used to accept service, if the corporation is doing business in Florida through the internet.
- Authorizes an applicant who sought a subpoena to petition a court to compel compliance through indirect criminal contempt and a daily fine of between $100 and $1,000, for up to 60 days.

This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.

A bill to be entitled

An act relating to subpoenas; amending s. 92.605, F.S.; revising the definition of the term "properly served"; authorizing an applicant to petition a court to compel compliance with a subpoena; authorizing a court to address noncompliance as indirect criminal contempt and impose a daily fine; providing an effective date.

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

Section 1. Paragraph (h) of subsection (1) of section 92.605, Florida Statutes, is amended, and subsection (10) is added to that section, to read:

92.605 Production of certain records by Florida businesses and out-of-state corporations.—

(1) For the purposes of this section, the term:

(h) "Properly served" means delivery by hand or in a manner reasonably allowing for proof of delivery if delivered by United States mail, overnight delivery service, or facsimile to a person or entity properly registered to do business in any state. In order for an out-of-state corporation to be properly served, the service described in this paragraph must be effected on the corporation's registered agent in this state or as authorized under the laws of the state where process is to be

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

served. Service on an out-of-state corporation doing business in this state through the Internet may also be made at any location where the corporation routinely accepts service.

(10) If a Florida business or an out-of-state corporation refuses to comply with a properly served subpoena or does not comply with the requirements of subsection (2) or subsection (3), the applicant who sought the subpoena may petition a court of competent jurisdiction to compel compliance. The court may address the matter as indirect criminal contempt and may punish a business or corporation by a fine of not less than $100 per day and not more than $1,000 per day for a maximum of 60 days.

Section 2. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 133 Towing and Immobilizing Vehicles and Vessels
SPONSOR(S): McClain
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local, Federal & Veterans Affairs Subcommittee	9 Y, 5 N	Darden	Miller
2) Business & Professions Subcommittee		Thompson	Anstead
3) State Affairs Committee			

SUMMARY ANALYSIS

County and municipal governments may contract with wrecker operators to tow or remove wrecked, disabled, or abandoned vehicles from streets, highways, and accident sites within their jurisdiction. Counties and municipalities may establish a wrecker operator system to apportion towing services across multiple wrecker operators. Wrecker operators who participate in the wrecker operator system are known as authorized wrecker operators. Counties and municipalities are authorized to establish by ordinance or rule maximum rates for the towing and storage of vehicles. Some municipalities impose an administrative fee on vehicles towed by an authorized wrecker operator if the vehicle is seized or towed in connection with certain misdemeanors or felonies.

Vehicles or vessels parked without permission on private property may be towed at the direction of the owner or lessee of the property. The towing or removal must be conducted by a person regularly engaged in the business of towing vehicles or vessels and is subject to strict compliance with certain conditions and restrictions placed on the towing company. If the property is not a single-family residence, towing may only occur if notice is given via signage that must meet certain conditions.

The bill requires counties and municipalities to establish maximum rates for the towing and immobilization of vessels, and prohibits a county or municipality from enacting a rule or ordinance that imposes a fee or charge on authorized wrecker operators. However, the bill provides that an authorized wrecker operator may impose and collect an administrative fee, which may only be remitted to the county or municipality after it has been collected. The bill prohibits counties and municipalities from adopting or enforcing ordinances or rules that impose fees on the registered owner or lienholder of a vehicle or vessel removed and impounded by an authorized wrecker operator. The bill provides that a wrecker operator who recovers, removes, or stores a vehicle or vessel must have a lien on the vehicle or vessel that includes the value of the reasonable administrative fee or charge imposed by a county or municipality.

The bill exempts certain counties with towing or immobilization licensing, regulatory, or enforcement programs as of January 1, 2020, from the prohibition on imposing a fee or charge on an authorized wrecker operator or on a towing business.

The bill prohibits a municipality or county from enacting an ordinance or rule requiring an authorized wrecker operator or towing business to accept credit cards as a form of payment. The bill expressly preempts the regulation of attorney fees in connection with the towing of vehicles or vessels from private property to the state and voids any municipal or county ordinance on the subject. In actions for the improper towing of a vehicle or vessel, the court may award damages, attorney fees, and costs to the prevailing party.

The bill may have an indeterminate fiscal impact on local governments.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

County and Municipal Wrecker Operator Systems

A county or municipal government may contract with one or more wrecker operators to tow or remove wrecked, disabled, or abandoned vehicles from streets, highways, and accident sites.[1] After the establishment of such contract(s), the county or municipality must create a "wrecker operator system" to apportion towing assignments between the contracted wrecker services. This apportionment may occur through the creation of geographic zones, a rotation schedule, or a combination of those methods.[2] Any wrecker operator that is included in the wrecker operator system is an "authorized wrecker operator" in the jurisdiction, while any wrecker operation not included is an "unauthorized wrecker operator."[3]

Unauthorized wrecker operators are not permitted to initiate contact with the owner or operator of a wrecked or disabled vehicle.[4] If the owner or operator initiates contact, the unauthorized wrecker operator must disclose in writing, before the vehicle is connected to the towing apparatus:

- His or her full name;
- Driver license number;
- That he or she is not a member of the wrecker operator system;
- That the vehicle is not being towed for the owner's or operator's insurance company or lienholder;
- Whether he or she has an insurance policy providing $300,000 in liability coverage and $50,000 in on-hook cargo coverage; and
- The maximum charges for towing and storage.[5]

The unauthorized wrecker operator must disclose this information to the owner or operator in the presence of a law enforcement officer if an officer is present at the scene of the accident.[6]

It is a second degree misdemeanor for an unauthorized wrecker operator to initiate contact or to fail to provide required information after contact has been initiated.[7] An unauthorized wrecker operator misrepresenting his or her status as an authorized wrecker operator commits a first degree misdemeanor.[8] In either instance, the unauthorized wrecker operator's wrecker, tow truck, or other motor vehicle used during the offense may be immediately removed and impounded.[9]

Unauthorized wrecker operators also are prohibited from monitoring police radios to determine the location of wrecked or disabled vehicles.[10]

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[1] S. 323.002(1)(c), F.S. The definition of "vehicle" does not include a vessel or trailer intended for the transport on land of a vessel. *See* s. 320.01, F.S. (defining "motor vehicle" for the purpose of issuance of motor vehicle licenses and separately defining a "marine boat trailer dealer" as a person engaged in "business of buying … trailers specifically designed to be drawn by another vehicle and used for the transportation on land of vessels.")

[2] *Id.*

[3] S. 323.002(1)(a)-(b), F.S.

[4] S. 323.002(2)(b), F.S.

[5] S. 323.002(2)(c), F.S.

[6] *Id.*

[7] *Id.*

[8] S. 323.002(2)(d), F.S.

[9] S. 323.002(2)(c) and (d), F.S.

[10] S. 323.002(2)(a), F.S.

Counties must establish maximum rates for the towing of vehicles removed from private property, as well as the towing and storage of vehicles removed from the scene of an accident or from where the vehicle is towed at the request of a law enforcement officer. Municipalities are also authorized to adopt maximum rate ordinances. If a municipality enacts an ordinance to establish towing fees, the county ordinance will not apply within the municipality.[11] A county or municipality may not establish rates, including a maximum rate, for the towing of vessels.[12]

Vehicle Holds, Wrecker Operator Storage Facilities, and Liens

An investigating agency may place a hold on a motor vehicle stored within a wrecker operator's storage facility for up to five business days.[13] A hold may be applied when the officer has probable cause to believe the vehicle:

- Should be seized under the Florida Contraband Forfeiture Act or Ch. 379, F.S.;
- Was used as the means of committing a crime;
- Is evidence that tends to show a crime has been committed; or
- Was involved in a traffic accident resulting in death or personal injury.[14]

An officer may also apply a hold when the vehicle is impounded pursuant to s. 316.193, F.S. (relating to driving under the influence) or s. 322.34, F.S. (relating to driving with a suspended or revoked license) or when the officer is complying with a court order.[15] The hold must be in writing and include the name and agency of the law enforcement officer placing the hold, the date and time the hold is placed on the vehicle, a general description of the vehicle, the specific reason for the hold, the condition of the vehicle, the location where the vehicle is being held, and the name and contact information for the wrecker operator and storage facility.[16]

The investigating agency must inform the wrecker operator within the five-day holding period if the agency intends to hold the vehicle for a longer period of time.[17] The vehicle owner is liable for towing and storage charges for the first five days. If the vehicle will be held beyond five days, the investigating agency may choose to have the vehicle stored at a designated impound lot or to pay for storage at the wrecker operator's storage facility.[18]

A wrecker operator or other person engaged in the business of transporting vehicles or vessels who recovers, removes, or stores a vehicle or vessel, possesses a lien on the vehicle or vessel for a reasonable towing fee and storage fee if the vehicle or vessel is removed upon instructions from:

- The owner of the vehicle or vessel;
- The owner, lessor, or authorized person acting on behalf of the owner/lessor of property on which the vehicle or vessel is wrongly parked (as long as the removal is performed pursuant to s. 715.07, F.S.);
- The landlord or authorized person acting on behalf of a landlord, when the vehicle or vessel remains on the property after the expiration of tenancy and the removal is performed pursuant to enforcing a lien pursuant to s. 83.806, F.S., or for the removal of property left after a lease is vacated pursuant to s. 715.104, F.S.; or
- Any law enforcement agency.[19]

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[11] Ss. 125.0103(1)(c) and 166.043(1)(c), F.S.
[12] *Compare* s. 125.0103(1)(c), F.S. (requiring a county to establish maximum rates for towing of vehicles) *with* s. 715.07, F.S. (towing of vehicles or vessels parked on private property).
[13] S. 323.001(1), F.S.
[14] S. 323.001(4)(a)-(e), F.S.
[15] S. 323.001(4)(f)-(g), F.S.
[16] S. 323.001(5), F.S.
[17] S. 323.001(2), F.S.
[18] S. 323.001(2)(a)-(b), F.S.
[19] S. 713.78(2), F.S.

Authority for Local Governments to Charge Fees

Counties and municipalities do not have authority to levy taxes, other than ad valorem taxes, except as provided by general law.[20] However, local governments possess the authority to impose user fees or assessments by local ordinance as such authority is within the constitutional and statutory home rule powers of local governments.[21] The key distinction between a tax and a fee is that fees are voluntary and benefit particular individuals in a manner not shared by others in the public.[22] On the other hand, a tax is a "forced charge or imposition, operating whether we like it or not and in no sense depends on the will or contract of the one on whom it is imposed."[23] Usually a fee is charged for the use of a service and is tied directly to the cost of maintaining the service. Money collected from a fee is not applied to uses other than to provide the service for which the fee is applied. An administrative fee for towing and storage services may be permissible to the extent the fee provides a specific benefit to vehicle owners.[24]

Fees Related to Towing and Storage

Some municipalities charge administrative fees when a vehicle is towed in connection with certain misdemeanors or felonies. For example, the City of Sarasota seizes the vehicle of those arrested for crimes related to drugs or prostitution.[25] The registered owner of the vehicle is given two options:

- The registered owner may request a hearing where the city must show by a preponderance of the evidence that the vehicle was used to facilitate the commission of an act of prostitution or any violation of ch. 893, F.S., the Florida Comprehensive Drug Abuse Prevention and Control Act. The owner may post a bond equal to the civil penalty ($500.00), hearing costs ($50.00), and towing and storage fees ($125.00 plus $25.00 per day) to receive the vehicle back pending the outcome of the hearing, or the owner may leave the vehicle in impound, incurring additional fees.
- The registered owner may waive the right to a hearing and pay the civil penalty ($500.00).

If the registered owner of the vehicle is unable to pay the administrative penalty within 35 days, the city disposes of the vehicle. The City of Bradenton uses the same process and rate structure.[26]

Other municipalities have enacted ordinances charging an administrative fee for any vehicle impoundment associated with an arrest. For example, the City of Sweetwater imposes an "impoundment administrative fee" on all vehicles seized incident to an arrest. The fee is $500 if the impoundment stems from a felony arrest and $250 if the impoundment stems from a misdemeanor.[27]

The City of Winter Springs imposes an administrative fee for impoundment arising from 12 offenses enumerated in the authorizing ordinance, ranging from prostitution to dumping litter weighing more than 15 pounds.[28] The registered owner may request a hearing, either accruing additional storage fees pending the hearing or posting a bond equal to the amount of the administrative fee ($550.00). If the registered owner waives the right to hearing, the administrative fee is reduced to $250.00. These fees are payable to the city but are collected by towing companies.[29]

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[20] Art. VII, s. 1(a), Fla. Const.
[21] *City of Boca Raton v. State,* 595 So. 2d 25, 30 (Fla. 1992).
[22] *City of Miami v. Quik Cash Jewelry & Pawn, Inc.,* 811 So.2d 756, 758 (Fla. 3rd DCA 2002).
[23] *Id.* at 758-59.
[24] *See Jasinski v. City of Miami*, 269 F. Supp. 2d 1341, 1348 (S.D. Fla. 2003).
[25] Sarasota Police Department, *Vehicle Seizure Program*, https://www.sarasotapd.org/about-us/vehicle-seizure-program (last visited Oct. 14, 2019).
[26] Bradenton, Fla. Code of Ordinances, ch. 54, art. IV (2019).
[27] Sweetwater, Fla. Code of Ordinances, ch. 42-1, s. 42.1(c) (2019).
[28] Winter Springs, Fla. Code of Ordinances ch. 12, s. 12-100 (2019).
[29] Winter Springs, Fla. Notice of Right to Hearing Form (on file with the Local, Federal & Veterans Affairs Subcommittee).

By contract, some municipalities require wrecker services to pay a monthly fee for serving as authorized wrecker operators. For example, the contract between the City of Sarasota and a wrecker operator requires the operator to pay the city $10,151 per month for "the opportunity to provide" wrecker services, as well as $500 for each impounded vehicle sold by the wrecker service.[30]

Towing from Private Property

A vehicle or vessel may be towed at the direction of an owner or lessee of real property, or their designee, if the vehicle or vessel is parked on the property without permission.[31] A person regularly engaged in the business of towing vehicles or vessels must conduct the tow. The towing or removal of any vehicle or vessel from private property without the consent of the registered owner or other legally authorized person in control of that vehicle or vessel is subject to strict compliance with certain conditions and restrictions. These conditions and restrictions include:[32]

- Any towed or removed vehicle or vessel must be stored at a site within a specified distance of the point of removal.[33]
- The towing company must notify local law enforcement within 30 minutes of completing the tow of the storage site; the time the vehicle or vessel was towed; and the make, model, color, and license plate number of the vehicle or description and registration number of the vessel. The towing truck operation is required to record the name of the law enforcement officer who received the information in the trip record.
- The owner of a vehicle or vessel must be allowed to redeem the vehicle or vessel from the towing company if the owner seeks return before the tow has occurred. The towing company may charge a reasonable service fee of up to one-half of the posted towing rate for the return of the vehicle or vessel and may tow the vehicle or vessel if the owner is unable to pay the fee after a reasonable opportunity.
- A towing company may not pay or accept money in exchange for the privilege of towing or removing vehicles or vessels from a particular location.
- If the towing company requires the owner of a vehicle to pay the costs of towing and storage prior to redemption, the towing company must file and keep on record its rate schedule with the local law enforcement agency and post the rate schedule at the storage site.
- Trucks and wreckers used by the towing company must have the name, address, and telephone number of the company printed on both sides of the vehicle in contrasting letters. The name of the towing company must be in 3-inch or taller permanently affixed letters, while the address and telephone number must be in 1-inch or taller permanently affixed letters.
- The towing company must exercise reasonable care when entering a vehicle or vessel for the purpose of removing it. The towing company is liable for any damage to the vehicle caused by failure to exercise reasonable care.
- The vehicle or vessel must be released to its owner within one hour after request. The owner maintains a right to inspect the vehicle or vessel and the towing company operation may not require a release or waiver of damages to be signed as a condition of returning the vehicle. The towing company operator must issue a detailed, single receipt to the owner of the vehicle or vessel.

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[30] Agreement for Wrecker Towing and Storage Services, City of Sarasota and J&G WFR, Inc. dba Direct Towing (on file with the Local, Federal & Veterans Affairs Subcommittee).

[31] S. 715.07(2), F.S.

[32] S. 715.07(2)(a), F.S.

[33] S. 715.07(2)(a)1.a., F.S. The vehicle or vessel must be stored within a 10-mile radius of the removal point in a county with a population of at least 500,000 and within a 15-mile radius of the removal point in a county with a population of fewer than 500,000. If no towing business operated within the given area, these radiuses are extended to 20 miles (for a county with a population of at least 500,000) and 30 miles (for a county with a population of fewer than 500,000). The site must be open from 8 am to 6 pm on the towing business is in operation and must post a telephone number where the operator of the site can be reached when the site is closed. The operator must return to the site within one hour.

Additionally, a vehicle or vessel may not be towed without consent of its owner, except from property appurtenant to a single-family residence, unless a notice is posted which states the area in which that vehicle or vessel is parked is reserved or otherwise unavailable for unauthorized vehicles or that the vehicle or vessel is subject to being removed at the owner's or operator's expense and the notice meets the following requirements:[34]

- The notice is placed prominently at each driveway access or curb cut, within five feet from the public right-of-way line. If the property has no curbs or access barriers, signs must be posted at least once every 25 feet of lot frontage.
- The notice must clearly indicate, in not less than 2-inch high, light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the owner's expense and contain the words "tow-away zone" in letters not less than 4 inches high.
- The notice must provide the name and telephone number of the towing company.
- The sign containing the notices must be permanently installed in such a way that the words "tow-away zone" are between 3 and 6 feet above ground level and the sign must have been continuously maintained on the property for not less than 24 hours prior to the towing of any vehicle or vessel.
- Local governments may also require permitting and inspection of signage before any towing is authorized.
- A business with 20 or fewer parking spaces may satisfy the requirement by prominently displaying a sign stating "Reserved Parking for Customers Only Unauthorized Vehicles or Vessels Will be Towed Away At the Owner's Expense" in not less than 4-inch high, light-reflective letters on a contrasting background.
- A property owner towing or removing vessels from real property must post notice, consistent with the requirements in the statute which apply to vehicles,[35] that unauthorized vehicles or vessels will be towed away at the owner's expense.

A vehicle or vessel may be towed even in the absence of a tow-away zone sign if the vehicle or vessel is parked in such a way that it restricts the normal operation of business or restricts access to a private driveway and the tow is requested by the business owner or lessee.[36]

A county or municipality may adopt additional standards, including regulation of the rates charged when a vehicle or vessel is towed from private property.[37]

If a person causes a vehicle or vessel to be removed improperly, that person is liable to the owner or lessee for the cost of removal, transportation, and storage; any damages resulting from the removal, transportation, or storage of the vehicle or vessel; attorney fees; and court costs.[38]

Violations of these provisions may constitute a first-degree misdemeanor[39] or a third-degree felony.[40]

Effect of Proposed Changes

The bill authorizes a county or municipality to regulate the rates for the towing or immobilization of vessels. A county or municipality must establish a maximum rate that may be charged for the towing or immobilization of a vessel.

The bill prohibits a county or municipality from enacting a rule or ordinance that imposes a fee or charge on authorized wrecker operators or a towing business. The bill defines the term "towing

[34] S. 715.07(2)(a)5, F.S.
[35] These requirements are contained in s. 715.07(2)(a)5.a.-f., F.S.
[36] S. 715.07(2)(a)5, F.S.
[37] S. 715.07(2)(b), F.S.
[38] S. 715.07(4), F.S.
[39] For subparagraphs (2)(a)2. and (2)(a)6. S. 715.07(5)(a), F.S.
[40] For subparagraphs (2)(a)1., (2)(a)3., (2)(a)4., (2)(a)7., and (2)(a)9. S. 715.07(5)(b), F.S.

business" as a business providing towing services for monetary gains. The prohibition would not impact the ability of the county or municipality to levy a business tax or impose a reasonable administrative fee or charge by ordinance on the legal owner of a vehicle or vessel to cover the cost of enforcement, including parking enforcement, by the county or municipality when the vehicle or vessel is towed from public property. The administrative fee may not exceed 25 percent of the maximum towing rate.

The bill authorizes an authorized wrecker operator or towing business to impose and collect the administrative fee and provides that the authorized wrecker operator or towing business is not required to remit the fee to the county or municipality until it is actually collected. The bill requires the administrative fee to be included as part of the lien on the vehicle or vessel held by the towing operator.

The prohibition on county ordinances or rules that impose a fee or tax on authorized wrecker operators or on towing businesses does not apply to towing or immobilization licensing, regulatory, or enforcement programs in effect on January 1, 2020 in charter counties where:

- 90 percent of the county's population lives in incorporated municipalities;[41]
- The county contains at least 38 incorporated municipalities within its territorial boundaries as of January 1, 2020;[42] or
- The county is a county as defined in s. 125.011(1), F.S.

These counties may continue to operate their existing towing or immobilization licensing, regulatory, or enforcement programs and are authorized to levy an administrative fee for enforcement costs. A county as defined in s. 125.011(1), F.S. is prohibited from imposing any new business tax, fee, or charge that was not in effect on January 1, 2020 on a towing business or authorized wrecker operator.

The bill prohibits a county or municipality from adopting or enforcing an ordinance that imposes any charge, cost, expense, fine, fee, or penalty on the registered owner of a vehicle or vessel, on the lienholder of a vehicle or vessel, or on an authorized wrecker operator when the vehicle or vessel is removed and impounded by an authorized wrecker operator. This prohibition does not apply to a reasonable administrative fee or charge, limited to 25 percent of the maximum towing rate, to cover the cost of enforcement and does not apply to the continuing operation of towing or immobilization licensing, regulatory, or enforcement programs in grandfathered charter counties.

The bill prohibits a municipality or county from enacting an ordinance or rule requiring an authorized wrecker operator or towing business to accept credit cards as a form of payment. This prohibition does not apply to an ordinance or rule adopted before January 1, 2020. The bill requires an authorized wrecker operator or towing business that does not accept credit cards as a form of payment to maintain an operable automatic teller machine for use by the public at its place of business. The bill prohibits a county or municipality from authorizing attorney fees in connection with the towing of vehicles or vessels from private property.

The bill authorizes the towing or removal of a vehicle or vessel from private property without the consent of the registered owner as long as the towing company is in "substantial" compliance with the conditions and restrictions established in s. 715.07, F.S., rather than in "strict" compliance.

The bill removes the requirement that the tow-away zone notice must be placed within five feet from the public right-of-way line. Instead, the notice must be placed prominently at each driveway access or curb cut allowing vehicular access to the property. The bill also removes the requirement that a "tow-away zone" sign must be permanently installed at between three and six feet above ground level.

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[41] As of April 1, 2018, more than 90 percent of the populations of Broward County and Duval County live in incorporated areas. EDR, *Florida Population Estimates for Counties and Municipalities*, http://edr.state.fl.us/Content/population-demographics/data/index-floridaproducts.cfm (last visited Oct. 14, 2019). As of Oct. 1, 2019, Broward County operates a towing or immobilization licensing, regulatory, or enforcement program, while Duval County does not.

[42] As of Oct. 1, 2019, only Palm Beach County has more than 38 municipalities. *See id.* (Palm Beach County has 39 municipalities).

The bill revises several provisions currently applicable to a person in control of a vehicle or vessel, making these provisions applicable also to those in custody of the vehicle.

The bill removes liability for attorney fees and court costs against any person causing a vehicle or vessel to be removed improperly. If an action is filed, the court may award damages, attorney fees, and court costs to the prevailing party. The bill expressly preempts to the state the regulation of attorney fees in connection with the towing of vehicles or vessels from private property and voids any municipal or county ordinance on the subject.

B. SECTION DIRECTORY:

Section 1: Amends s. 125.0103, F.S., requiring counties to establish maximum rates for the towing and immobilization both of vehicles and vessels.

Section 2: Creates s. 125.01047, F.S., prohibiting counties from enacting ordinances imposing specific fees and charges on authorized wrecker operators.

Section 3: Amends s. 166.043, F.S., requiring municipalities to establish maximum rates for the towing and immobilization both of vehicles and vessels.

Section 4: Creates s. 166.04465, F.S., prohibiting municipalities from enacting ordinances imposing specific fees and charges on authorized wrecker operators.

Section 5: Amends s. 323.002, F.S., prohibiting counties and municipalities from adopting or maintaining ordinances or rules imposing fees and charges on the registered owner or lienholder of a vehicle removed and impounded pursuant to ch. 323, F.S.

Section 6: Amends s. 713.78, F.S., providing that a wrecker operation has a lien for a reasonable administrative fee or charge imposed by a county or municipality.

Section 7: Amends s. 715.07, F.S., concerning requirements for towing a vehicle from private property.

Section 8: Provides that the bill takes effect July 1, 2019.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   The bill will have an indeterminate impact on local government revenue. The bill prohibits counties and municipalities from charging certain fees to authorized wrecker operators and towing companies that are currently charged by some jurisdictions, while authorizing the collection of administrative fees for the cost of enforcement.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will reduce expenses for towing companies that are located in counties or municipalities currently charging a fee.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

The Florida Constitution prohibits the passage of any law that would impair the obligation of contracts.[43] The bill does not appear to implicate this provision, as the bill does not address the enforcement of current contracts. The retroactive application of a statutory provision generally only occurs upon an express statement of intent by the Legislature and is limited to the extent retroactive application would impair a vested right, create a new obligation, or impose a new penalty.[44]

B. RULE-MAKING AUTHORITY:

The bill does not provide rulemaking authority or require executive branch rulemaking.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[43] Art. I, s. 10, Fla. Const.

[44] *Menendez v. Progressive Exp. Ins. Co, Inc.*, 35 So. 3d 873, 877 (Fla. 2010).

A bill to be entitled

An act relating to towing and immobilizing vehicles and vessels; amending ss. 125.0103 and 166.043, F.S.; authorizing local governments to enact rates to tow or immobilize vessels on private property and to remove and store vessels under specified circumstances; creating ss. 125.01047 and 166.04465, F.S.; prohibiting counties or municipalities from enacting certain ordinances or rules that impose fees or charges on authorized wrecker operators or towing businesses; defining the term "towing business"; providing exceptions; amending s. 323.002, F.S.; prohibiting counties or municipalities from adopting or maintaining in effect certain ordinances or rules that impose charges, costs, expenses, fines, fees, or penalties on registered owners, other legally authorized persons in control, or lienholders of vehicles or vessels under certain conditions; providing an exception; prohibiting counties or municipalities from enacting certain ordinances or rules that require authorized wrecker operators to accept a specified form of payment; providing exceptions; providing applicability; amending s. 713.78, F.S.; authorizing certain persons to place liens on vehicles or vessels to recover specified fees

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

or charges; amending s. 715.07, F.S.; removing a requirement regarding notices and signs concerning the towing or removal of vehicles or vessels; prohibiting counties or municipalities from enacting certain ordinances or rules that require towing businesses to accept a specified form of payment; prohibiting counties or municipalities from authorizing attorney fees in connection with certain towing activities; providing exceptions; providing applicability; preempting to the state the regulation of attorney fees in connection with certain towing activities; authorizing a court to award damages, attorney fees, and court costs in certain cases; providing an effective date.

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

Section 1. Paragraphs (b) and (c) of subsection (1) of section 125.0103, Florida Statutes, are amended to read:

125.0103 Ordinances and rules imposing price controls; findings required; procedures.—

(1)

(b) ~~The provisions of~~ This section does ~~shall~~ not prevent the enactment by local governments of public service rates otherwise authorized by law, including water, sewer, solid

waste, public transportation, taxicab, or port rates, rates for towing of vehicles or vessels from or immobilization of vehicles or vessels on private property, or rates for removal and storage of wrecked or disabled vehicles or vessels from an accident scene or the removal and storage of vehicles or vessels in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle or vessel.

(c) Counties must establish maximum rates which may be charged on the towing of vehicles or vessels from or immobilization of vehicles or vessels on private property, removal and storage of wrecked or disabled vehicles or vessels from an accident scene or for the removal and storage of vehicles or vessels, in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle or vessel. However, if a municipality chooses to enact an ordinance establishing the maximum rates ~~fees~~ for the towing or immobilization of vehicles or vessels as described in paragraph (b), the county's ordinance shall not apply within such municipality.

Section 2. Section 125.01047, Florida Statutes, is created to read:

125.01047 Rules and ordinances relating to towing services.—

(1) A county may not enact an ordinance or rule that would impose a fee or charge on an authorized wrecker operator, as defined in s. 323.002(1), or on a towing business for towing, impounding, or storing a vehicle or vessel. As used in this section, the term "towing business" means a business that provides towing services for monetary gain.

(2) The prohibition set forth in subsection (1) does not affect a county's authority to:

(a) Levy a reasonable business tax under s. 205.0315, s. 205.033, or s. 205.0535.

(b) Impose and collect a reasonable administrative fee or charge on the registered owner or other legally authorized person in control of a vehicle or vessel, or the lienholder of a vehicle or vessel, not to exceed 25 percent of the maximum towing rate, to cover the cost of enforcement, including parking enforcement, by the county when the vehicle or vessel is towed from public property. An authorized wrecker operator or towing business may impose and collect the administrative fee or charge on behalf of the county and shall remit such fee or charge to the county only after it is collected.

(3)(a) This section does not apply to a towing or immobilization licensing, regulatory, or enforcement program of a charter county in which at least 90 percent of the population

resides in incorporated municipalities, or to a charter county with at least 38 incorporated municipalities within its territorial boundaries as of January 1, 2020. This section does not affect a charter county's authority to:

1. Impose and collect towing operating license fees, license renewal fees, license extension fees, expedite fees, storage site inspection or reinspection fees, criminal background check fees, and tow truck decal fees, including decal renewal fees, expedite fees, and decal replacement fees.

2. Impose and collect immobilization operating license fees, license extension fees, license renewal fees, expedite fees, and criminal background check fees.

3. Set maximum rates for the towing or immobilization of vehicles or vessels on private property, including rates based on different classes of towing vehicles, research fees, administrative fees, storage fees, and labor fees; rates for towing services performed or directed by governmental entities; road service rates; winch recovery rates; voluntary expediting fees for vehicle or vessel ownership verification; and to establish conditions in connection with the applicability or payment of maximum rates set for towing or immobilization of vehicles or vessels.

4. Impose and collect such other taxes, fees, or charges otherwise authorized by general law, special law, or county ordinance, resolution, or regulation.

(b) A charter county may impose and collect an administrative fee or charge as provided in paragraph (2)(b) but may not impose such fee or charge on a towing business or an authorized wrecker operator. If the charter county imposes such administrative fee or charge, the charter county may authorize a towing business or authorized wrecker operator to impose and collect such fee or charge on behalf of the county, and the towing business or authorized wrecker operator shall remit such fee or charge to the charter county only after it is collected.

(4)(a) Subsection (1) does not apply to a charter county that had a towing licensing, regulatory, or enforcement program in effect on January 1, 2020. However, such charter county may not impose any new business tax, fee, or charge that was not in effect as of January 1, 2020, on a towing business or an authorized wrecker operator.

(b) A charter county may impose and collect an administrative fee or charge as provided in paragraph (2)(b); however, it may not impose that fee or charge upon a towing business or an authorized wrecker operator. If such charter county imposes such administrative fee or charge, such fee or charge must be imposed on the registered owner or other legally authorized person in control of a vehicle or vessel, or the lienholder of a vehicle or vessel. The fee or charge may not exceed 25 percent of the maximum towing rate to cover the cost of enforcement, including parking enforcement, by the charter

county when the vehicle or vessel is towed from public property. The charter county may authorize an authorized wrecker operator or towing business to impose and collect the administrative fee or charge on behalf of the charter county, and the authorized wrecker operator or towing business shall remit such fee or charge to the charter county only after it is collected.

(c) For purposes of this subsection, the term "charter county" means a county as defined in s. 125.011(1).

Section 3. Paragraphs (b) and (c) of subsection (1) of section 166.043, Florida Statutes, are amended to read:

166.043 Ordinances and rules imposing price controls; findings required; procedures.—

(1)

(b) ~~The provisions of~~ This section does ~~shall~~ not prevent the enactment by local governments of public service rates otherwise authorized by law, including water, sewer, solid waste, public transportation, taxicab, or port rates, rates for towing of vehicles or vessels from or immobilization of vehicles or vessels on private property, or rates for removal and storage of wrecked or disabled vehicles or vessels from an accident scene or the removal and storage of vehicles or vessels in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle or vessel.

(c) Counties must establish maximum rates which may be charged on the towing of vehicles or vessels from or immobilization of vehicles or vessels on private property, removal and storage of wrecked or disabled vehicles or vessels from an accident scene or for the removal and storage of vehicles or vessels, in the event the owner or operator is incapacitated, unavailable, leaves the procurement of wrecker service to the law enforcement officer at the scene, or otherwise does not consent to the removal of the vehicle or vessel. However, if a municipality chooses to enact an ordinance establishing the maximum rates ~~fees~~ for the towing or immobilization of vehicles or vessels as described in paragraph (b), the county's ordinance established under s. 125.0103 shall not apply within such municipality.

Section 4. Section 166.04465, Florida Statutes, is created to read:

166.04465 Rules and ordinances relating to towing services.—

(1) A municipality may not enact an ordinance or rule that would impose a fee or charge on an authorized wrecker operator, as defined in s. 323.002(1), or on a towing business for towing, impounding, or storing a vehicle or vessel. As used in this section, the term "towing business" means a business that provides towing services for monetary gain.

(2) The prohibition set forth in subsection (1) does not

affect a municipality's authority to:

(a) Levy a reasonable business tax under s. 205.0315, s. 205.043, or s. 205.0535.

(b) Impose and collect a reasonable administrative fee or charge on the registered owner or other legally authorized person in control of a vehicle or vessel, or the lienholder of a vehicle or vessel, not to exceed 25 percent of the maximum towing rate, to cover the cost of enforcement, including parking enforcement, by the municipality when the vehicle or vessel is towed from public property. An authorized wrecker operator or towing business may impose and collect the administrative fee or charge on behalf of the municipality and shall remit such fee or charge to the municipality only after it is collected.

Section 5. Subsection (4) of section 323.002, Florida Statutes, is renumbered as subsection (6), and new subsections (4) and (5) are added to that section to read:

323.002 County and municipal wrecker operator systems; penalties for operation outside of system.—

(4)(a) Except as provided in paragraph (b), a county or municipality may not adopt or maintain in effect an ordinance or rule that imposes a charge, cost, expense, fine, fee, or penalty on an authorized wrecker operator, the registered owner or other legally authorized person in control of a vehicle or vessel, or the lienholder of a vehicle or vessel when the vehicle or vessel is towed by an authorized wrecker operator under this chapter.

(b) A county or municipality may adopt or maintain an ordinance or rule that imposes a reasonable administrative fee or charge on the registered owner or other legally authorized person in control of a vehicle or vessel, or the lienholder of a vehicle or vessel, that is towed by an authorized wrecker operator, not to exceed 25 percent of the maximum towing rate, to cover the cost of enforcement, including parking enforcement, by the county or municipality when the vehicle or vessel is towed from public property. An authorized wrecker operator or towing business may impose and collect the administrative fee or charge on behalf of the county or municipality and shall remit such fee or charge to the county or municipality only after it is collected.

(c) A county or municipality may not enact an ordinance or rule that requires an authorized wrecker operator to accept a credit card as a form of payment. However, if an authorized wrecker operator does not accept a credit card, the wrecker operator must maintain an operable automatic teller machine for use by the public at its place of business. This paragraph does not apply to a county or municipality that adopted an ordinance or rule before January 1, 2020, requiring an authorized wrecker operator to accept a credit card as a form of payment.

(5) Subsection (4) does not apply to the towing or immobilization licensing, regulatory, or enforcement program of a charter county described in s. 125.01047(3) or (4). Such

charter county may impose a charge, cost, expense, fine, fee, or penalty on an authorized wrecker operator in connection with a violation of the towing or immobilization program requirements as set forth by ordinance, resolution, or regulation.

Section 6. Subsection (2) of section 713.78, Florida Statutes, is amended to read:

713.78 Liens for recovering, towing, or storing vehicles and vessels.—

(2) Whenever a person regularly engaged in the business of transporting vehicles or vessels by wrecker, tow truck, or car carrier recovers, removes, or stores a vehicle or vessel upon instructions from:

(a) The owner thereof;

(b) The owner or lessor, or a person authorized by the owner or lessor, of property on which such vehicle or vessel is wrongfully parked, and the removal is done in compliance with s. 715.07;

(c) The landlord or a person authorized by the landlord, when such motor vehicle or vessel remained on the premises after the tenancy terminated and the removal is done in compliance with s. 83.806 or s. 715.104; or

(d) Any law enforcement agency,

she or he shall have a lien on the vehicle or vessel for a reasonable towing fee, for a reasonable administrative fee or

charge imposed by a county or municipality, and for a reasonable storage fee; except that a ~~no~~ storage fee may not ~~shall~~ be charged if the vehicle or vessel is stored for fewer ~~less~~ than 6 hours.

Section 7. Subsections (2) and (4) of section 715.07, Florida Statutes, are amended to read:

715.07 Vehicles or vessels parked on private property; towing.—

(2) The owner or lessee of real property, or any person authorized by the owner or lessee, which person may be the designated representative of the condominium association if the real property is a condominium, may cause any vehicle or vessel parked on such property without her or his permission to be removed by a person regularly engaged in the business of towing vehicles or vessels, without liability for the costs of removal, transportation, or storage or damages caused by such removal, transportation, or storage, under any of the following circumstances:

(a) The towing or removal of any vehicle or vessel from private property without the consent of the registered owner or other legally authorized person in control of that vehicle or vessel is subject to substantial ~~strict~~ compliance with the following conditions and restrictions:

1.a. Any towed or removed vehicle or vessel must be stored at a site within a 10-mile radius of the point of removal in any

county of 500,000 population or more, and within a 15-mile radius of the point of removal in any county of fewer ~~less~~ than 500,000 population. That site must be open for the purpose of redemption of vehicles on any day that the person or firm towing such vehicle or vessel is open for towing purposes, from 8:00 a.m. to 6:00 p.m., and, when closed, shall have prominently posted a sign indicating a telephone number where the operator of the site can be reached at all times. Upon receipt of a telephoned request to open the site to redeem a vehicle or vessel, the operator shall return to the site within 1 hour or she or he will be in violation of this section.

b. If no towing business providing such service is located within the area of towing limitations set forth in sub-subparagraph a., the following limitations apply: any towed or removed vehicle or vessel must be stored at a site within a 20-mile radius of the point of removal in any county of 500,000 population or more, and within a 30-mile radius of the point of removal in any county of fewer ~~less~~ than 500,000 population.

2. The person or firm towing or removing the vehicle or vessel shall, within 30 minutes after completion of such towing or removal, notify the municipal police department or, in an unincorporated area, the sheriff, of such towing or removal, the storage site, the time the vehicle or vessel was towed or removed, and the make, model, color, and license plate number of the vehicle or description and registration number of the vessel

and shall obtain the name of the person at that department to whom such information was reported and note that name on the trip record.

3. A person in the process of towing or removing a vehicle or vessel from the premises or parking lot in which the vehicle or vessel is not lawfully parked must stop when a person seeks the return of the vehicle or vessel. The vehicle or vessel must be returned upon the payment of a reasonable service fee of not more than one-half of the posted rate for the towing or removal service as provided in subparagraph 6. The vehicle or vessel may be towed or removed if, after a reasonable opportunity, the owner or legally authorized person in control of the vehicle or vessel is unable to pay the service fee. If the vehicle or vessel is redeemed, a detailed signed receipt must be given to the person redeeming the vehicle or vessel.

4. A person may not pay or accept money or other valuable consideration for the privilege of towing or removing vehicles or vessels from a particular location.

5. Except for property appurtenant to and obviously a part of a single-family residence, and except for instances when notice is personally given to the owner or other legally authorized person in control of the vehicle or vessel that the area in which that vehicle or vessel is parked is reserved or otherwise unavailable for unauthorized vehicles or vessels and that the vehicle or vessel is subject to being removed at the

owner's or operator's expense, any property owner or lessee, or person authorized by the property owner or lessee, before ~~prior to~~ towing or removing any vehicle or vessel from private property without the consent of the owner or other legally authorized person in control of that vehicle or vessel, must post a notice meeting the following requirements:

a. The notice must be prominently placed at each driveway access or curb cut allowing vehicular access to the property~~, within 5 feet from the public right-of-way line~~. If there are no curbs or access barriers, the signs must be posted not fewer ~~less~~ than one sign for each 25 feet of lot frontage.

b. The notice must ~~clearly~~ indicate, in not fewer ~~less~~ than 2-inch high, light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the owner's expense. The words "tow-away zone" must be included on the sign in not fewer ~~less~~ than 4-inch high letters.

c. The notice must also provide the name and current telephone number of the person or firm towing or removing the vehicles or vessels.

d. The sign structure containing the required notices must be permanently installed with the words "tow-away zone" ~~not less than 3 feet and not more than 6 feet above ground level~~ and must be continuously maintained on the property for not fewer ~~less~~ than 24 hours before ~~prior to~~ the towing or removal of any vehicles or vessels.

e. The local government may require permitting and inspection of these signs before ~~prior to~~ any towing or removal of vehicles or vessels being authorized.

f. A business with 20 or fewer parking spaces satisfies the notice requirements of this subparagraph by prominently displaying a sign stating "Reserved Parking for Customers Only Unauthorized Vehicles or Vessels Will be Towed Away At the Owner's Expense" in not fewer ~~less~~ than 4-inch high, light-reflective letters on a contrasting background.

g. A property owner towing or removing vessels from real property must post notice, consistent with the requirements in sub-subparagraphs a.-f., which apply to vehicles, that unauthorized vehicles or vessels will be towed away at the owner's expense.

A business owner or lessee may authorize the removal of a vehicle or vessel by a towing company when the vehicle or vessel is parked in such a manner that restricts the normal operation of business; and if a vehicle or vessel parked on a public right-of-way obstructs access to a private driveway the owner, lessee, or agent may have the vehicle or vessel removed by a towing company upon signing an order that the vehicle or vessel be removed without a posted tow-away zone sign.

6. Any person or firm that tows or removes vehicles or vessels and proposes to require an owner, operator, or person in

control or custody of a vehicle or vessel to pay the costs of towing and storage before ~~prior to~~ redemption of the vehicle or vessel must file and keep on record with the local law enforcement agency a complete copy of the current rates to be charged for such services and post at the storage site an identical rate schedule and any written contracts with property owners, lessees, or persons in control of property which authorize such person or firm to remove vehicles or vessels as provided in this section.

7. Any person or firm towing or removing any vehicles or vessels from private property without the consent of the owner or other legally authorized person in control or custody of the vehicles or vessels shall, on any trucks, wreckers as defined in s. 713.78(1)(c), or other vehicles used in the towing or removal, have the name, address, and telephone number of the company performing such service clearly printed in contrasting colors on the driver and passenger sides of the vehicle. The name shall be in at least 3-inch permanently affixed letters, and the address and telephone number shall be in at least 1-inch permanently affixed letters.

8. Vehicle entry for the purpose of removing the vehicle or vessel shall be allowed with reasonable care on the part of the person or firm towing the vehicle or vessel. Such person or firm shall be liable for any damage occasioned to the vehicle or vessel if such entry is not in accordance with the standard of

reasonable care.

9. When a vehicle or vessel has been towed or removed pursuant to this section, it must be released to its owner or person in control or custody ~~custodian~~ within 1 ~~one~~ hour after requested. Any vehicle or vessel owner or person in control or custody has ~~agent shall have~~ the right to inspect the vehicle or vessel before accepting its return, and no release or waiver of any kind which would release the person or firm towing the vehicle or vessel from liability for damages noted by the owner or person in control or custody ~~other legally authorized person~~ at the time of the redemption may be required from any vehicle or vessel owner or person in control or custody ~~, custodian, or agent~~ as a condition of release of the vehicle or vessel to its owner or person in control or custody. A detailed~~, signed~~ receipt showing the legal name of the company or person towing or removing the vehicle or vessel must be given to the person paying towing or storage charges at the time of payment, whether requested or not.

(b) These requirements are minimum standards and do not preclude enactment of additional regulations by any municipality or county including the right to regulate rates when vehicles or vessels are towed from private property, except that a county or municipality may not enact an ordinance or rule that requires a towing business to accept a credit card as a form of payment. However, if a towing business does not accept a credit card, the

towing business must maintain an operable automatic teller machine for use by the public at its place of business. This paragraph does not apply to a county or municipality that adopted an ordinance or rule before January 1, 2020, requiring a towing business to accept a credit card as a form of payment. Additionally, a municipality or county may not authorize attorney fees in connection with the towing of vehicles or vessels from private property. The regulation of attorney fees in connection with the towing of vehicles or vessels from private property is expressly preempted to the state and any municipal or county ordinance on the subject is void.

(4) When a person improperly causes a vehicle or vessel to be removed, such person shall be liable to the owner or lessee of the vehicle or vessel for the cost of removal, transportation, and storage and~~,~~ any damages resulting from the removal, transportation, or storage of the vehicle or vessel~~, attorney's fees, and court costs~~. If an action is filed, the court may award damages, attorney fees, and court costs in favor of the prevailing party after determining the respective rights of the parties.

Section 8. This act shall take effect July 1, 2020.

BUSINESS & PROFESSIONS SUBCOMMITTEE

HB 133 by Rep. McClain
Towing and Immobilization of Vehicles

AMENDMENT SUMMARY
December 11, 2020

Amendment 1 by Rep. McClain (line 456-471):
Removes the bill language regarding liability for attorney fees and court costs relating to towing of vehicles from private property. Specifically, the amendment:

- Removes the provision from the bill that authorizes the court, if an action is filed, to award damages, attorney fees, and court costs to the prevailing party.
- Maintains the requirement in current law for persons who improperly tow to pay attorney's fees and court costs.
- Removes the provision from the bill that expressly preempts to the state the regulation of attorney fees in connection with the towing of vehicles or vessels from private property, and removes the provision that would void any municipal or county ordinance on the subject.
- Changes the effective date from July 1, 2020, to October 1, 2020.

Amendment 2 by Rep. McClain (line 357-375):
Revises tow-away zone notice requirements. Specifically, the amendment:

- Changes the current requirement that a tow-away zone notice be placed within 5 feet from the "public right-of-way line" to instead require the notice to be placed within 10 feet from the "road" as defined s. 334.03(22), F.S.
- Reverts the height requirement back to current law, which means signs must still be permanently installed between three and six feet above ground level.

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative McClain offered the following:

Amendment (with title amendment)

Remove lines 456-471 and insert:

Section 8. This act shall take effect October 1, 2020.

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

Remove lines 31-38 and insert:

accept a specified form of payment; providing an

Amendment No. 2

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative McClain offered the following:

Amendment

Remove lines 357-375 and insert:

a. The notice must be prominently placed at each driveway access or curb cut allowing vehicular access to the property, within 10 ~~5~~ feet from the road as defined in s. 334.03(22) ~~public right-of-way line~~. If there are no curbs or access barriers, the signs must be posted not fewer ~~less~~ than one sign for each 25 feet of lot frontage.

b. The notice must clearly indicate, in not fewer ~~less~~ than 2-inch high, light-reflective letters on a contrasting background, that unauthorized vehicles will be towed away at the

owner's expense. The words "tow-away zone" must be included on the sign in not fewer ~~less~~ than 4-inch high letters.

c. The notice must also provide the name and current telephone number of the person or firm towing or removing the vehicles or vessels.

d. The sign structure containing the required notices must be permanently installed with the words "tow-away zone" not less than 3 feet and not more than 6 feet above ground level and must be continuously maintained on the property for not fewer ~~less~~ than 24 hours before ~~prior to~~ the towing or removal of any vehicles or vessels.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 283 Liens and Bonds
SPONSOR(S): Toledo and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Brackett	Anstead
2) Civil Justice Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

A construction lien is designed to protect those who provide work or materials to improve property for a property owner that are not in direct contract with the owner, such as subcontractors, laborers, and material suppliers. Any person who provides services, labor, or materials for improving, repairing, or maintaining real property (except public property) may place a construction lien on the property if they are not paid for their services, and they timely notify the property owner.

Under part I of chapter 713, F.S., a person who is not in direct contract with the owner, such as subcontractors and material suppliers, that intends to secure the right to claim a lien against the property must take several steps. If a payment bond does not apply, the first step is to serve a notice to owner setting forth the person's name and address and the nature of the services or materials furnished or to be furnished to the owner's property. The notice to owner must be served no later than 45 days after the person begins furnishing labor, services, or materials.

Once the owner receives a notice to owner from a subcontractor or material supplier, the owner must obtain a waiver or release of lien from the subcontractor or material supplier before paying the contractor. Otherwise, a payment to the contractor may constitute an improper payment and the owner would be liable to the subcontractor or material supplier if he or she is not paid by the contractor.

The bill:

- Provides that any provision in a waiver or release of lien that is not related to the waiver or release of lien is not enforceable.
- Clarifies the definition of "final furnishing" related to specially fabricated materials.
- Provides that construction liens have priority over debts that are recorded after the construction lien is recorded, even if such debts relate back to a debt that was recorded before the construction lien attached pursuant to the operation of "any common law doctrine or remedy."
- Removes the requirement that a notice of commencement must include:
    - The owner or lessee's interest in the property;
    - A statement that the ownership interest is a leasehold interest if a lessee contracted for the work; and
    - The address of the fee simple titleholder if it is different from the owner.

The bill does not appear to have a fiscal impact on state and local governments.

The bill provides for an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Background

Florida law ensures that people who work on construction projects can obtain payments for their work. Any person who provides services, labor, or materials for improving, repairing, or maintaining real property (except public property) may place a construction lien on the property, provided the person meets the procedural guidelines set forth in current law.[1]

Under part I of chapter 713, F.S., a person who is not in privity or direct contract with the owner, such as subcontractors and material suppliers, who intends to secure the right to claim a lien against the property must take several steps. The construction lien law requires various notices, demands, and requests to be provided in writing to the homeowner, contractor, subcontractor, lender, and building officials. Florida law requires that some notices, demands, and requests be in the statutory form provided in statute, while others do not have to be in the statutory form. The following notices are required by the act: Notice of Commencement,[2] Notice to Owner,[3] Claim of Lien,[4] Notice of Termination,[5] Waiver or Release of Lien,[6] Notice of Contest of Lien,[7] Contractor's Final Payment Affidavit,[8] and Demands of Written Statement of Account.[9]

For example, if a payment bond does not apply, the person must serve a notice to owner[10] (in the statutory form provided) that sets forth the person's name and address and the nature of the services or materials furnished or to be furnished to the owner's property.[11] The notice informs the owner of who is providing services or materials on their property, and that the person serving the notice is looking to the owner to ensure he or she receives payment for their services or materials.[12] The notice to owner must be served no later than 45 days after the person begins furnishing labor, services, or materials.[13]

Once the owner receives a notice to owner, the owner must obtain a waiver or release of lien (not required to be in the statutory form) from that person before paying the contractor. Otherwise, a payment to the contractor may constitute an improper payment and the owner is liable to the person if he or she is not paid by the contractor.[14]

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[1] Ch. 713, F.S.
[2] S. 713.13, F.S;.
[2] S. 713.06(2), F.S; *MHB Construction Services, LLC v. RM-NA HB Waterway Shoppes, L.L.C.*, 74 So. 3d 587, 589 (Fla. 4th DCA 2011) "Though the Notice of Commencement was originally required to trigger a commencement date from which to measure time limitations under the Mechanic's Lien Law, the information contained in the Notice of Commencement provides all the details necessary to complete a Notice to Owner."
[3] S. 713.06(2), F.S.
[4] S. 713.08, F.S.
[5] S. 713.132, F.S.
[6] S. 713.20, F.S.
[7] S. 713.22(2), F.S.
[8] S. 713.06(3), F.S.
[9] S. 713.16, F.S.
[10] S. 713.06(2), F.S.
[11] S. 713.06(2)(a), F.S.
[12] *Stocking*, 76 So. 3d 313, 319.
[13] *Id.*
[14] *Id.*; S. 713.06, F.S.

A payment bond is a type of bond that guarantees that a contractor will pay subcontractors, laborers, and material suppliers for their work.[15] It forms a three-part contract between the owner, the contractor, and the surety, and ensures that liens are not filed on the project. A payment bond for a construction project exempts the owner from the construction lien law because the surety insurer providing the bond guarantees the subcontractors, laborers, and material suppliers will receive payment for their work or materials. Current law requires contractors to obtain a payment bond for public projects over $100,000.[16]

Waiver or Release of Lien — Current Law

Prior to making a payment to a contractor, an owner must request that a person who served a notice to owner provide a waiver or release of lien. A waiver or release of lien is essentially a receipt provided by the person who served a notice to owner acknowledging payment for services performed or materials provided and a waiver of their ability to file a lien for those services or materials.[17] A waiver or release of lien can be a partial waiver for some of the person's services or materials or it can be a final waiver for all of the person's services or materials.[18] A person may not waive or release their right to file a lien prior to doing work or providing materials. However, a person may waive or release their right to file a lien prior to receiving payment for their services or materials.[19]

Current law provides a statutory form for a waiver or release of lien. However, current law does not require that the waiver or release of lien be in the statutory form.[20] Thus, a waiver or release of lien may be substantially different from the form and it may include additional provisions that are not included in the form. However, an owner may not require a person to sign a waiver or release of lien that is substantially different from the form.[21]

The form provides that the person who served the notice of owner waives their right to claim a lien for services or materials provided for the job on the owner's property in exchange for a certain sum of money.[22] The form entitled "Waiver and Release of Lien Upon Partial or Final Payment" states:

> "The undersigned lienor, in consideration of the (sum of or final payment in the amount of) $, hereby waives and releases its lien and right to claim a lien for labor, services, or materials furnished to (insert the name of your customer) on the job of (insert the name of the owner) to the described property (insert description of the property)."[23]

Industry blogs and news reports indicate it has become routine in the industry for the form for a waiver or release of lien to include other miscellaneous provisions, and that subcontractors and material suppliers should be warned about signing a waiver or release of lien without understanding the extra provisions. They advise to carefully inspect a waiver or release to ensure someone does not unknowingly sign a waiver or release that includes additional provisions such as a waiver or release of all claims, damages, losses, or expenses.[24]

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[15] *See* Bond, Black's Law Dictionary (11th ed. 2019).
[16] S. 255.05, F.S.
[17] S. 713.20, F.S.; Leonard Klingen, *Florida's unwieldy but effective construction lien law*, Florida Bar Journal (Jan./Feb. 2019) https://www.floridabar.org/the-florida-bar-journal/floridas-unwieldy-but-effective-construction-lien-law/ (last visited Nov. 12, 2019).
[18] S. 713.20, F.S.
[19] *Id.*
[20] *Id.*
[21] *Id.*
[22] *Id.*
[23] *Id.*
[24] Levelset, *Florida's "Non-Required" Statutory Lien Waivers Can Lead to Confusion*, (May 20, 2019) https://www.levelset.com/blog/florida-statutory-lien-waivers-lead-to-confusion/ (last visited Dec. 6, 2019); Craig Distel, *Understanding waivers and releases for Florida construction contractors*, (Dec. 20, 2018) https://mcdonaldhopkins.com/Insights/Blog/Industry-Insights/2018/12/20/Understanding-waivers-and-releases-for-Florida-construction-contractors (last visited Dec. 6, 2019).

Right to Claim Against a Payment Bond — Current Law

Similar to a waiver or release of lien, in a situation where there is a payment bond, prior to making a payment to a subcontractor, laborer, or material supplier, a contractor may request the person provide a waiver of right to claim against the payment bond.

A waiver of right to claim against a bond is similar to a waiver or release of lien. Like a waiver or release of lien, a waiver of right to claim against the bond is essentially a receipt provided by the person acknowledging payment for services performed or materials provided and a waiver of their ability to seek payment from the surety.[25]

Current law provides a statutory form for a waiver of right to claim against a bond, which is similar to a waiver or release of a lien. Current law provides that a contractor may not require a person to sign a waiver of right to claim against a bond that is substantially different from the form. However, also like a waiver or release of lien, the statutory form for the waiver of right to claim against a bond is not required, and a waiver of right to claim against a bond may be different from the form and it may include additional provisions that are not included in the statutory form.[26]

According to industry experts, any person required to provide a claim against a bond must ensure they carefully inspect a waiver or release to ensure they do not unknowingly sign a waiver or release that includes additional provisions such as a waiver or release of all claims, damages, losses, or expenses.[27]

Waiver or Release of Lien and Right to Claim Against a Payment Bond — Effect of the Bill

The bill provides that any provision in a waiver or release of lien or a right to claim against a bond that is not related to the waiver or release of lien or the right to claim against a bond is not enforceable.

Priority of Construction Liens — Current Law

Construction liens have priority over any conveyance, encumbrance, or demand (debt) not recorded against the real property prior to the time the lien attaches. Any debt recorded prior to the time the lien attaches and any proceeds thereof, regardless of when disbursed, have priority over construction liens.[28]

However, under the common law doctrine of subrogation, any debt that is recorded after the time a lien attaches will take priority over the lien if the debt was obtained to satisfy a previous debt that was recorded prior to the time the construction lien attaches.[29]

The doctrine of subrogation is the substitution of one party for another, where one party pays the debt of another party, entitling the paying party to rights, remedies, or securities (including priority) that would otherwise belong to the original debtor.[30] There are two types of subrogation: conventional and equitable.[31]

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[25] Ss. 255.05(2), & 713.235, F.S.
[26] *Id.*
[27] Levelset, *supra* note 24.
[28] S. 713.07(3), F.S.
[29] *Federal Land Bank of Columbia v. Godwin*, 107 Fla. 537, 549-551 (Fla. 1933); *Bankers Lending Company, LLC v. Angela Jackson*, 253 So. 3d 1174, 1177 (Fla. 5th DCA 2018).
[30] Black's Law Dictionary (11th ed. 2019).
[31] *Dade County School Board v. Radio Station WQBA*, 731 So. 2d 638, 646 (Fla. 1999).

Conventional subrogation occurs when parties who have recorded debts against real property agree that a person who pays the debt of one of the parties will have the rights, remedies, and securities of that party.[32]

Equitable subrogation does not depend on a contract. It arises by operation of law to provide a remedy and prevent unjust enrichment.[33] Equitable subrogation applies when the person paying the debt or lien with higher priority: made the payment to protect his or her own interest; did not act as a volunteer; is not primarily liable for the debt her or she is paying; paid off the entire debt; and subrogating the person for the original debtor does not injustice the rights of another debt holder.[34] If a person meets the requirements of equitable subrogation then he or she will have the rights, remedies, and securities of the debt or lien he or she paid regardless if any other person with a debt or lien against the property agrees to it.[35]

Priority of Construction Liens— Effect of the Bill

The bill provides that construction liens have priority over any debt not recorded against the real property prior to the time the lien attaches, *including* any debt that relates back to a debt recorded before the construction lien is recorded "pursuant to the operation of any common law doctrine or remedy."

Final Furnishing of Materials & Specially Fabricated Materials— Current Law

In order to record a construction lien on real property, a person must record a claim of lien with the clerk of court of the county where the property is located and serve the owner with the claim of lien. The person must serve the owner with the claim of lien before recording the lien or within 15 days of recording the lien.[36]

If a claim of lien is not recorded, the lien is void to the extent that the failure or delay is shown to have been prejudicial to any person entitled to rely on service of the claim of lien.[37]

A person may file a claim of lien at any time during the progress of work. However, a person may not file a claim of lien later than 90 days after the final furnishing of labor or materials by the person.[38]

Current law provides that the final furnishing date is the last day the person furnishes labor, services, or materials. The date may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of final completion, and does not include correction of deficiencies in the person's previously performed work or materials supplied. With respect to rental equipment, the term means the date that the rental equipment was last on the job site and available for use.[39]

Materials must be incorporated in the jobsite in order for the materials to considered furnished. Current law provides that the delivery of materials to the jobsite is prima facie evidence that the materials have been incorporated into the jobsite.[40]

However, "specially fabricated materials" do not have to be incorporated into a jobsite in order for the materials to be considered furnished. Specially fabricated materials are materials made

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[32] *Id.*
[33] *Federal Land Bank of Columbia v. Godwin*, 107 Fla. 537, 549-551 (Fla. 1933).
[34] *Bankers Lending Company, LLC v. Angela Jackson*, 253 So. 3d 1174, 1177 (Fla. 5th DCA 2018).
[35] *Id.*
[36] S. 713.08, F.S.
[37] S. 713.08(4), F.S.
[38] S. 713.08(5), F.S.
[39] S. 713.01(12), F.S.
[40] S. 713.01(13), F.S.

for a particular project and are not suited or readily adaptable for use in a different project.[41] Since specially fabricated materials cannot be used for another project, Florida courts have determined that specially fabricated materials do not have to be delivered to a jobsite in order for the supplier to file lien on the real property.[42] However, current law does not provide a date to determine the last day specially fabricated materials are furnished.

Final Furnishing of Materials & Specially Fabricated Materials — Effect of the Bill

The bill provides that the final furnishing date for specially fabricated materials is the date that the last portion of the specially fabricated materials is delivered to the jobsite, or if any portion of the specially fabricated materials is not delivered to the jobsite by no fault of the material supplier, the final furnishing date is the later of:

- One year after the date the material supplier completes the fabrication;
- One year after the date the material supplier receives the last portion of the specially fabricated materials needed to complete the order; or
- The date the notice of commencement expires.

Notice of Commencement— Current Law

Before construction begins, a property owner or the owner's authorized agent generally must file a notice of commencement for recording by the clerk of court in the official records. The notice of commencement must also be posted on the construction site, and filed with the building department before the first inspection.[43] The notice of commencement determines the priority of construction liens, provides details needed to fill out a notice to owner, establishes the date on which the statute of limitations begins to run, and protects owners from double payments.[44]

Current law provides a statutory form for the notice of commencement, and the notice must be substantially similar to the form. The notice of commencement must contain information describing: the real property on which the improvement will be located; a general description of the improvement; the name and address of the owner and contractor; information relating to a surety bond, if a bond applies; the contact information for the lender for the project; contact information designated by the owner upon whom notices may be served; the notice's expiration date; a warning in all caps stating that the notice must be recorded and payments after the notice expires could be improper and lead to the owner paying twice.[45]

The owner's information required in the notice of commencement must include:[46]

- The name and address of the owner or lessee if the lessee contracted for the work;
- The owner or lessee's interest in the property;
- A statement that the ownership interest is a leasehold interest if a lessee contracted for the work;
- The name and address of the fee simple titleholder[47] (if different from the owner); and

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[41] *Surf Properties v. Markowitz Bros.*, 75 So. 298, 302 (Fla. 1954).

[42] *Oolite Industries, Inc. v. Millman Construction Company, Inc.*, 501 So. 2d 655, 656 (Fla. 3rd DCA 1987); *Aquatic Plant Management, Inc. v. Paramount Engineering, Inc.*, 977 So. 2d 600, 603, (Fla. 4th DCA 2007).

[43] Ss. 713.13(1)(a), & 713.135(1)(d), F.S.

[44] *Stocking Building Supply of Florida, Inc. v. Soares Da Costa Construction Services, LLC*, 76 So. 3d 313, 317 (Fla 3rd DCA 2011); The Florida Senate Committee on Regulated Industries, *Review of the Florida Construction Lien Law*, November 2007 http://archive.flsenate.gov/data/Publications/2008/Senate/reports/interim_reports/pdf/2008-149ri.pdf (last visited Nov. 11, 2019); Fred Dudley, William A. Buzzett, & Deborah Kaveney Kearney, *Construction Lien Law Reform: The Equilibrium of Change*, 18 Fla. St. U. L. Rev., 278 (1991).

[45] S. 713.13(1)(a), F.S.

[46] S. 713.13(1)(d), F.S.

[47] The construction lien law does not define fee simple titleholder; however, Black's Law Dictionary defines fee simple title as an interest in land that, being the broadest property interest allowed by law, endures until the current holder dies without heirs. Black's Law Dictionary (11th ed. 2019).

- Any person designated by the owner to receive a claim of lien.

The construction lien law defines "owner" as a person who is the owner of any legal or equitable interest in real property, which interest can be sold by legal process, and who enters into a contract for the improvement of the real property.[48]

Notice of Commencement — Effect of the Bill

The bill repeals the requirement that the notice must include:
- The owner or lessee's interest in the property;
- A statement that the ownership interest is a leasehold interest if a lessee contracted for the work; and
- The name and address of the fee simple titleholder if different from the owner.

The bill also provides that instead of the owner's information, the notice must include the name, address, and phone number of the "owner of record" for the property. The construction lien law does not currently use or define the term "owner of record."[49]

Manner of Serving Documents — Current Law

Notices, claims, and waivers must be served by one of the following methods:[50]
- By actual delivery to the person being served;
- By common carrier delivery service or by registered, Global Express Guaranteed, or certified mail, with postage or shipping paid by the sender and with evidence of delivery; or
- By posting on the construction site if service cannot be performed by the other two methods.

Service by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail is effective on the day the notice, claim, or waiver is **mailed,** if it is:[51]
- Sent to the last address shown in the notice of commencement or, in the absence of a notice, to the last address shown in the building permit application, or to the last known address of the person to be served; and
- Returned as being "refused," "moved, not forwardable," or "unclaimed," or is otherwise not delivered or deliverable through no fault of the person serving the item.

Manner of Serving Documents — Effect of the Bill

The bill provides that service by common carrier delivery service or by registered, Global Express Guaranteed, or certified mail is effective on the day the notice, claim, or waiver is mailed ***or shipped***.

Notice of Nonpayment for a Payment Bond— Current Law

Since a payment bond exempts the owner from having construction liens placed on their real property, the surety is the one who guarantees a subcontractor, laborer, or material supplies that they will receive payment from the general contractor. If the general contractor fails to do so then the subcontractor, laborer, or material supplier will seek payment from the surety.

In order to receive protection under a payment bond for a public or private project, a subcontractor, laborer, or material supplier who does not have a direct contract with the contractor must provide a written notice of nonpayment to the contractor and the surety.[52]

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[48] S. 713.01(23), F.S.
[49] *See* Ch. 713, F.S.
[50] S. 713.18(1), F.S.
[51] 713.18(3), F.S.
[52] Ss. 255.05(2), & 713.23(1)(d), F.S. F.S.

Notice of Nonpayment for a Payment Bond — Effect of the Bill

The bill provides that a subcontractor, laborer, or material supplier must provide a notice of nonpayment to the general contractor and ***a copy*** of the notice of nonpayment to the surety.

B. SECTION DIRECTORY:

Section 1. Amends s. 255.05, F.S., relating to the notice of nonpayment and the waiver or release of claim against a payment bond for public projects.

Section 2. Amends s. 713.01, F.S., relating to the final furnishing of specially fabricated materials.

Section 3. Amends s. 713.07, F.S., relating to the priority of construction liens.

Section 4. Amends s. 713.13, F.S., relating to the notice of commencement.

Section 5. Amends s. 713.18, F.S., relating to the service of instruments.

Section 6. Amends s. 713.20, F.S., relating to the waiver or release of construction liens.

Section 7. Amends s. 713.23, F.S., relating to the notice of nonpayments.

Section 8. Amends s. 713.235, F.S., relating to the waiver or release of claim against a payment bonds for private projects.

Section 9. Providing an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Unknown.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that construction liens have priority over any debt not recorded against the real property prior to the time the lien attaches, including any debt that relates back to a debt recorded before the construction lien is recorded pursuant to the operation of "any common law doctrine or remedy." It is not clear exactly what "pursuant to the operation of any common law doctrine or remedy" means or how many common law doctrines or remedies exist. Thus, the effect of this provision is unknown.

The bill does not provide a definition for "owner of record," and the construction lien law does not define the term. However, "owner of record" is defined in multiple places in current law with different interpretations of who is an owner of record. For example, s. 45.032(1)(a), F.S., defines "owner of record" as the person or persons who appear to be the owners of a property that is the subject of a foreclosure proceeding. Section 328.0015(1)(r), F.S., defines "owner of record" as the owner indicated in the Department of Highway Safety and Motor Vehicles. It is recommended that in order to prevent confusion the bill be amended to include a definition of "owner of record."

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to liens and bonds; amending s. 255.05, F.S.; requiring that a copy of a notice of nonpayment be served on the surety; providing that certain waivers and releases are unenforceable; amending s. 713.01, F.S.; revising the definition of the term "final furnishing"; amending s. 713.07, F.S.; providing that certain liens have priority over certain subordinate conveyances, encumbrances, or demands; amending s. 713.13, F.S.; revising information to be included in a notice of commencement; amending s. 713.18, F.S.; providing that service of an instrument is effective on the date of shipping; amending ss. 713.20 and 713.235, F.S.; providing that certain waivers and releases are unenforceable; amending s. 713.23, F.S.; requiring that a copy of a notice of nonpayment be served on the surety; providing an effective date.

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

Section 1. Paragraphs (a) and (f) of subsection (2) of section 255.05, Florida Statutes, are amended to read:

255.05 Bond of contractor constructing public buildings; form; action by claimants.—

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

(2)(a)1. If a claimant is no longer furnishing labor, services, or materials on a project, a contractor or the contractor's agent or attorney may elect to shorten the time within which an action to enforce any claim against a payment bond must be commenced by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF CLAIM

AGAINST PAYMENT BOND

To: ...(Name and address of claimant)...

You are notified that the undersigned contests your notice of nonpayment, dated ....., ..., and served on the undersigned on ....., ..., and that the time within which you may file suit to enforce your claim is limited to 60 days after the date of service of this notice.

DATED on ....., ...

Signed: ...(Contractor or Attorney)...

The claim of a claimant upon whom such notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of such notice is extinguished automatically. The contractor or the contractor's attorney shall serve a copy of the notice of contest <u>on</u> ~~to~~ the claimant at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the notice and record the notice.

2. A claimant, except a laborer, who is not in privity

with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, services, or materials for the prosecution of the work, serve the contractor with a written notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for furnishing his or her labor, services, or materials shall serve a written notice of nonpayment on the contractor and a copy on the surety. The notice of nonpayment shall be under oath and served during the progress of the work or thereafter but may not be served earlier than 45 days after the first furnishing of labor, services, or materials by the claimant or later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, later than 90 days after the date that the rental equipment was last on the job site available for use. Any notice of nonpayment served by a claimant who is not in privity with the contractor which includes sums for retainage must specify the portion of the amount claimed for retainage. An action for the labor, services, or materials may not be instituted against the contractor or the surety unless the notice to the contractor and notice of nonpayment have been served, if required by this section. Notices required or permitted under this section must be served in accordance with s. 713.18. A claimant may not waive in advance his or her right to bring an action under the bond

against the surety. In any action brought to enforce a claim against a payment bond under this section, the prevailing party is entitled to recover a reasonable fee for the services of his or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions. The time periods for service of a notice of nonpayment or for bringing an action against a contractor or a surety is ~~shall be~~ measured from the last day of furnishing labor, services, or materials by the claimant and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A claimant who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the claimant has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates

to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the claimant's claim against the bond. The notice of nonpayment under this subparagraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

To: ...(name of contractor and address)...

...(name of surety and address)...

The undersigned claimant notifies you that:

1. Claimant has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is $...., of which $.... is unpaid retainage.

2. Claimant has been paid to date the amount of $.... for previously furnishing ...(describe labor, services, or materials)... for this improvement.

3. Claimant expects to furnish ...(describe labor, services, or materials)... for this improvement in the future (if known), and the corresponding amount expected to become due is $.... (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.

DATED on ....., ...

...(signature and address of claimant)...

STATE OF FLORIDA

COUNTY OF .....

The foregoing instrument was sworn to (or affirmed) and subscribed before me this....day of ...., ...(year)..., by ...(name of signatory)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known ..... OR Produced Identification .....

Type of Identification Produced.....

(f) A provision in a waiver or release that is not related to the waiver or release of a claim against the payment bond as provided in this subsection is unenforceable ~~substantially similar to the forms in this subsection is enforceable in accordance with its terms~~.

Section 2. Subsection (12) of section 713.01, Florida Statutes, is amended to read:

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

(12) "Final furnishing" means the last date that the lienor furnishes labor, services, or materials. Such date may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of final completion, and does not include the correction of

deficiencies in the lienor's previously performed work or materials supplied. With respect to rental equipment, the term means the date that the rental equipment was last on the ~~job~~ site of the improvement and available for use. With respect to specially fabricated materials, the term means the date that the last portion of the specially fabricated materials is delivered to the site of the improvement, or if any portion of the specially fabricated materials is not delivered to the site of the improvement by no fault of the lienor, the term means 1 year after the date the lienor completes the fabrication, 1 year after the date the lienor receives the last portion of the specially fabricated materials needed to complete the order, or the date the notice of commencement expires, whichever is later.

Section 3. Subsection (3) of section 713.07, Florida Statutes, is amended to read:

713.07 Priority of liens.—

(3) All such liens shall have priority over any conveyance, encumbrance, or demand not recorded against the real property before ~~prior to~~ the time such lien attached as provided herein, including those subordinate conveyances, encumbrances, or demands that would otherwise relate back to any conveyance, encumbrance, or demand recorded before the time such lien attaches pursuant to the operation of any common law doctrine or remedy; but any conveyance, encumbrance, or demand recorded before ~~prior to~~ the time such lien attaches and any proceeds

thereof, regardless of when disbursed, shall have priority over such liens.

Section 4. Paragraphs (a) and (d) of subsection (1) of section 713.13, Florida Statutes, are amended to read:

713.13 Notice of commencement.—

(1)(a) Except for an improvement that is exempt under ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized agent before actually commencing to improve any real property, or recommencing completion of any improvement after default or abandonment, whether or not a project has a payment bond complying with s. 713.23, shall record a notice of commencement in the clerk's office and forthwith post either a certified copy thereof or a notarized statement that the notice of commencement has been filed for recording along with a copy thereof. The notice of commencement shall contain the following information:

1. A description sufficient for identification of the real property to be improved. The description should include the legal description of the property and also should include the street address and tax folio number of the property if available or, if there is no street address available, such additional information as will describe the physical location of the real property to be improved.

2. A general description of the improvement.

3. The name and address of the owner of record~~, the owner's interest in the site of the improvement, and the name~~

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

~~and address of the fee simple titleholder, if other than such owner~~.

4. The name and address of the lessee, if the ~~A~~ lessee ~~who~~ contracts for the improvements as ~~is~~ an owner as defined in s. 713.01 ~~under s. 713.01(23) and must be listed as the owner together with a statement that the ownership interest is a leasehold interest~~.

5.~~4.~~ The name and address of the contractor.

6.~~5.~~ The name and address of the surety on the payment bond under s. 713.23, if any, and the amount of such bond.

7.~~6.~~ The name and address of any person making a loan for the construction of the improvements.

8.~~7.~~ The name and address within the state of a person other than himself or herself who may be designated by the owner as the person upon whom notices or other documents may be served under this part; and service upon the person so designated constitutes service upon the owner.

(d) A notice of commencement must be in substantially the following form:

Permit No..... Tax Folio No.....

NOTICE OF COMMENCEMENT

State of....

County of....

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter

713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Description of property: ...(legal description of the property, and street address if available)....

2. General description of improvement:.....

3.a. Owner of record: ...(name and address)....

b. Owner's phone number:.....

4.a. Lessee, if the lessee contracted for the improvements: ...(name and address)....

b. Lessee's phone number..... ~~owner information or Lessee information if the Lessee contracted for the improvement:~~

~~a. Name and address:.....~~

~~b. Interest in property:.....~~

~~c. Name and address of fee simple titleholder (if different from Owner listed above):.....~~

5.a.~~4.a.~~ Contractor: ...(name and address)....

b. Contractor's phone number:.....

6.~~5.~~ Surety (if applicable, a copy of the payment bond is attached):

a. Name and address:.....

b. Phone number:.....

c. Amount of bond: $.....

7.a.~~6.a.~~ Lender: ...(name and address)....

b. Lender's phone number:.....

8.~~7.~~ Persons within the State of Florida designated by

Owner upon whom notices or other documents may be served as provided in ~~by~~ Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida Statutes:

a. Name and address:.....

b. Phone numbers of designated persons:.....

9.a.~~8.a.~~ In addition to himself or herself, Owner designates ..... of ..... to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes.

b. Phone number of person or entity designated by owner:.....

10.~~9.~~ Expiration date of notice of commencement (the expiration date will be 1 year after ~~from~~ the date of recording unless a different date is specified).....

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

...(Signature of Owner or Lessee, or Owner's or Lessee's Authorized Officer/Director/Partner/Manager)...

...(Signatory's Title/Office)...
The foregoing instrument was acknowledged before me this .... day of ...., ...(year)..., by ...(name of person)... as ...(type of authority, . . . e.g. officer, trustee, attorney in fact)... for ...(name of party on behalf of whom instrument was executed)....
...(Signature of Notary Public - State of Florida)...
...(Print, Type, or Stamp Commissioned Name of Notary Public)...
Personally Known .... OR Produced Identification ....
Type of Identification Produced.....

Section 5. Paragraph (a) of subsection (3) of section 713.18, Florida Statutes, is amended to read:

713.18 Manner of serving notices and other instruments.—

(3)(a) Service of an instrument pursuant to this section is effective on the date of mailing or shipping the instrument if it:

1. Is sent to the last address shown in the notice of commencement or any amendment thereto or, in the absence of a notice of commencement, to the last address shown in the building permit application, or to the last known address of the person to be served; and

2. Is returned as being "refused," "moved, not forwardable," or "unclaimed," or is otherwise not delivered or deliverable through no fault of the person serving the item.

Section 6. Subsection (8) of section 713.20, Florida

Statutes, is amended to read:

713.20 Waiver or release of liens.—

(8) A provision in a lien waiver or lien release that is not related to the waiver or release of lien rights as provided in this section is unenforceable ~~substantially similar to the forms in subsections (4) and (5) is enforceable in accordance with the terms of the lien waiver or lien release~~.

Section 7. Paragraph (d) of subsection (1) of section 713.23, Florida Statutes, is amended to read:

713.23 Payment bond.—

(1)

(d) In addition, a lienor who has not received payment for furnishing his or her labor, services, or materials must, as a condition precedent to recovery under the bond, serve a written notice of nonpayment on ~~to~~ the contractor and a copy on the surety. The notice must be under oath and served during the progress of the work or thereafter, but may not be served later than 90 days after the final furnishing of labor, services, or materials by the lienor, or, with respect to rental equipment, later than 90 days after the date the rental equipment was on the job site and available for use. A notice of nonpayment that includes sums for retainage must specify the portion of the amount claimed for retainage. The required notice satisfies this condition precedent with respect to the payment described in the notice of nonpayment, including unpaid finance charges due under

the lienor's contract, and with respect to any other payments which become due to the lienor after the date of the notice of nonpayment. The time period for serving a notice of nonpayment is ~~shall be~~ measured from the last day of furnishing labor, services, or materials by the lienor and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The failure of a lienor to receive retainage sums not in excess of 10 percent of the value of labor, services, or materials furnished by the lienor is not considered a nonpayment requiring the service of the notice provided under this paragraph. If the payment bond is not recorded before commencement of construction, the time period for the lienor to serve a notice of nonpayment may at the option of the lienor be calculated from the date specified in this section or the date the lienor is served a copy of the bond. However, the limitation period for commencement of an action on the payment bond as established in paragraph (e) may not be expanded. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A lienor who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the lienor has willfully exaggerated the amount unpaid, willfully included a claim for

work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the lienor's claim against the bond. The notice under this paragraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

To ...(name of contractor and address)...

...(name of surety and address)...

The undersigned lienor notifies you that:

1. The lienor has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is $...., of which $.... is unpaid retainage.

2. The lienor has been paid to date the amount of $.... for previously furnishing ...(describe labor, services, or materials)... for this improvement.

3. The lienor expects to furnish ...(describe labor, services, or materials)... for this improvement in the future

(if known), and the corresponding amount expected to become due is $.... (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.

DATED on ....., ...

...(signature and address of lienor)...

STATE OF FLORIDA

COUNTY OF.....

The foregoing instrument was sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of signatory)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known ..... OR Produced Identification .....

Type of Identification Produced.....

Section 8. Subsection (5) of section 713.235, Florida Statutes, is amended to read:

713.235 Waivers of right to claim against payment bond; forms.—

(5) A provision of a waiver or release that is not related to the waiver or release of a claim against the payment bond as provided in this section is unenforceable ~~substantially similar to the forms in this section is enforceable in accordance with~~

~~its terms~~.

Section 9. This act shall take effect July 1, 2020.

Lar

BUSINESS & PROFESSIONS SUBCOMMITTEE

HB 283 by Rep. Toledo
Liens and Bonds

AMENDMENT SUMMARY
December 11, 2019

Amendment 1 by Rep. Toledo (Strike-all amendment):
The strike-all amendment differs from the original bill in the following ways:

- Provides that a subcontractor may not be required to sign a waiver or release of lien that is different from the form provided in statute in exchange for payment;
- Prohibits any provisions in a waiver or release of lien that are not related to the waiver or release unless the subcontractor has agreed to those provisions in their initial contract.
- Provides that the statutory requirements for waivers of right to claim against a bond for public construction projects also apply to DOT construction projects.
- Provides that licensed building and general contractors who provide construction management services and their subcontractors may record a construction lien.
- Provides that construction liens may be filed against a lease when a construction project is for a private entity leasing public property.
- Provides that a lienor may file one claim of lien for multiple contracts with the same owner.
- Removes the use of the term "owner of record" from the notice of commencement thereby maintaining current law.
- Provides that a termination of a notice of commencement does not take effect until each contractor or subcontractor has been paid and has received notice of the termination.
- Provides that an owner must provide a copy of the notice of termination to a lienor who timely serves a notice to owner after the notice of termination has taken effect.
- Allows a lien to be transferred to a payment bond obtained by a subcontractor if the lienor is working for the subcontractor.
- Increases the amount needed to obtain a bond in order to transfer a lien to the bond.
- Provides that a prevailing party is entitled to attorney's fees in actions to enforce liens that have been transferred to bonds.

The remainder of the bill's provisions are unchanged by the strike-all amendment. The bill:

- Clarifies the definition of "final furnishing" related to specially fabricated materials.
- Provides that construction liens have priority over debts that are recorded after the construction lien is recorded, even if such debts relate back to a debt that was recorded before the construction lien attached pursuant to the operation of "any common law doctrine or remedy."
- Removes the requirement that a notice of commencement must include:
    - The owner or lessee's interest in the property; and
    - A statement that the ownership interest is a leasehold interest if a lessee contracted for the work.

Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative Toledo offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraphs (a), (d), and (f) of subsection (2) of section 255.05, Florida Statutes, are amended to read:

255.05 Bond of contractor constructing public buildings; form; action by claimants.—

(2)(a)1. If a claimant is no longer furnishing labor, services, or materials on a project, a contractor or the contractor's agent or attorney may elect to shorten the time within which an action to enforce any claim against a payment bond must be commenced by recording in the clerk's office a notice in substantially the following form:

NOTICE OF CONTEST OF CLAIM
AGAINST PAYMENT BOND

To: ...(Name and address of claimant)...

You are notified that the undersigned contests your notice of nonpayment, dated ....., ..., and served on the undersigned on ....., ..., and that the time within which you may file suit to enforce your claim is limited to 60 days after the date of service of this notice.

DATED on ....., ...

Signed: ...(Contractor or Attorney)...

The claim of a claimant upon whom such notice is served and who fails to institute a suit to enforce his or her claim against the payment bond within 60 days after service of such notice is extinguished automatically. The contractor or the contractor's attorney shall serve a copy of the notice of contest on ~~to~~ the claimant at the address shown in the notice of nonpayment or most recent amendment thereto and shall certify to such service on the face of the notice and record the notice.

2. A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 45 days after commencing to furnish labor, services, or materials for the prosecution of the work, serve the contractor

with a written notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for furnishing his or her labor, services, or materials shall serve a written notice of nonpayment on the contractor, and a copy of the notice on the surety. The notice of nonpayment shall be under oath and served during the progress of the work or thereafter but may not be served earlier than 45 days after the first furnishing of labor, services, or materials by the claimant or later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, later than 90 days after the date that the rental equipment was last on the job site available for use. Any notice of nonpayment served by a claimant who is not in privity with the contractor which includes sums for retainage must specify the portion of the amount claimed for retainage. An action for the labor, services, or materials may not be instituted against the contractor or the surety unless the notice to the contractor and notice of nonpayment have been served, if required by this section. Notices required or permitted under this section must be served in accordance with s. 713.18. A claimant may not waive in advance his or her right to bring an action under the bond against the surety. In any action brought to enforce a claim against a payment bond under this section, the prevailing party is entitled to recover a reasonable fee for the services of his

or her attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions. The time periods for service of a notice of nonpayment or for bringing an action against a contractor or a surety are ~~shall be~~ measured from the last day of furnishing labor, services, or materials by the claimant and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A claimant who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the claimant has willfully exaggerated the amount unpaid, willfully included a claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the claimant's claim against the bond. The notice of nonpayment

under this subparagraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

To: ...(name of contractor and address)...

...(name of surety and address)...

The undersigned claimant notifies you that:

1. Claimant has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is $...., of which $.... is unpaid retainage.

2. Claimant has been paid to date the amount of $.... for previously furnishing ...(describe labor, services, or materials)... for this improvement.

3. Claimant expects to furnish ...(describe labor, services, or materials)... for this improvement in the future (if known), and the corresponding amount expected to become due is $.... (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.

DATED on ....., ...

...(signature and address of claimant)...

STATE OF FLORIDA
COUNTY OF .....

The foregoing instrument was sworn to (or affirmed) and subscribed before me this....day of ...., ...(year)..., by ...(name of signatory)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known ..... OR Produced Identification .....

Type of Identification Produced .....

(d) A person may not require a claimant to furnish a waiver that is different from the forms in paragraphs (b) and (c) in exchange for or to induce a progress payment or final payment, unless the claimant has entered into a direct contract which requires the claimant to furnish a form that is different from the forms in paragraphs (b) and (c).

(f) Any provisions in a waiver that are not related to the waiver of right to claim against a payment bond as provided in this section are unenforceable, unless the claimant has

otherwise agreed to those provisions in the claimant's direct contract ~~is not substantially similar to the forms in this subsection is enforceable in accordance with its terms~~.

Section 2. Paragraph (c) of subsection (1) of section 337.18, Florida Statutes, is amended to read:

337.18 Surety bonds for construction or maintenance contracts; requirement with respect to contract award; bond requirements; defaults; damage assessments.—

(1)

(c) A claimant, except a laborer, who is not in privity with the contractor shall, before commencing or not later than 90 days after commencing to furnish labor, materials, or supplies for the prosecution of the work, furnish the contractor with a notice that he or she intends to look to the bond for protection. A claimant who is not in privity with the contractor and who has not received payment for his or her labor, materials, or supplies shall deliver to the contractor and to the surety written notice of the performance of the labor or delivery of the materials or supplies and of the nonpayment. The notice of nonpayment may be served at any time during the progress of the work or thereafter but not before 45 days after the first furnishing of labor, services, or materials, and not later than 90 days after the final furnishing of the labor, services, or materials by the claimant or, with respect to rental equipment, not later than 90 days after the date that the

rental equipment was last on the job site available for use. An action by a claimant, except a laborer, who is not in privity with the contractor for the labor, materials, or supplies may not be instituted against the contractor or the surety unless both notices have been given. Notices required or permitted under this section may be served in any manner provided in s. 713.18, and provisions for the waiver and release of claims against the payment bond contained in s. 255.05(2) shall apply to all contracts under this section.

Section 3. Subsections (8), (12), and (26) of section 713.01, Florida Statutes, are amended to read:

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

(8) "Contractor" means a person other than a materialman or laborer who enters into a contract with the owner of real property for improving it, or who takes over from a contractor as so defined the entire remaining work under such contract. The term "contractor" includes an architect, landscape architect, or engineer who improves real property pursuant to a design-build contract authorized by s. 489.103(16). The term also includes a licensed building or general contractor as defined in paragraphs 489.105(3)(a) and (b) who provides construction management services, which include responsibility for scheduling and coordination in both preconstruction and construction phases and for the successful, timely, and economical completion of the construction project, or who provides program management

services, which include responsibility for schedule control, cost control, and coordination in providing or procuring planning, design, and construction.

(12) "Final furnishing" means the last date that the lienor furnishes labor, services, or materials. Such date may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of final completion, and does not include the correction of deficiencies in the lienor's previously performed work or materials supplied. With respect to rental equipment, the term means the date that the rental equipment was last on the ~~job~~ site of the improvement and available for use. With respect to specially fabricated materials, the term means the date that the last portion of the specially fabricated materials is delivered to the site of the improvement, or if any portion of the specially fabricated materials is not delivered to the site of the improvement by no fault of the lienor, the term means 1 year after the date the lienor completes the fabrication, 1 year after the date the lienor receives the last portion of the specially fabricated materials needed to complete the order, or the date the notice of commencement expires, whichever is later.

(26) "Real property" means the land that is improved and the improvements thereon, including fixtures, except any such property owned by the state or any county, municipality, school board, or governmental agency, commission, or political

subdivision, provided, however, that a private leasehold interest in such government-owned property which is improved and the leasehold improvements shall be considered real property for purposes of this part.

Section 4. Subsection (3) of section 713.07, Florida Statutes, is amended to read:

713.07 Priority of liens.—

(3) All such liens shall have priority over any conveyance, encumbrance or demand not recorded against the real property before ~~prior to~~ the time such lien attached as provided herein, including those subordinate conveyances, encumbrances, or demands that would otherwise relate back to any conveyance, encumbrance, or demand recorded before the time such lien attaches pursuant to the operation of any common law doctrine or remedy; but any conveyance, encumbrance, or demand recorded before ~~prior to~~ the time such lien attaches and any proceeds thereof, regardless of when disbursed, shall have priority over such liens.

Section 5. Section 713.09, Florida Statutes, is amended to read:

713.09 Single claim of lien.—A lienor may ~~is required to~~ record only one claim of lien covering his or her entire demand against the real property when the amount demanded is for labor or services or material furnished for more than one improvement under the same direct contract or multiple direct contracts. The

single claim of lien is sufficient even though the improvement is for one or more improvements located on separate lots, parcels, or tracts of land. If materials to be used on one or more improvements on separate lots, parcels, or tracts of land ~~under one direct contract~~ are delivered by a lienor to a place designated by the person with whom the materialman contracted, other than the site of the improvement, the delivery to the place designated is prima facie evidence of delivery to the site of the improvement and incorporation in the improvement. The single claim of lien may be limited to a part of multiple lots, parcels, or tracts of land and their improvements or may cover all of the lots, parcels, or tracts of land and improvements. If a ~~In each~~ claim of lien under this section is for multiple direct contracts, the owner under the direct contracts must be the same person for all lots, parcels, or tracts of land against which a single claim of lien is recorded.

Section 6. Paragraphs (a) and (d) of subsection (1) of section 713.13, Florida Statutes, are amended to read:

713.13 Notice of commencement.—

(1)(a) Except for an improvement that is exempt under ~~pursuant to~~ s. 713.02(5), an owner or the owner's authorized agent before actually commencing to improve any real property, or recommencing completion of any improvement after default or abandonment, whether or not a project has a payment bond complying with s. 713.23, shall record a notice of commencement

in the clerk's office and forthwith post either a certified copy thereof or a notarized statement that the notice of commencement has been filed for recording along with a copy thereof. The notice of commencement shall contain the following information:

1. A description sufficient for identification of the real property to be improved. The description should include the legal description of the property and also should include the street address and tax folio number of the property if available or, if there is no street address available, such additional information as will describe the physical location of the real property to be improved.

2. A general description of the improvement.

3. The name and address of the owner, the owner's interest in the site of the improvement, and the name and address of the fee simple titleholder, if other than such owner.

4. The name and address of the lessee, if the ~~A~~ lessee ~~who~~ contracts for the improvements as ~~is~~ an owner as defined in s. 713.01 ~~under s. 713.01(23) and must be listed as the owner together with a statement that the ownership interest is a leasehold interest~~.

5. ~~4.~~ The name and address of the contractor.

6. ~~5.~~ The name and address of the surety on the payment bond under s. 713.23, if any, and the amount of such bond.

6. The name and address of any person making a loan for the construction of the improvements.

8. ~~7.~~ The name and address within the state of a person other than himself or herself who may be designated by the owner as the person upon whom notices or other documents may be served under this part; and service upon the person so designated constitutes service upon the owner.

(d) A notice of commencement must be in substantially the following form:

Permit No..... Tax Folio No.....

NOTICE OF COMMENCEMENT

State of....
County of....

The undersigned hereby gives notice that improvement will be made to certain real property, and in accordance with Chapter 713, Florida Statutes, the following information is provided in this Notice of Commencement.

1. Description of property: ...(legal description of the property, and street address if available)....

2. General description of improvement:.....

3.a. Owner: ...(name and address)....

b. Owner's phone number:.....

4.a. Lessee, if the lessee contracted for the improvements: ... (name and address)....

b. Lessee's phone number:..... ~~Owner information or Lessee information if the Lessee contracted for the improvement:~~

~~a. Name and address:.....~~

~~b. Interest in property:.....~~

c. Name and address of fee simple titleholder (if different from Owner listed above):.....

5.a. ~~4.a.~~ Contractor: ...(name and address)....

b. Contractor's phone number:.....

6. ~~5.~~ Surety (if applicable, a copy of the payment bond is attached):

a. Name and address:.....

b. Phone number:.....

c. Amount of bond: $.....

7.a. ~~6.a.~~ Lender: ...(name and address)....

b. Lender's phone number:.....

8. ~~7.~~ Persons within the State of Florida designated by Owner upon whom notices or other documents may be served as provided in ~~by~~ Section 713.13(1)(a)8. ~~713.13(1)(a)7.~~, Florida Statutes:

a. Name and address:.....

b. Phone numbers of designated persons:.....

9.a. ~~8.a.~~ In addition to himself or herself, Owner designates ..... of ..... to receive a copy of the Lienor's Notice as provided in Section 713.13(1)(b), Florida Statutes.

b. Phone number of person or entity designated by owner:.....

10. ~~9.~~ Expiration date of notice of commencement (the expiration date will be 1 year after ~~from~~ the date of recording unless a different date is specified).....

WARNING TO OWNER: ANY PAYMENTS MADE BY THE OWNER AFTER THE EXPIRATION OF THE NOTICE OF COMMENCEMENT ARE CONSIDERED IMPROPER PAYMENTS UNDER CHAPTER 713, PART I, SECTION 713.13, FLORIDA STATUTES, AND CAN RESULT IN YOUR PAYING TWICE FOR IMPROVEMENTS TO YOUR PROPERTY. A NOTICE OF COMMENCEMENT MUST BE RECORDED AND POSTED ON THE JOB SITE BEFORE THE FIRST INSPECTION. IF YOU INTEND TO OBTAIN FINANCING, CONSULT WITH YOUR LENDER OR AN ATTORNEY BEFORE COMMENCING WORK OR RECORDING YOUR NOTICE OF COMMENCEMENT.

...(Signature of Owner or Lessee, or Owner's or Lessee's Authorized Officer/Director/Partner/Manager)...

...(Signatory's Title/Office)...

The foregoing instrument was acknowledged before me this .... day of ...., ...(year)..., by ...(name of person)... as ...(type of authority, . . . e.g. officer, trustee, attorney in fact)... for ...(name of party on behalf of whom instrument was executed)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known .... OR Produced Identification ....

Type of Identification Produced.....

Section 7. Section 713.132, Florida Statutes, is amended to read:

713.132 Notice of termination.—

(1) An owner may terminate the period of effectiveness of a notice of commencement by executing, swearing to, and recording a notice of termination that contains:

(a) The same information as the notice of commencement;

(b) The recording office document with the ~~book and page~~ reference numbers and date of the notice of commencement;

(c) A statement of the date as of which the notice of commencement is terminated, which date may not be earlier than 30 days after the notice of termination is recorded;

(d) A statement specifying that the notice applies to all the real property subject to the notice of commencement or specifying the portion of such real property to which it applies;

(e) A statement that all lienors have been paid in full; and

(f) A statement that the owner has, before recording the notice of termination, served a copy of the notice of

termination ~~on the contractor and~~ on each lienor who has a direct contract with the owner or who has timely served a notice to owner, and a statement that the owner will serve a copy of the notice of termination on each lienor who timely serves a notice to owner after the notice of termination has been recorded. The owner is not required to serve a copy of the notice of termination on any lienor who has executed a waiver and release of lien upon final payment in accordance with s. 713.20.

(2) An owner has the right to rely on a contractor's affidavit given under s. 713.06(3)(d), except with respect to lienors who have already given notice, in connection with the execution, swearing to, and recording of a notice of termination. However, the notice of termination must be accompanied by the contractor's affidavit.

(3) An owner may ~~not~~ record a notice of termination at any time after ~~except after completion of construction, or after construction ceases before completion and~~ all lienors have been paid in full or pro rata in accordance with s. 713.06(4).

(4) If an owner or a contractor, by fraud or collusion, knowingly makes any fraudulent statement or affidavit in a notice of termination or any accompanying affidavit, the owner and the contractor, or either of them, ~~as the case may be,~~ is liable to any lienor who suffers damages as a result of the

filing of the fraudulent notice of termination; and any such lienor has a right of action for damages ~~occasioned thereby~~.

(5) ~~(4)~~ A notice of termination shall be served prior to recording, on each lienor who has a direct contract with the owner and one each lienor who has timely and properly served a notice to owner in accordance with this part. A notice of termination must be recorded in the public records of the county where the project is located. If properly served prior to recording in accordance with this subsection, the notice of commencement terminates 30 days after the notice of termination is recorded in the public records ~~is effective to terminate the notice of commencement at the later of 30 days after recording of the notice of termination~~ or such later ~~the~~ date stated in the notice of termination as the date on which the notice of commencement is terminated. However, if a lienor, who began work under the notice of commencement before its termination, lacks a direct contract with the owner, and timely serves his or her notice to owner after the notice of termination has been recorded, the owner must serve a copy of the notice of termination upon such lienor, and the termination of the notice of commencement as to that lienor is effective 30 days after service of the notice of termination~~, if the notice of termination has been served pursuant to paragraph (1)(f) on the contractor and on each lienor who has a direct contract with the owner or who has served a notice to owner~~.

Section 8. Paragraph (a) of subsection (3) of section 713.18, Florida Statutes, is amended to read:

713.18 Manner of serving notices and other instruments.—

(3)(a) Service of an instrument pursuant to this section is effective on the date of mailing or shipping the instrument if it:

1. Is sent to the last address shown in the notice of commencement or any amendment thereto or, in the absence of a notice of commencement, to the last address shown in the building permit application, or to the last known address of the person to be served; and

2. Is returned as being "refused," "moved, not forwardable," or "unclaimed," or is otherwise not delivered or deliverable through no fault of the person serving the item.

Section 9. Subsections (6) and (8) of section 713.20, Florida Statutes, are amended to read:

713.20 Waiver or release of liens.—

(6) A person may not require a lienor to furnish a lien waiver or release of lien that is different from the forms in subsection (4) or subsection (5) in exchange for or to induce a progress payment or final payment, unless the lienor has entered into a direct contract which requires the lienor to furnish a form that is different from the forms in subsection (4) or subsection (5).

(8) Any provisions in a lien waiver or lien release that are not related to the waiver or release of lien rights as provided in this section are unenforceable, unless the lienor has otherwise agreed to those provisions in the lienor's direct contract ~~is not substantially similar to the forms in subsections (4) and (5) is enforceable in accordance with the terms of the lien waiver or lien release~~.

Section 10. Paragraph (d) of subsection (1) of section 713.23, Florida Statutes, is amended to read:

713.23 Payment bond.—

(1)

(d) In addition, a lienor who has not received payment for furnishing his or her labor, services, or materials must, as a condition precedent to recovery under the bond, serve a written notice of nonpayment on ~~to~~ the contractor, and a copy of the notice on the surety. The notice must be under oath and served during the progress of the work or thereafter, but may not be served later than 90 days after the final furnishing of labor, services, or materials by the lienor, or, with respect to rental equipment, later than 90 days after the date the rental equipment was on the job site and available for use. A notice of nonpayment that includes sums for retainage must specify the portion of the amount claimed for retainage. The required notice satisfies this condition precedent with respect to the payment described in the notice of nonpayment, including unpaid finance

charges due under the lienor's contract, and with respect to any other payments which become due to the lienor after the date of the notice of nonpayment. The time period for serving a notice of nonpayment is ~~shall be~~ measured from the last day of furnishing labor, services, or materials by the lienor and may not be measured by other standards, such as the issuance of a certificate of occupancy or the issuance of a certificate of substantial completion. The failure of a lienor to receive retainage sums not in excess of 10 percent of the value of labor, services, or materials furnished by the lienor is not considered a nonpayment requiring the service of the notice provided under this paragraph. If the payment bond is not recorded before commencement of construction, the time period for the lienor to serve a notice of nonpayment may at the option of the lienor be calculated from the date specified in this section or the date the lienor is served a copy of the bond. However, the limitation period for commencement of an action on the payment bond as established in paragraph (e) may not be expanded. The negligent inclusion or omission of any information in the notice of nonpayment that has not prejudiced the contractor or surety does not constitute a default that operates to defeat an otherwise valid bond claim. A lienor who serves a fraudulent notice of nonpayment forfeits his or her rights under the bond. A notice of nonpayment is fraudulent if the lienor has willfully exaggerated the amount unpaid, willfully included a

claim for work not performed or materials not furnished for the subject improvement, or prepared the notice with such willful and gross negligence as to amount to a willful exaggeration. However, a minor mistake or error in a notice of nonpayment, or a good faith dispute as to the amount unpaid, does not constitute a willful exaggeration that operates to defeat an otherwise valid claim against the bond. The service of a fraudulent notice of nonpayment is a complete defense to the lienor's claim against the bond. The notice under this paragraph must include the following information, current as of the date of the notice, and must be in substantially the following form:

NOTICE OF NONPAYMENT

To ...(name of contractor and address)...

...(name of surety and address)...

The undersigned lienor notifies you that:

1. The lienor has furnished ...(describe labor, services, or materials)... for the improvement of the real property identified as ...(property description).... The corresponding amount unpaid to date is $...., of which $.... is unpaid retainage.

2. The lienor has been paid to date the amount of $.... for previously furnishing ...(describe labor, services, or materials)... for this improvement.

3. The lienor expects to furnish ...(describe labor, services, or materials)... for this improvement in the future (if known), and the corresponding amount expected to become due is $.... (if known).

I declare that I have read the foregoing Notice of Nonpayment and that the facts stated in it are true to the best of my knowledge and belief.

DATED on ....., ...

...(signature and address of lienor)...

STATE OF FLORIDA
COUNTY OF.....

The foregoing instrument was sworn to (or affirmed) and subscribed before me this .... day of ...., ...(year)..., by ...(name of signatory)....

...(Signature of Notary Public - State of Florida)...

...(Print, Type, or Stamp Commissioned Name of Notary Public)...

Personally Known ..... OR Produced Identification .....

Type of Identification Produced .....

Section 11. Subsections (3) and (5) of section 713.235, Florida Statutes, are amended to read:

713.235 Waivers of right to claim against payment bond; forms.—

(3) A person may not require a claimant to furnish a waiver that is different from the forms in subsections (1) and (2) in exchange for or to induce a progress payment or final payment, unless the claimant has entered into a direct contract which requires the claimant to furnish a form that is different from the forms in subsections (1) and (2).

(5) Any provisions in a waiver that are not related to the waiver of a claim against the payment bond as provided in this section are unenforceable, unless the claimant has otherwise agreed to those provisions in the claimant's direct contract ~~is not substantially similar to the forms in this section is enforceable in accordance with its terms~~.

Section 12. Subsection (1) of section 713.24, Florida Statutes, is amended to read:

713.24 Transfer of liens to security.—

(1) Any lien claimed under this part may be transferred, by any person having an interest in the real property upon which the lien is imposed or the contract under which the lien is claimed, from such real property to other security by doing one of the following ~~either~~:

(a) Depositing in the clerk's office a sum of money.~~, or~~

(b)1. Recording ~~Filing~~ in the clerk's office a bond executed as surety by a surety insurer licensed to do business in this state, or

2. Recording in the clerk's office a bond executed as surety by a surety insurer licensed to do business in this state which was furnished by a subcontractor under whose subcontract the lienor's claim emanates, which bond must be recorded and served with a notice of bond in the same manner as a payment bond furnished pursuant to s. 713.23(2). For purposes of this subparagraph, the subcontract payment bond must have been furnished at the time the subcontractor's work commenced and before the claim of lien was recorded. The subcontract payment bond may not be used to transfer a lien of the contractor or the subcontractor that is the principal on the subcontract payment bond. Any provision in the subcontract payment bond which restricts the classes of persons who are protected by the subcontract payment bond, which restricts the venue of any proceeding relating to the subcontract payment bond, which limits or expands the effective duration of the subcontract payment bond, or which includes conditions precedent to the enforcement of a claim against the subcontract payment bond beyond those provided in this part is unenforceable.

Such deposit or bond shall ~~either~~ to be in an amount at least equal to the amount demanded in such claim of lien, plus

interest thereon at the legal rate for 3 years, plus $1,000 or 35 ~~25~~ percent of the amount demanded in the claim of lien, whichever is greater, to apply on any attorney's fees and court costs that may be taxed in any proceeding to enforce said lien. Such deposit or bond shall be conditioned to pay any judgment or decree which may be rendered for the satisfaction of the lien for which such claim of lien was recorded. Upon making such deposit or filing such bond, the clerk shall make and record a certificate showing the transfer of the lien from the real property to the security and shall mail a copy thereof by registered or certified mail to the lienor named in the claim of lien so transferred, at the address stated therein. Upon filing the certificate of transfer, the real property shall thereupon be released from the lien claimed, and such lien shall be transferred to said security. In the absence of allegations of privity between the lienor and the owner, and subject to any order of the court increasing the amount required for the lien transfer deposit or bond, no other judgment or decree to pay money may be entered by the court against the owner. The clerk shall be entitled to a service charge for making and serving the certificate, in the amount of up to $20, from which the clerk shall remit $5 to the Department of Revenue for deposit into the General Revenue Fund. If the transaction involves the transfer of multiple liens, an additional charge of up to $10 for each additional lien shall be charged, from which the clerk shall

remit $2.50 to the Department of Revenue for deposit into the General Revenue Fund. For recording the certificate and approving the bond, the clerk shall receive her or his usual statutory service charges as prescribed in s. 28.24. Any number of liens may be transferred to one such security.

Section 13. Section 713.29, Florida Statutes, is amended to read:

713.29 Attorney's fees.—In any action brought to enforce a lien, including a lien that has been transferred to security, or to enforce a claim against a bond under this part, the prevailing party is entitled to recover a reasonable fee for the services of her or his attorney for trial and appeal or for arbitration, in an amount to be determined by the court, which fee must be taxed as part of the prevailing party's costs, as allowed in equitable actions.

Section 14. This act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert:

An act relating to liens and bonds; amending s. 255.05, F.S.; requiring that a copy of a notice of nonpayment be served on the surety; providing that certain waivers and releases are unenforceable;

amending s. 337.18, F.S.; providing that certain waivers and release apply to certain contracts; amending s. 713.01, F.S.; revising the definition of the term "contractor," "real property," and "final furnishing"; amending s. 713.07, F.S.; providing that certain liens have priority over certain subordinate conveyances, encumbrances, or demands; amending s. 713.09, F.S.; providing that one claim of lien may be used for multiple contracts; amending s. 713.13, F.S.; revising information to be included in a notice of commencement; amending 713.132, F.S., amending when a notice of termination takes effect and who must receive a notice of termination; amending s. 713.18, F.S.; providing that service of an instrument is effective on the date of shipping; amending ss. 713.20 and 713.235, F.S.; providing that certain waivers and releases are unenforceable; amending s. 713.23, F.S.; requiring that a copy of a notice of nonpayment be served on the surety; amending s. 713.24, F.S.; amending the process to transfer a lien to a security; amending 713.29, F.S., amending when attorney's fees may be recovered; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 481 Malt Beverages
SPONSOR(S): Mariano
TIED BILLS: **IDEN./SIM. BILLS:** SB 900

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Willson MW	Anstead La
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors, as well as the business relations between beer distributors and manufacturers. The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.

Florida's "Tied House Evil Law," s. 561.42, F.S., prohibits a manufacturer or distributor of alcoholic beverages from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans, property, or rebates to retail vendors.

Division rules allow retail vendors of alcoholic beverages to return damaged and undamaged products under certain circumstances. The sale of alcoholic beverages on consignment or under a similar arrangement is prohibited by Division rules and federal law.

Some brewers assign a coded "pull date" or "freshness date" to their product as a quality control tool to prevent stale or outdated product from remaining in the marketplace. Federal regulations allow for the return (exchange, refund or credit) of malt beverages for freshness reasons, under certain circumstances.

The bill defines terms and establishes a framework for the return of malt beverage products that are damaged, undamaged, or out of code, including the return of product for freshness reasons. These provisions are similar to provisions in federal law and Division rules. The bill also prohibits consignment sales.

The bill provides that the Department of Business and Professional Regulation (DBPR) is authorized to impose and collect fines not to exceed $1,000, resulting in an insignificant positive fiscal impact. The bill provides DBPR with rulemaking authority, which can be accomplished within existing resources.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law

In Florida, the Beverage Law[1] regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[2]

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[3]

Section 561.14, F.S., specifies license and registration classifications used in the Beverage Law:

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."
- "Importers" are those "licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state."
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."

Three-Tier System and Tied House Evil

Since the repeal of Prohibition in 1933, regulation of alcohol in the United States has traditionally been based upon what is termed the "three-tier system." The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.[4] Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail, and manufacturers, distributors, and exporters[5] are generally prohibited from holding a vendor's license.[6] Manufacturers, distributors, and vendors are generally prohibited from being licensed or having an interest in more than one tier.

The three-tier system is deeply rooted in the perceived evils of the "tied house" in which a retail vendor is owned or operated by a manufacturer or the manufacturer exercises undue influence over the retail vendor.[7]

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[1] Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] S. 561.02, F.S.
[3] S. 563.01, F.S.
[4] S. 561.14, F.S.
[5] S. 561.01(16), F.S. "Exporter" means any person that sells alcoholic beverages to persons for use outside the state and includes a ship's chandler and a duty-free shop
[6] S. 561.22(1), F.S.; s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.
[7] *See* Andrew Tamayo, *What's Brewing in the Old North State: An Analysis of the Beer Distribution Laws Regulating North Carolina's Craft Breweries*, 88 N.C. L. REV. 2198 (2010), http://scholarship.law.unc.edu/nclr/vol88/iss6/6.

Florida's "Tied House Evil Law," s. 561.42, F.S., prohibits a manufacturer or distributor of alcoholic beverages from having a financial interest, directly or indirectly, in the establishment or business of a licensed vendor, and prohibits a manufacturer or distributor from giving gifts, loans, property, or rebates to retail vendors. Additionally, s. 563.022(4), F.S., prohibits unfair methods of competition and unfair or deceptive practices in the conduct of the manufacturing, importing, distribution, sale, wholesaling, and franchising of beer.

Product Returns – Federal Law

Federal regulations prohibit the sale or purchase of any alcoholic beverage products on consignment, under conditional sale, with privilege of return, on any basis other than a bona fide sale, or if the sale involves an agreement to acquire other products.[8] However, transactions involving the bona fide return of products for "ordinary and usual commercial reasons arising after the merchandise has been sold" are not prohibited.[9] Under federal regulations, ordinary and usual commercial reasons include:

- Defective product,
- Shipment error,
- A change in law preventing the sale of the product,
- Termination of the buyer's business,
- Change in product from that in inventory,
- Product in inventory is discontinued, or
- Possible spoilage of product during the offseason of a seasonal retail dealer.[10]

Such returns are optional. The distributor is not required to accept the return.[11] Returns or exchanges of products that are merely overstocked, slow-moving, or seasonal in nature are not considered ordinary and usual commercial reasons.[12]

Freshness Dating

Some brewers assign a coded "pull date" or "freshness date" to their product as a quality control tool to prevent stale or outdated product from remaining in the marketplace.[13] Federal regulations allow for the return (exchange, refund or credit) of malt beverages for freshness reasons under the following circumstances:

- The brewer has policies and procedures in place that specify the date the retailer must pull the product.
- The policies and procedures are readily verifiable and consistently followed by the brewer.
- The container has identifying markings that correspond with this date.
- The malt beverage product pulled by the distributor or retailer may not re-enter the retail marketplace.
- If the product is returned for exchange, it must be for an identical quantity of the same brand.[14]

Federal regulation prohibits the use of freshness provisions as "mere subterfuge to violate these same consignment sales and/or tied house provisions."[15]

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[8] 27 U.S.C. § 205(d).
[9] *Id.*
[10] 27 C.F.R.§§ 11.32–11.39.
[11] Alcohol and Tobacco Tax and Trade Bureau (TTB) Ruling, *2017-2 Revised – Freshness Dating and Allowable Returns of Malt Beverage Products under the FAA Act* (Sept. 29, 2017). In the case of malt beverages, trade practice provisions of the Federal Alcohol Administration Act (FAA Act) apply only if the laws of the state into which the malt beverage products are sold or shipped impose similar requirements.
[12] *Id.; 27 C.F.R.* § 11.45 & 11.46.
[13] *Id.*
[14] *Id.*
[15] *Id.*

Product Returns – Division Rules

The Beverage Law does not explicitly regulate the return of malt beverage products to distributors by vendors. However, the Division has adopted rules to provide guidance to the industry.

Return of Damaged Products

Rule 61A-1.0107, F.A.C., regulates the return of damaged products. Products are considered damaged if they, through no fault of the vendor or customer, exhibit product deterioration, leaking containers, damaged labels, or missing or mutilated tamper-evident closures. Damaged products can be returned for exchange, cash, or a credit when the vendor makes the request within 15 days of delivery. Distributors are required to keep detailed transaction records of such returns.[16]

If the vendor does not make the return request within 15 days of delivery, damaged product may not be returned unless:

- The product is part of a manufacturer recall that affects multiple unaffiliated vendors; or
- Through no fault of the vendor, the product has deteriorated due to manufacturing or packaging problems.

Return of Undamaged Products

Rule 61A-1.0108, F.A.C., regulates the return of undamaged products. A vendor may receive cash or credit for the return of undamaged product if the request is made within 10 days of delivery. Distributors are required to keep detailed transaction records of such returns.

If the vendor does not make the request within 10 days of delivery, undamaged product may not be returned unless:

- The product may no longer be lawfully sold.
- The vendor goes out of business.
- There is a change in product, such as a change in formula, proof, label, or container.
- The product is discontinued; or
- The vendor is only open for a portion of the year, and the remaining product will spoil in the off-season.[17]

Additionally, distributors are prohibited from making consignment sales to vendors, and vendors may not attempt to return or exchange overstocked or slow-moving product.[18]

Violations and Penalties

Section 562.45(1), F.S., provides that the false entry of any record required under the Beverage Law or violation of the excise tax provisions, when done intentionally, is a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S. For violations of the Beverage Law where no penalty is provided, first-time offenses are guilty of a misdemeanor of the second degree and a felony of the third degree for any subsequent offenses thereafter.

Section 561.29, F.S., authorizes the Division to issue civil penalties for violations of the Beverage Law and rules issued thereto. Such penalties may not exceed $1,000 per transaction. The Division is also authorized to suspend the license of a licensee that fails to pay a civil penalty.

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[16] Section 561.55(3)(a), F.S., requires a manufacturer, distributor, broker, agent, and importer licensed under the Beverage Law to maintain and keep, for a period of three years at the licensed place of business, such records of alcoholic beverages received, sold, or delivered within or without this state as may be required by the Division

[17] R. 61A-1.0108(4), F.A.C.

[18] *Id.*

Effect of the Bill

The bill creates s. 563.061, F.S., relating to the return of malt beverage products.

Consignment Sales Prohibited

The bill prohibits the sale of malt beverages on consignment or any other basis other than a "bona fide sale." Once a sale is made, only "bona fide returns" are allowed for the "ordinary and usual commercial reasons" authorized in the bill. The terms "bona fide sale" and "bona fide return" are not defined in the bill. The bill also specifies that product may not be returned simply because it is overstocked, slow-moving, or has limited or seasonal demand, such as holiday decanters or other specialized containers.

Product Returns

The bill outlines situations where a vendor is permitted to return product for an exchange, a credit, or a refund. The bill does not condition the return of product for a credit or a refund, but product returned for an exchange may only be exchanged for:

- the exact same quantity of product,
- of near or equal value,
- made by the same manufacturer, and
- in the same size container or keg.

Return of Undamaged Product

The bill defines "undamaged product" as malt beverage product that is not damaged or out of code. Undamaged product may be returned for exchange or credit. The vendor must make their return request within 7 days of delivery. However, there is no time frame for a distributor to accept the return of undamaged product if:

- Due to a change in regulations, the vendor is no longer permitted to sell a particular brand or product size. (For credit or refund.[19])
- The vendor terminates operations. (For credit or refund.)
- The product is returned for "purposes of ensuring quality control or freshness" even if it is not yet out of code. (For exchange only.)
- A manufacturer issues a recall affecting multiple vendors that are not: under common ownership, members of the same pool buying group, or members of the same advertising cooperative. (For exchange or credit.)
- Production or importation of the product is discontinued. (For credit or refund.)
- The vendor is only open for part of the year, and the inventory at closing would go bad before the vendor reopens. (For credit or refund.)

When undamaged product is returned more than 7 days after delivery, documentation of the qualifying exception must be kept with the transaction record maintained by the distributor.

Return of Damaged Product

The bill defines "damaged product" to mean a malt beverage product delivered to a vendor exhibiting product deterioration, defective seals, leaking, damaged labels, or missing or mutilated tamper-evident closures. The bill establishes the following guidelines for damaged product:

- Return requests must be made within 7 days of delivery.
- The distributor must verify that the product is damaged.
- Product that is damaged by the vendor or their customers may not be returned.
- Damaged product may be returned for exchange of product or credit.

[19] Type of return allowed is indicated in parentheses.

Return of Out-of-Code Product

The bill defines "out-of-code product" as malt beverages that have exceeded the manufacturer's code date and, according to the manufacturer's policies, must be removed and replaced with fresh product for purchase in the retail market.

The bill defines "manufacturer's code date" to mean a coded best-by date, expiration date, or other designated date or dating system established by a manufacturer to signify freshness that is printed on the malt beverage container or, in the case of a keg, marked on a cap, collar, tag, or label affixed directly to the keg.

A distributor may accept out-of-code product if:

- The distributor verifies that the product is out-of-code.
- The manufacturer has established written guidelines relating to product removal.
- Such policies and procedures are readily available, verifiable, and consistently applied by the manufacturer.
- The manufacturer's code date is printed or marked on the product container.
- The out-of-code product that is removed by the distributor does not reenter the retail market.

Out-of-code product may be returned for exchange only.

Distributor Requirements

The bill authorizes, but does not require, distributors to accept returns. When a distributor does accept a return, the distributor is required to:

- Provide the exchange, credit, or refund to the vendor at the time the product is picked up.
- Pick up damaged or undamaged product within 14 days of a vendor's return request.
- The bill does not specify when a distributor must pick up product that is out-of-code.

The bill requires distributors to maintain detailed transaction records for returned product for 3 years and provide a copy to the vendor.

Additional Provisions

The bill specifies that, for the purposes of the Tied-House Evil Law, authorized returns are not considered gifts, loans, or any other form of prohibited financial aid or assistance. The bill authorizes the Division to impose a fine of up to $1,000 for each violation. The bill authorizes the Division to adopt rules to administer and enforce the provisions.

B. SECTION DIRECTORY:

Section 1. Creates s. 563.061, F.S.; providing definitions; prohibiting consignment sales of malt beverages between a distributor and vendor; authorizing bona fide returns of malt beverages under certain conditions; providing applicability; authorizing distributors to accept returns of certain products under specified conditions; providing distributor requirements for such returns; providing requirements for exchanges of product; providing recordkeeping requirements; specifying that authorized returns are not gifts, loans, or other prohibited forms of financial aid or assistance; providing penalties; and providing for rulemaking.

Section 2. Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The bill provides that the Department of Business and Professional Regulation is authorized to impose and collect fines not to exceed $1,000, resulting in an insignificant positive fiscal impact.

2. Expenditures:

   The bill provides DBPR with rulemaking authority, which can be accomplished within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

For some manufacturers and distributors, the bill may have a positive economic impact due to an increase in consumer sales, stemming from the ability to move product between vendors for "freshness" purposes.

For other manufacturers and distributors, the bill may have a negative economic impact to the extent that their brands become less attractive to vendors as compared to brands for which there is a freshness policy.

For vendors, the bill may have a positive economic impact for those with difficult to sell inventory, and may have a negative impact to the extent that the narrowing of the window for returns and the addition of a freshness policy affects a vendor's ability to return or sell certain products.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill authorizes the Division of Alcoholic Beverages and Tobacco to adopt rules to administer the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to malt beverages; creating s. 563.061, F.S.; providing definitions; prohibiting consignment sales of malt beverages between a distributor and vendor; authorizing bona fide returns of malt beverages under certain conditions; providing applicability; authorizing distributors to accept returns of certain products under specified conditions; providing distributor requirements for such returns; providing requirements for exchanges of product; providing recordkeeping requirements; specifying that authorized returns are not gifts, loans, or other prohibited forms of financial aid or assistance; providing penalties; providing for rulemaking; providing an effective date.

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

Section 1. Section 563.061, Florida Statutes, is created to read:

563.061 Return of malt beverage products.—

(1) DEFINITIONS.—As used in this section, the term:

(a) "Damaged product" means a malt beverage product delivered to a vendor exhibiting product deterioration,

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

defective seals, leaking, damaged labels, or missing or mutilated tamper-evident closures.

(b) "Keg" means a reusable container used to store and dispense a malt beverage product in draft form on tap.

(c) "Manufacturer's code date" means a coded best-by date, expiration date, or other designated date or dating system established by a manufacturer to signify freshness that is printed on the malt beverage container or, in the case of a keg, marked on a cap, collar, tag, or label affixed directly to the keg.

(d) "Out-of-code product" means a malt beverage product that has exceeded the manufacturer's code date and, according to the manufacturer's policies, must be removed and replaced with fresh product for purchase in the retail market.

(e) "Undamaged product" means a malt beverage product that is not damaged or out of code.

(2) CONSIGNMENT SALES PROHIBITED; AUTHORIZED RETURNS.—A distributor may not sell, offer for sale, or contract to sell malt beverages on consignment or any basis other than a bona fide sale. A vendor may not purchase, offer to purchase, or contract to purchase malt beverages on consignment or any basis other than a bona fide sale. Once a distributor sells malt beverages to a vendor, only bona fide returns are permitted for the ordinary and usual commercial reasons authorized in this section. This section does not permit return of product because

it is overstocked or slow-moving or because it has limited or seasonal demand, including, but not limited to, product packaged in holiday decanters or distinctive bottles.

(3) RETURNS OF UNDAMAGED PRODUCT.—

(a) Except as provided in paragraph (b), undamaged product may be returned for exchange of product or credit.

(b) A distributor may only accept a return of undamaged product if the return is requested within 7 days after the delivery date. However, a distributor may accept a return of undamaged product after such time in the following circumstances:

1. If a vendor or its employees or agents are no longer permitted, due to a change in regulation or administrative procedure, to sell a particular brand or size product, such product may be returned for credit or refund.

2. If a vendor terminates operations, the vendor's inventory of product at the time of termination may be returned for credit or refund. This subparagraph does not apply during a vendor's temporary seasonal shutdown.

3. Except as provided in subparagraph 6., a product that has not yet exceeded the manufacturer's code date may be returned for purposes of ensuring quality control or freshness; however, such product may only be returned for exchange of product.

4. If a manufacturer has issued a product recall that affects multiple vendors that are not affiliated through having common ownership, being members of the same pool buying group, or being members of the same advertising cooperative, the recalled product may be returned for exchange of product or credit. If return of such product is requested more than 7 days after the delivery date, the distributor must keep documentation of the recall with the transaction record maintained pursuant to subsection (8).

5. If production or importation of a product is discontinued, a vendor's inventory of the discontinued product may be returned for credit or refund.

6. If a vendor is only open for a portion of the year and has product remaining at closure which, with respect to quality control or freshness, would become unsuitable for sale during the off-season according to the manufacturer's code date, such product may be returned for credit or refund.

If undamaged product is returned under this paragraph, the distributor must keep documentation of a qualifying exception in subparagraphs 1.-6. with the transaction record maintained pursuant to subsection (8).

(4) RETURNS OF DAMAGED PRODUCT.—

(a) Damaged product may only be returned for exchange of product or credit. A distributor must verify damaged product before accepting its return.

(b) Product damaged by a vendor, its employees or agents, or its customers may not be returned and shall be the vendor's liability.

(c) A distributor may only accept return of damaged product if requested within 7 days after the delivery date.

(5) RETURNS OF OUT-OF-CODE PRODUCT.—

(a) Out-of-code product may only be returned for exchange of product. A distributor must verify out-of-code product before accepting its return.

(b) A distributor may accept return of out-of-code product any time after the manufacturer's code date only in the following circumstances:

1. The manufacturer has written policies and procedures that specify the date that out-of-code product should be removed.

2. Such policies and procedures are readily available, verifiable, and consistently applied by the manufacturer.

3. The manufacturer's code date is printed on the product container or, in the case of a keg, marked on a cap, collar, tag, or label affixed directly to the keg.

4. Out-of-code product removed by the distributor does not reenter the retail market.

(6) EXCHANGES OF PRODUCT.—An exchange of product authorized under this section must be in exact quantities with a product of near or equal value, made by the same manufacturer, and in the same size container or keg unless a credit is issued at the time of the return.

(7) DISTRIBUTOR REQUIREMENTS FOR RETURNS.—This section does not require a distributor to accept returns authorized under this section; however, if a distributor accepts return of product, the distributor must:

(a) Provide the exchange of product, credit, or refund to the vendor, as provided in subsections (3)-(5), at the same time the distributor picks up the product being returned.

(b) For damaged or undamaged product, pick up the product being returned within 14 days after receipt of the vendor's request.

(8) TRANSACTION RECORDS.—A distributor must keep and maintain for 3 years a transaction record of each return identifying the vendor's business name, address, and license number; product returned for exchange of product, credit, or refund; and any other documentation required by this section. The distributor must provide a copy of the transaction record to the vendor in a format accessible and readable by the vendor. Such transaction records must be maintained on the distributor's licensed premises, or may be kept at another location in this state if the distributor notifies the division in writing before

keeping records in another location, and must be made available to the division upon request for inspection in a format accessible and readable by the division. The distributor must notify the division in writing of any change in recordkeeping location.

(9) RETURNS NOT TIED HOUSE EVIL.—Bona fide returns authorized under this section for exchange of product, credit, or refund are not considered gifts, loans, or other forms of financial aid or assistance prohibited by s. 561.42.

(10) CIVIL PENALTY.—In accordance with s. 561.29, the division may impose a civil penalty against a distributor or vendor for any violation of this section, or any rule adopted under this section, not to exceed $1,000 per violation.

(11) RULEMAKING AUTHORITY.—The division may adopt rules to administer and enforce this section.

Section 2. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 583 Beverage Law
SPONSOR(S): Sabatini
TIED BILLS: **IDEN./SIM. BILLS:** SB 138, SB 482

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Willson MW	Anstead Le
2) Government Operations & Technology Appropriations Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation administers and enforces the Beverage Law.

Relating to alcoholic beverage container sizes, the bill:
- Repeals s. 564.05, F.S., relating to wine container size limitations.
- Repeals s. 564.055, F.S., relating to cider container size limitations.
- Amends s. 564.09, F.S., to specify that a restaurant patron may take home a partially consumed bottle of wine with the purchase of "a meal."

Relating to craft distilleries, the bill:
- Clarifies that a craft distiller may blend their product with other distilled spirits.
- Increases the maximum production threshold for craft distilleries, and similar provisions related to ownership interests, from 75,000 to 250,000 gallons.
- Allows a craft distillery to sell up to 250,000 gallons of branded product per year from its souvenir gift shop and removes the limitations on the number of bottles per brand per consumer that may be sold per year.
- Allows a craft distillery to ship or deliver product to consumers located outside the state, subject to the laws of the receiving state.
- Authorizes the issuance of a vendor's license for the sale of alcoholic beverages on a distillery's licensed premises.
- Specifies that any alcoholic beverages not manufactured on-site by the distillery must be obtained through a licensed distributor, broker, agent or importer.

The bill may have a positive fiscal impact for certain entities involved in the production or sale of wine, cider and distilled spirits. See *Fiscal Analysis & Economic Impact Statement.*

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Beverage Law

In Florida, the Beverage Law[1] regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco (Division) within the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[2]

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[3]

Wine Containers

Section 564.05, F.S., prohibits the sale of wine in an individual container that holds more than one gallon of wine. However, wine may be sold in a reusable container of 5.16 gallons. Distributors and manufacturers may sell wine to other distributors and manufacturers in containers of any size. Any person who violates the prohibition in s. 564.05, F.S., commits a second degree misdemeanor.[4]

Effect of the Bill

The bill repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

Cider Containers

Section 564.055, F.S., prohibits the sale of cider by vendors at retail in any individual container of more than 32 ounces. However, cider may be packaged and sold in bulk, in kegs or barrels, or in any individual container of one gallon or more, regardless of container type. The Beverage Law does not provide for the sale of cider in growlers.

Effect of the Bill

The bill repeals s. 564.055, F.S., relating to the retail sale of individual cider containers.

Restaurants - Off-Premises Consumption of Wine

Restaurants licensed to sell wine on the premises may permit patrons to remove one bottle of wine for consumption off the licensed premises under the following conditions:

- The patron must have purchased a full-course meal consisting of a salad or vegetable, entrée, a beverage, and bread and consumed a portion of the bottle of wine with the meal;
- Before the partially-consumed bottle of wine is removed from the premises, the bottle must be securely resealed by the licensee, or the licensee's employee, and placed in a bag or other

[1] Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] S. 561.02, F.S.
[3] S. 563.01, F.S.
[4] Section 775.082, F.S., provides the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days. Section 775.083, F.S., provides the penalty for a misdemeanor of the second degree is a fine not to exceed $500.

container that is secured in such a manner that it is visibly apparent if the container has been opened or tampered with after having been sealed;
- A dated receipt for the wine and meal must be attached to the container; and
- The container must be placed in a locked glove compartment, trunk, or other area behind the last upright seat of a motor vehicle that does not have a trunk.[5]

Effect of the Bill

The bill amends 564.09, F.S., simplifying the requirement that a patron's meal be a "full course meal consisting of salad or vegetable, entrée, a beverage, and bread" to just "a meal."

Three-Tier System

Since the repeal of Prohibition, regulation of alcohol in the United States has traditionally been based upon what is termed the "three-tier system." The system requires separation of the manufacture, distribution, and sale of alcoholic beverages. The manufacturer creates the beverages, and the distributor obtains the beverages from the manufacturer to deliver to the vendor. The vendor makes the ultimate sale to the consumer.[6]

Generally, only licensed vendors are permitted to sell alcoholic beverages directly to consumers at retail, and manufacturers, distributors, and exporters[7] are generally prohibited from holding a vendor's license.[8] Manufacturers, distributors, and vendors are generally prohibited from being licensed or having an interest in more than one tier. Limited exceptions, subject to certain conditions, include the ability for a craft brewery to hold a vendor's license (tap room), a restaurant to hold a manufacturer's license (brew pub), and a winery to hold up to three vendor's licenses.[9]

Alcoholic Beverage Deliveries

Vendors, but not manufacturers or distributors, are allowed to make deliveries away from their place of business for sales actually made at their licensed place of business. Telephone, electronic, and mail orders received at a vendor's licensed place of business are construed as a sale actually made at the vendor's licensed place of business. Deliveries may be made in vehicles that are owned or leased by the vendor, or in a third-party vehicle pursuant to a contract with a third party with whom the vendor has contracted to make deliveries, including, but not limited to, common carriers.[10]

A craft brewery which also holds a vendor's license is specifically prohibited from making deliveries under this law.[11]

Distilleries and Craft Distilleries

Section 565.01, F.S., defines the terms "liquor," "distilled spirits," "spirituous liquors," "spirituous beverages," or "distilled spirituous liquors" to mean "that substance known as ethyl alcohol, ethanol, or spirits of wine in any form, including all dilutions and mixtures thereof from whatever source or by whatever process produced."

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[5] S. 564.09, F.S.
[6] S. 561.14, F.S.
[7] S. 561.01(16), F.S. "Exporter" means any person that sells alcoholic beverages to persons for use outside the state and includes a ship's chandler and a duty-free shop
[8] S. 561.22(1), F.S.; s. 561.14(3), F.S. However, see the exceptions provided in ss. 561.221 and 565.03, F.S.
[9] *See* ss. 561.22, F.S.; 561.24, F.S.; 561.14(1), F.S.; and 563.022(14), F.S.
[10] S. 561.57(1) & (2), F.S.
[11] Ss. 561.221 (2)(d), and 565.57(1), F.S.

A "distillery" is a manufacturer of distilled spirits, and a "craft distillery" is a licensed distillery that produces 75,000 or fewer gallons of distilled spirits per calendar year on its premises. A craft distillery must notify the Division in writing of its decision to qualify as a craft distillery.[12]

A distillery engaged solely in the business of manufacturing distilled spirits, or a person engaged in the business of blending and rectifying distilled spirits must pay a state license tax of $4,000 for each plant or branch operating in Florida. The license tax for a craft distillery is $1,000. Persons who engage in the business of distilling spirits may also rectify and blend spirituous liquors without paying an additional license tax.[13]

According to the Division, 58 of the 60 licensed distilleries operating in Florida produce less than 75,000 gallons of distilled spirits.[14]

Retail Sales by Craft Distilleries

A craft distillery is allowed to sell to consumers branded products,[15] distilled on the licensed premises, in factory-sealed containers that are filled at the distillery and sold for off-premises consumption only. The sales must occur at the distillery's souvenir gift shop located on private property contiguous to the licensed distillery premises, and included on the sketch submitted with the license application. Sales must be in face-to-face transactions with consumers who are making a purchase of no more than six individual containers of each branded product.[16] The craft distillery is not required to obtain a vendor's license to sell to consumers from their souvenir gift shop.

The Division must approve any subsequent revisions to a craft distillery's sketch to verify that the souvenir gift shop location operated by the craft distillery is "owned or leased by the craft distillery and on property contiguous to the craft distillery's production building."[17]

Section 565.03, F.S., imposes the following requirements and prohibitions for craft distilleries:

- A craft distillery may not ship, arrange to ship, or deliver distilled spirits to consumers, but may ship, arrange to ship, or deliver distilled spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, and exporters.
- A craft distillery may not transfer its license or any ownership interest to any individual or entity with a direct or indirect interest in another distillery licensed in any other state, territory, or country. However, a craft distillery may be affiliated with another distillery that produces 75,000 or fewer gallons per calendar year of distilled spirits on its premises or in any other state, territory, or country.
- A craft distillery must report to the Division within 5 business days after it has reached the 75,000-gallon production limit and cease making sales to consumers on the day after it reaches the production limit.
- A craft distillery must submit beverage excise taxes on distilled spirits sold to consumers in its monthly report to the Division.
- Containers must comply with the container limits in s. 565.10, F.S., which prohibits the sale and distribution of distilled spirits in any size container in excess of 1.75 liters or 59.18 ounces.

Effect of the Bill

The bill amends s. 565.03, F.S., to:

[12] Ss. 565.03(1)(b) & (c), F.S.
[13] S. 565.03(2)(b), F.S.
[14] Department of Business and Professional Regulation, Agency Analysis of 2019 HB 1229, p. 4 (Mar. 18, 2019).
[15] Section 565.03(1)(a), F.S., defines "branded product" to mean "any distilled spirits product manufactured on site, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations."
[16] S. 565.03(1)(c), F.S.
[17] *Id.*

- Expand the definition of "branded product" to allow craft distillers to blend their product with distilled spirits that are not manufactured on site.
- Increase the maximum production threshold for craft distilleries and similar provisions related to ownership interests, from 75,000 to 250,000.
- Allow a craft distillery to sell up to 250,000 gallons of branded product per year from its souvenir gift shop and removes the limitations on the number of bottles per brand per consumer that may be sold per year.
- Specify that a craft distillery can transfer up to 250,000 gallons of its product from its federal bonded space, nonbonded space, or storage areas to its souvenir gift shop, per year.
- Prohibit a craft distillery that does not have a vendor's license under s. 561.221, F.S., from shipping its distilled spirits to consumers located in the state.
- Allow a craft distillery to ship, arrange to ship, or deliver product to consumers located outside the state, subject to the laws of the receiving state.

The bill amends s. 561.221, F.S., to:

- Authorize the issuance of a vendor's license to any distillery for the sale of alcoholic beverages on the distillery's licensed premises.
- Specify that any alcoholic beverages distilled by another manufacturer, regardless of ownership, must be obtained through a licensed distributor, a licensed broker or sales agent, or a licensed importer.

The bill provides an effective date of July 1, 2020.

B. SECTION DIRECTORY:

Section 1: Repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

Section 2: Repeals s. 564.055, F.S., relating to limitations on the size of individual cider containers.

Section 3: Amends s. 564.09, F.S.; revising provisions that authorize a restaurant to allow patrons to remove partially consumed bottles of wine from a restaurant for off-premises consumption.

Section 4: Amends s. 565.03, F.S., redefining the terms "branded product" and "craft distillery"; revising the requirements for the sale of branded products by a licensed craft distillery to consumers; deleting a provision that prohibits a craft distillery from selling more than six individual containers of a branded product to a consumer; etc.

Section 5: Amends s. 561.221, F.S.; authorizing the division to issue vendor's licenses to certain distilleries under certain circumstances; requiring that certain information be included on certain sketches and diagrams and approved by the Division under certain circumstances; requiring that certain alcoholic beverages be obtained through a licensed distributor, a licensed broker or sales agent, or a licensed importer.

Section 6: Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill may have a positive economic impact on certain entities in the wine and cider industry, due to the lessening or elimination of regulatory constraints relating to container sizes.

The bill may have a positive economic impact for many craft distilleries due to the removal of many current regulatory constraints, resulting in enhanced brand recognition, increased sales volume, opportunities for collaboration, and access to new markets and consumers.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to the Beverage Law; repealing s. 564.05, F.S., relating to limitations on the size of individual wine containers; repealing s. 564.055, F.S., relating to limitations on the size of individual cider containers; amending s. 564.09, F.S.; revising provisions that authorize a restaurant to allow patrons to remove partially consumed bottles of wine from a restaurant for off-premises consumption; amending s. 565.03, F.S.; redefining the terms "branded product" and "craft distillery"; revising the requirements for the sale of branded products by a licensed craft distillery to consumers; deleting a provision that prohibits a craft distillery from selling more than six individual containers of a branded product to a consumer; revising requirements relating to the shipping of distilled spirits to consumers by a craft distillery; providing that it is unlawful to transfer a distillery license, or ownership in a distillery license, for certain distilleries to certain individuals or entities; prohibiting a craft distillery from having its ownership affiliated with certain other distilleries; authorizing a craft distillery to transfer specified distilled spirits from certain locations to its

souvenir gift shop; requiring a craft distillery making certain transfers of distilled spirits to submit certain excise taxes with its monthly report to the Division of Alcoholic Beverages and Tobacco of the Department of Business and Professional Regulation; amending s. 561.221, F.S.; authorizing the division to issue vendor's licenses to certain distilleries for the sale of alcoholic beverages on the distillery's licensed premises; requiring that the licensed vendor premises be included on certain sketches and diagrams under certain circumstances; requiring that all revisions to a sketch or diagram be approved by the division; requiring that certain alcoholic beverages be obtained through a licensed distributor, a licensed broker or sales agent, or a licensed importer; providing an effective date.

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

Section 1. Section 564.05, Florida Statutes, is repealed.

Section 2. Section 564.055, Florida Statutes, is repealed.

Section 3. Section 564.09, Florida Statutes, is amended to read:

564.09 Restaurants; off-premises consumption of wine.—Notwithstanding any other provision of law, a restaurant

licensed to sell wine on the premises may permit a patron to remove one unsealed bottle of wine for consumption off the premises if the patron has purchased a ~~full course~~ meal ~~consisting of a salad or vegetable, entree, a beverage, and bread~~ and consumed a portion of the bottle of wine ~~with such meal~~ on the restaurant premises. A partially consumed bottle of wine that is to be removed from the premises must be securely resealed by the licensee or its employees before removal from the premises. The partially consumed bottle of wine shall be placed in a bag or other container that is secured in such a manner that it is visibly apparent if the container has been subsequently opened or tampered with, and a dated receipt for the bottle of wine and ~~full course~~ meal shall be provided by the licensee and attached to the container. If transported in a motor vehicle, the container with the resealed bottle of wine must be placed in a locked glove compartment, a locked trunk, or the area behind the last upright seat of a motor vehicle that is not equipped with a trunk.

Section 4. Paragraphs (a) and (b) of subsection (1), paragraphs (b) and (c) of subsection (2), and subsection (5) of section 565.03, Florida Statutes, are amended to read:

565.03 License fees; manufacturers, distributors, brokers, sales agents, and importers of alcoholic beverages; vendor licenses and fees; distilleries and craft distilleries.—

(1) As used in this section, the term:

(a) "Branded product" means any distilled spirits product manufactured on site, or manufactured on site and blended on site with other distilled spirits, which requires a federal certificate and label approval by the Federal Alcohol Administration Act or federal regulations.

(b) "Craft distillery" means a licensed distillery that produces 250,000 ~~75,000~~ or fewer gallons per calendar year of distilled spirits on its premises and is designated as a craft distillery by ~~has notified~~ the division upon notification in writing of its decision to qualify as a craft distillery.

(2)

(b) A licensed distillery or craft distillery may ~~Persons licensed under this section who are in the business of distilling spirituous liquors may also~~ engage in the business of rectifying and blending spirituous liquors without the payment of an additional license tax.

(c) A craft distillery licensed under this section which is not licensed as a vendor under s. 561.221 may sell to consumers under its craft distillery license, at its souvenir gift shop, up to 250,000 gallons per calendar year of branded products ~~distilled on its premises in this state~~ in factory-sealed containers that are filled at the distillery for off-premises consumption by consumers. Such sales are authorized only on ~~private~~ property owned or leased by the craft distillery which is contiguous to the craft distillery's licensed

~~distillery~~ premises approved by the division ~~in this state and included on the sketch or diagram defining the licensed premises submitted with the distillery's license application. All sketch or diagram revisions by the distillery shall require the division's approval verifying that the souvenir gift shop location operated by the licensed distillery is owned or leased by the distillery and on property contiguous to the distillery's production building in this state~~.

1. A craft distillery may not sell under its craft distillery license any factory-sealed individual containers of spirits to consumers in this state except in face-to-face sales transactions with such consumers at the craft distillery's licensed premises. Such containers must be in compliance with the container limits as provided in s. 565.10 ~~who are making a purchase of no more than six individual containers of each branded product~~.

~~2. Each container sold in face-to-face transactions with consumers must comply with the container limits in s. 565.10, per calendar year for the consumer's personal use and not for resale and who are present at the distillery's licensed premises in this state.~~

2.~~3.~~ A craft distillery must report to the division within 5 days after it reaches the production limitations provided in paragraph (1)(b). Any retail sales to consumers under its craft distillery license ~~at the craft distillery's licensed premises~~

are prohibited beginning the day after it reaches the production limitation.

3.~~4.~~ A craft distillery that has not been issued a vendor's license under s. 561.221 may not ship or arrange to ship any of its distilled spirits to consumers in this state and may sell and deliver only to consumers within the state in a face-to-face transaction at the distillery property. However, a craft distillery ~~distiller~~ licensed under this section may ship, arrange to ship, or deliver such spirits to manufacturers of distilled spirits, wholesale distributors of distilled spirits, state or federal bonded warehouses, ~~and~~ exporters, or consumers located outside of this state; however, all such shipments must comply with the laws where such products are scheduled to be delivered for personal use.

4.~~5.~~ Except as provided in subparagraph 5. ~~6.~~, it is unlawful to transfer a distillery license for a distillery that produces 250,000 ~~75,000~~ or fewer gallons per calendar year of distilled spirits on its premises or any ownership interest in such license to an individual or entity that has a direct or indirect ownership interest in any distillery licensed in this state; another state, territory, or country; or by the United States government to manufacture, blend, or rectify distilled spirits for beverage purposes.

5.~~6.~~ A craft distillery shall not have its ownership affiliated with another distillery, unless such distillery

produces 250,000 ~~75,000~~ or fewer gallons per calendar year of distilled spirits on each of its premises in this state or in another state, territory, or country.

6. A craft distillery may transfer up to 250,000 gallons per calendar year of distilled spirits that it manufactures from its federal bonded space, nonbonded space at its licensed premises, or storage areas to its souvenir gift shop.

(5) A craft distillery may transfer distilled spirits to any of its retail areas pursuant to paragraph (2)(c) or s. 561.221 and ~~making sales under paragraph (2)(c)~~ is responsible for submitting any excise taxes due to the state on distilled spirits ~~on beverages~~ under the Beverage Law with ~~in~~ its monthly report to the division ~~with any tax payments due to the state~~.

Section 5. Subsection (4) is added to section 561.221, Florida Statutes, to read:

561.221 Licensing of manufacturers and distributors as vendors and of vendors as manufacturers; conditions and limitations.—

(4)(a) Notwithstanding s. 561.22, s. 561.42, or any other provision of the Beverage Law, the division may issue a vendor's license for the sale of alcoholic beverages on a distillery's licensed premises to a distillery licensed under s. 565.03, even if such distillery is also licensed as a distributor.

(b) If the vendor's license is for the sale of alcoholic beverages on a distillery's licensed premises, the licensed

vendor premises must be included on the sketch or diagram defining the licensed premises submitted with the distillery's license application. All sketch or diagram revisions by the distillery must be approved by the division, verifying that the vendor premises operated by the licensed distillery is owned or leased by the distillery and is located on the licensed distillery premises.

(c) Distilled spirits and other alcoholic beverages manufactured by another licensed manufacturer, including any distilled spirits that are owned in whole or in part by the craft distillery but are distilled by another manufacturer, must be obtained through a licensed distributor, a licensed broker or sales agent, or a licensed importer.

Section 6. This act shall take effect July 1, 2020.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 623 Community Associations
SPONSOR(S): Shoaf
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Brackett	Anstead
2) Civil Justice Subcommittee			
3) Commerce Committee			

SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes, within the Department of Business and Professional Regulation (DBPR), broadly regulates condominium and cooperative associations and has limited regulatory authority over homeowner's associations (HOA).

The bill:

- Exempts a pool within an HOA with 32 parcels or less from the Department of Health's regulation of public pools.
- Requires associations to maintain bids for work or materials for one year, instead of seven.
- Requires an HOA to maintain ballots and all records relating to elections in the HOA's official records.
- Prohibits associations from requiring owners to state a reason for requesting to inspect official records.
- Provides that a condominium association required to make association documents available on a website may instead make them available on a mobile application.
- Allows an HOA to give notice of a meeting on a website.
- Provides that condominium board term limits do not apply retroactively to service prior to 2018.
- Prohibits condominium owners' insurance policies from providing rights of subrogation against the association under certain circumstances.
- Allows condominiums to charge a buyer or renter the actual cost of a background check.
- Provides that certain notice requirements apply to all unit owner meetings instead of just the annual meetings.
- Amends the due date for paying a fine levied by an association.
- Provides that an interest in a cooperative unit is an interest in real property, instead of an interest in personal property.
- Removes the provision that prohibited a condominium association from contracting with a company in which a board member has a financial interest.
- Allows the office of the Condominium Ombudsman to be located outside of Leon County.
- Restates that any provision in a community association's declaration, bylaws, or rules that violates any right under the 14th amendment of the U.S. Constitution or article II of the Florida Constitution is void and unenforceable, and no action is required by an association to remove or amend such provisions.
- Provides that a community association may record a notice in the county in which it is located indicating that it does not intend to enforce any regulation in its declaration, bylaws, or rules that infringes upon the 14th amendment or article II.

The bill is not expected to have a fiscal impact on local government. The bill may have a fiscal impact on state government. *See* Fiscal Comments.

The effective date of the bill is July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Community Associations

The Florida Division of Condominiums, Timeshares and Mobile Homes (Division), within the Department of Business and Professional Regulation (DBPR), provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has regulatory authority over the following business entities and individuals:

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

Condominiums

A condominium is a form of ownership of real property created pursuant to ch. 718, F.S., comprised of units which may be owned by one or more persons along with an undivided right of access to common elements.[1] A condominium is created by recording a declaration of condominium in the public records of the county where the condominium is located.[2] A declaration governs the relationships among condominium unit owners and the condominium association. 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, commonly referred to as a "board of administration." The board enacts bylaws which govern the administration of the association.

Cooperatives

A cooperative is a form of property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association, and individual units are leased to the residents who own shares in the cooperative association.[3] The lease payment amount is the pro-rata share of the operational expenses of the cooperative. Cooperatives operate similarly to condominiums and the laws regulating cooperatives are in many instances nearly identical to those regulating condominiums.

Homeowners' Associations

A homeowners' association (HOA) is an association of residential property owners in which voting membership is made up of parcel owners, in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel.[4] Only HOAs whose covenants and restrictions include mandatory assessments are regulated by ch. 720, F.S. Like a condominium or cooperative, an HOA is administered by an elected board of directors. The powers and duties of an HOA includes the powers and duties provided in ch. 720, F.S., and in the governing documents of the association, which include the recorded covenants and restrictions, together with the bylaws, articles of incorporation, and duly adopted amendments to those documents. No state agency has direct oversight of HOAs. Florida law provides procedures and

[1] S. 718.103(11), F.S.
[2] S. 718.104(2), F.S.
[3] S. 719.103(2)(26), F.S.
[4] S. 720.301(9), F.S.

minimum requirements for operating and provides for a mandatory binding arbitration program, administered by the Division, only for certain election disputes.

Cooperatives as Personal and Real Property Interest

Current Situation

The building and land of a cooperative association are owned by a corporation, not the individual unit owners. A person who purchases a cooperative unit does not receive title to the unit or any portion of the cooperative's building or land. Instead, the purchaser receives shares of the cooperative association and leases a unit from the association. An interest in a corporation or cooperative is represented by the ownership of stock in the corporation.

An ownership interest in a corporation or cooperative is an interest in personal property, not real property.[5] Generally, personal property is any object or right that is not real property, such as automobiles, clothing, or stocks.[6]

Real property is anything that is permanent, fixed, and immovable, such as land or a building. At common law, a leasehold, even for as long as 99 years, was not considered an interest in real property. However, a long-term leasehold interest is taxed in the same manner as a fee interest, so courts generally regard long-term leaseholds to be an interest in real property for taxation purposes.[7]

In Florida, a cooperative is treated as real property for some homestead purposes. Even though the legal definition of homestead follows the common law and requires an interest in real property to qualify for the homestead exemption, the Florida Constitution specifically extends the exemption to a cooperative unit.[8] Florida's homestead laws govern the cooperative for purposes of exemption from forced sale by creditors[9] and for purposes of the exemption from ad valorem taxation. However, a cooperative is not subject to Florida's homestead protections and is not considered real property for purposes of devise and descent. Devise and descent is the transfer or conveyance of property by will or inheritance.[10]

In contrast, the Condominium Act specifically provides that "[a] condominium parcel created by the declaration is a separate parcel of real property, even though the condominium is created on a leasehold." Thus, an ownership interest in a condominium is expressly converted by statute into an interest in real property. There is no corresponding statute in the Cooperative Act.[11] Florida courts have recognized that there is some confusion in this area and that there is a need for clarification on whether a cooperative ownership interest is an interest in real property or personal property.[12]

Effect of the Bill

The bill provides that an interest in a cooperative unit is an interest in real property for all purposes including devise and descent.

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[5] *Downey v. Surf Club Apartments, Inc.*, 667 So.2d 414 (Fla. 1st DCA 1996)
[6] Am. Jur. 2d Property § 18.
[7] *Williams v. Jones*, 326 So.2d 425, 433 (Fla. 1975); *See generally*, The Florida Bar, *Practice Under Florida Probate Code* Chapter 19 (9th ed. 2017).
[8] Art. VII, s. 6(a), Fla. Const. ("The real estate may be held by legal or equitable title, by the entireties, jointly, in common, as a condominium, or indirectly by stock ownership or membership representing the owner's or member's proprietary interest in a corporation owning a fee or a leasehold initially in excess of ninety-eight years.").
[9] Ss. 222.01, and 222.05, F.S.
[10] *Southern Walls, Inc. v. Stilwell Corp.*, 810 So. 2d 566, 572 (Fla. 2nd DCA 2002); *Phillips v. Hirshon*, 958 So. 2d 425, 430 (Fla. 3rd DCA 2007); *In re Estate of Wartels*, 357 So.2d 708 (Fla. 1978); Black's Law Dictionary (11th ed. 2019).
[11] S. 718.106(1), F.S; *See generally* Ch. 719, F.S.
[12] *Phillips*, 958 So.2d 425; *Levine v. Hirshon*, 980 So.2d 1053 (Fla. 2008).

Official Records

Current Situation

Condominiums, cooperatives, and HOAs are required to maintain official records for at least 7 years. The official records must include:

- A copy of the articles of incorporation, declaration, bylaws, and rules of the association;
- Meeting minutes;
- A roster of all owners or members, including the electronic mailing addresses and fax numbers of unit owners consenting to receive notice by electronic transmission;
- A copy of any contracts to which the association is a party or under which the association or the unit owners or members have an obligation;
- Accounting records for the association;
- All contracts for work to be performed, including bids for work, materials, and equipment. Cooperatives and HOAs are only required to maintain bids for one year;
- A copy of the plans, permits, warranties, and other items provided by the developer; and
- All other written records which are related to the operation of the association.[13]

The official records for condominiums and cooperatives, but not HOAs, must also include all ballots, sign-in sheets, voting proxies, and all other papers relating to voting by unit owners.[14]

Owners may request to inspect an association's official records, and the association must make the records available for inspection within 10 business days of receiving an inspection request.[15] A condominium and cooperative may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections. An HOA may also adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections, but an HOA may not require an owner to state the reason for the inspection.[16]

Effect of the Bill

The bill:

- Provides that all records that are related to a condominium association and an HOA are considered official records;
- Mirrors condominium law to cooperative and HOA law by requiring that condominiums maintain bids for work, materials, and equipment for one year instead of seven years;
- Mirrors condominium and cooperative law to HOA law by prohibiting a condominium or cooperative from requiring a unit owner to state a reason for the inspection; and
- Mirrors HOA law to condominium and cooperative law by including all ballots, sign-in sheets, voting proxies, and all other papers relating to voting by owners in the HOA's official records.

Condominium Unit Owner Insurance and Subrogation

Current Situation

A condominium association must use its best efforts to maintain insurance for the association, the association property, and the common elements. If a condominium maintains insurance for the association, it must have coverage for the condominium property as originally installed and all alterations or additions made to the condominium property.[17]

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[13] Ss. 718.111(12)(a), 719.104(2), and 720.303(4)-(5), F.S.
[14] *Id.*
[15] *Id.*
[16] S. 720.303(5), F.S.
[17] S. 718.111, F.S.

Condominium association insurance coverage does not include personal property within a unit or a unit's limited common elements, floor, wall, ceiling coverings, electrical fixtures, appliances, water heaters, water filters, built-in cabinets and countertops, and window treatments. Insurance coverage for such property is the responsibility of the unit owner.[18]

Subrogation is "the substitution of one party for another whose debt the party pays, entitling the paying party to rights, remedies, or securities that would otherwise belong to the debtor."[19] In the condominium setting, subrogation allows a unit owner's insurer to stand in the place of the unit owner whose unit has been damaged by a negligent party. The unit owner's insurer pays the unit owner for the damage and stands in the place of the unit owner to seek relief from the party that caused the damage, which may be the condominium association.

Often, a condominium association's declaration may contain a clause requiring a unit owner's insurance policy to prohibit subrogation against the condominium association.[20]

Prior to 2010, Florida law prohibited a condominium unit owner's insurance policy from providing rights of subrogation against the association. That statutory prohibition was repealed in 2010, and subrogation against a condominium association has been permitted since that time.[21]

Effect of the Bill

The bill provides that if a condominium association's insurance policy does not provide rights of subrogation against the unit owners, then a unit owner's insurance policy may not provide rights of subrogation against the association.

Condominium Websites

Current Situation

Condominium associations with 150 or more units that do not manage timeshare units must post certain documents to a website that is only accessible to unit owners and employees of the condominium association. The condominium association's website must include:

- The recorded declaration of condominium of each condominium operated by the condominium association and each amendment to each declaration;
- The recorded bylaws of the condominium association and each amendment to the bylaws;
- The articles of incorporation of the condominium association, or other documents creating the condominium association and each amendment thereto. The copy posted must be a copy of the articles of incorporation filed with the Department of State;
- The rules of the condominium association;
- Any management agreement, lease, or other contract to which the condominium association is a party or under which the condominium association or the unit owners have an obligation or responsibility. Summaries or complete copies of bids for materials, equipment, or services must be maintained on the website for 1 year;
- The annual budget and any proposed budget to be considered at the annual meeting;
- The financial report and any proposed financial report to be considered at a meeting;
- The certification of each director;
- All contracts or transactions between the condominium association and any director, corporation, firm, or condominium association that is not an affiliated condominium association

[18] *Id.*
[19] *Aurora Loan Services LLC v. Senchuk*, 36 So. 3d 716, 717 (Fla. 1st DCA 2010).
[20] Gary L. Wickert & Kelsey Burazin, *Subrogating Condominium Damage*, Claims Journal June 4, 2015 https://www.claimsjournal.com/news/national/2015/06/04/263728.htm (last visited Dec. 4, 2019).
[21] S. 718.111(11), F.S. (2009); *See* Senate Analysis of 2010 Senate Bill 1196 & 1222 (April 9, 2010).

or any other entity in which an condominium association director is also a director or officer and financially interested;
- Any contract or document regarding a conflict of interest or possible conflict of interest by a community association manager or a board member;
- The notice of any unit owner meeting and the agenda for the meeting, posted at least 14 days before the meeting. The notice must be posted in plain view on the front page of the website or on a separate subpage of the website labeled "Notices" which is conspicuously visible and linked on the front page; and
- Any documents to be considered during a meeting or listed on the agenda for a meeting. These must be posted at least 7 days before the meeting where the document will be considered.[22]

Effect of the Bill

The bill allows a condominium association to post the required documents on a mobile application downloadable to a mobile device instead of on a website.

Condominium Term Limits

Current Situation

Condominium association board members serve one-year terms, but a board member may serve a 2-year term if the association's bylaws or articles of incorporation allow it.[23]

In 2017, the Legislature passed a law prohibiting a condominium association board member from serving more than 4 consecutive 2-year terms unless his or her continued service is approved by two-thirds of the total voting interests or there are not enough eligible candidates to fill the vacancies on the board.[24]

In 2018, the Legislature amended the term limit provision for condominium board members to clarify that a board member could not serve more than 8 consecutive years instead of 4 consecutive 2-year terms.[25] Questions from the public remain about whether time served on a board prior to the enactment of the term limit provision count toward the 8-year maximum.[26]

Effect of the Bill

The bill provides that only service on a condominium's board of directors as a result of an election or appointment that occurred after July 1, 2018, counts towards a board member's 8-year term limit.

Condominium Transfer Costs

Current Situation

A condominium association may not charge a potential buyer or renter costs or fees in connection with the sale, lease, or sublease, or other transfer of a unit unless:
- The fee is limited to $100 or less;
- The fee is provided for in the association's governing documents; and

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[22] S. 718.111(12)(g), F.S.
[23] S. 718.112(2)(d), F.S.
[24] *See* House Analysis of 2017 House Bill 1237 (July 5, 2017).
[25] *See* House Analysis of 2018 House Bill 841 (Mar. 27, 2018).
[26] David G. Muller, *Is new term limit restriction retroactive*, Naples Daily News (Sept. 15, 2018) https://www.naplesnews.com/story/money/real-estate/2018/09/15/new-term-limit-restriction-retroactive/1259991002/ (last visited Dec. 4, 2019).

- The association approves the sale, lease, sublease, or transfer.[27]

A condominium association may require a potential renter to provide the association a security deposit equivalent to one month of rent. The association must place the security deposit in an escrow account maintained by the association.[28]

Effect of the Bill

The bill provides that in addition to a $100 administrative fee, a condominium association may charge a potential buyer or renter the actual cost to perform any background check or screening in connection with the sale, mortgage, lease, sublease, or other transfer of a unit.

Condominium Service Providers Conflicts of Interest

Current Situation

Prior to 2017, a condominium association could sign a contract for maintenance or management services with an entity in which a member of the association's board of directors had a financial interest. The contract had to disclose the board member's financial interest, and a discussion of the financial interest had to be in the minutes of the meeting at which the vote to authorize the contract was held. Any contract that failed to disclose such interest was unenforceable.[29] The contract also had to be affirmed by a two-thirds vote of the members of the board of directors present. The board member with a financial interest in the entity could not participate in the vote.[30]

In 2017, the Legislature passed a law prohibiting a condominium association from employing or contracting with any service provider in which a board member, or a relative of a board member within the third degree of consanguinity by blood or marriage, has a financial interest. This restriction does not apply if the board member or relative owns less than 1 percent of the equity shares of the service provider or to timeshare condominiums.[31]

Effect of the Bill

The bill repeals the provision prohibiting a condominium association from employing or contracting with any service provider in which a board member or a relative of a board member has a financial relationship. However, the bill maintains the provision requiring a board member's financial interest be disclosed in the contract with the association, and in the minutes of the meeting at which the board votes on the contract. Any contract that fails to disclose such interest is unenforceable. The contract also requires an affirmative vote of two-thirds of the board of directors present and prohibits a board member with a financial interest from participating in the vote.

Condominium Electric Car Charging Stations

Current Situation

In 2018, the Legislature passed a law prohibiting a condominium association from preventing a unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limited common element parking area. The electricity charges for the station must be separately metered by the unit owner.[32]

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[27] S. 718.112(2)(i), F.S.
[28] *Id.*
[29] S. 718.3026(3), F.S.
[30] *Id.*
[31] *See* House Analysis, *supra* note 24.
[32] *See* House Analysis, *supra* note 25.

Effect of the Bill

The bill prohibits a condominium association from prohibiting a unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's exclusively designated parking area, in addition to a unit owner's limited common element parking area.

The bill also allows a unit owner to use an embedded meter to meter the electricity used by an electric vehicle charging station, instead of having the charging station separately metered.

Condominium and HOA Fines and Suspensions

Current Situation

Condominium associations and HOAs may levy fines against or suspend the right of an owner, occupant, or a guest of an owner or occupant, to use the common elements for failing to comply with any provision in the association's declaration, bylaws, or rules.[33]

A board may not impose a fine or suspension unless it gives at least 14 days' written notice of the imposed fine or suspension, and the opportunity for a hearing. The hearing must be held before a committee of unit or parcel owners who are not board members or residing in a board member's household. The role of the committee is to determine whether to confirm or reject the fine or suspension.[34]

A fine approved by the committee must be paid to the association five days after the date of the committee meeting. The condominium or HOA must provide written notice of any fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or guest of the unit owner.[35]

Effect of the Bill

The bill provides that if a fine is approved by the committee, it must be paid to the association five days after notice of the approved fine is sent to the unit or parcel owner and if applicable, to any tenant, licensee, or invitee of the owner, instead of five days after the meeting approving the fine.

Notice of Elections for Condominium Associations

Current Situation

Condominium Associations are required to mail, deliver, or electronically transmit notice of an election to unit owners at least 60 days before the election. Condominium associations are also required to mail, deliver, or electronically transmit a second notice of election to the unit owners along with a ballot that lists all the candidates. However, no exact time is currently specified for the provision of the second notice.[36]

Effect of the Bill

The bill provides that the second notice must be mailed, delivered, or electronically transmitted to unit owners not less than 14 days or more than 34 days prior to the election.

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[33] Ss. 718.303(3) & 720.305(2)(a), F.S.
[34] *Id.*
[35] *Id.*
[36] S. 718.112(2)(d), F.S.

Notice of Meetings for Condominium Associations

Current Situation

A condominium association must provide written notice for the association's annual meeting. The notice must include an agenda, and must be mailed, delivered, or electronically transmitted to each unit owner at least 14 days before the annual meeting. The notice must also be posted in a conspicuous place on condominium property for at least 14 continuous days before the annual meeting. Instead of posting the notice in a conspicuous place, a condominium may repeatedly broadcast the notice and agenda on a closed-circuit cable television system serving the association.[37]

Effect of the Bill

The bill provides that the requirements to provide written notice to each owner and conspicuously post such notice applies to all unit owner meetings instead of just the annual meeting.

The bill also provides that except for the annual meeting, the time-period that a condominium association must serve notice of meetings to the owners and conspicuously post such notice is determined by the association's bylaws. If the bylaws are silent, the notice must be sent to the unit owners and conspicuously posted at least 14 days before the meeting.

Notice of Meetings for HOAs

Current Situation

HOAs must notice all board meetings by posting notice in a conspicuous place on the HOA's property for at least 48 hours. Notice must be posted 14 days before meetings where a nonemergency special assessment or an amendment to the rules regarding parcel use is considered.[38]

HOAs are required to notice all member meetings by mailing, hand delivering, or electronically transmitting notice before the meeting. They must also post notice in a conspicuous place before the meeting. If an HOA opts to broadcast notice in lieu of posting notice, it must do so at least four times during every broadcast hour of each day.[39] Additionally, when notice of an HOA meeting is mailed or delivered to an owner's address it must be sent to the address identified as the parcel owner's mailing address on the property appraiser's website for the county in which the owner's parcel is located.[40]

In 2018, the Legislature passed a law allowing condominium and cooperatives to adopt rules for noticing all board and owner meetings on a website if the time requirements for physically posting the board meetings are met. Any rule adopted for website notice must include a requirement that the association send an electronic notice providing a hyperlink to the website where the notice is posted, to all unit owners whose email addresses are part of the official records, and in the same manner as notice for a meeting of the members. Notice by website does not remove the requirement to comply with the other notice requirements.[41]

Effect of the Bill

The bill amends HOA law to mirror condominium and cooperative law by allowing HOAs to adopt rules for noticing all board and owner meetings on a website if the time requirements for physically posting the meetings are met. Any rule adopted for website notice must include a requirement that the

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[37] S. 718.112(d), F.S.
[38] Ss. 718.112(2), 719.106(1), & 720.303(2)(c), F.S.
[39] *Id.*
[40] S. 720.306(1)(g), F.S.
[41] *See* House Analysis, *supra* note 25.

association send an electronic notice providing a hyperlink to the website where the notice is posted, to all parcel owners whose email addresses are part of the official records, and in the same manner as notice for a meeting of the members. Notice by website must be in addition to the other notice requirements.

The bill also provides that when notice of a meeting is mailed or delivered to an owner's address it must be sent to the address identified as the parcel owner's mailing address in the HOA's official records, instead of the address identified as the parcel's owner's mailing address on the property appraiser's website.

Cooperative Associations Video Conferencing

Current Situation

Cooperative association board members and committee members may attend meetings by telephone. If board members or committee members attend a meeting by a telephone, a telephone speaker must be used so the members may be heard by the rest of the board, committee, or any unit owners in attendance.[42]

Effect of the Bill

The bill provides that cooperative association board members and committee members may attend meetings by telephone, real time video conferencing, or by using a similar real-time electronic or video communication. If board members or committee members attend a meeting by telephone, video, or electronic or video communication, a speaker must be used so the members may be heard by the rest of the board, committee, or any unit owners in attendance.

HOA Swimming Pools

Current Situation

The Department of Health (DOH) is responsible for the oversight and regulation of water quality and safety of public swimming pools in Florida under ch. 514, F.S. Inspections and permitting for swimming pools are conducted by the county health departments. In order to operate or continue to operate a public swimming pool, a valid operating permit from DOH must be obtained. If DOH determines that the public swimming pool is, or may reasonably be expected to be, operated in compliance with state laws and rules, DOH will issue a permit. 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.[43]

Pools that are used by condominiums or cooperatives with 32 units or less and which are not being operated as public lodging establishments are exempt from DOH's requirements for public pools.[44] HOA pools are not exempt from DOH regulation even where the HOA has 32 homes or less.

Effect of the Bill

The bill provides that pools for HOAs and other property associations that have 32 parcels or less and are not being operated as public lodging establishments are also exempt from DOH's requirements for public pools.

[42] S. 719.106(1)(b), F.S.
[43] S. 514.031(1), F.S.
[44] S. 514.0115(2), F.S.

Condominium Ombudsman

Current Situation

Within the Division is housed the Office of the Condominium Ombudsman (Ombudsman). The Ombudsman is an attorney appointed by the Governor and a neutral resource for unit owners and condominium associations. The Ombudsman is authorized to prepare and issue reports and recommendations to the Governor, the Division, and the Legislature on any matter or subject within the jurisdiction of the Division. In addition, the Ombudsman may make recommendations to the Division for changes in rules and procedures for the filing, investigation, and resolution of complaints.[45]

The Ombudsman also acts as a liaison between the Division, unit owners, and condominium associations and is responsible for developing policies and procedures to help affected parties understand their rights and responsibilities.[46]

The Ombudsman is required to keep his or her principal office in Leon County.

Effect of the Bill

The bill deletes the requirement that the Ombudsman keep his or her principal office in Leon County.

The Fourteenth Amendment of the U.S. Constitution and Article II of the Florida Constitution

Current Situation

Section 1 of the Fourteenth Amendment of the U.S. Constitution provides that:[47]

- Every person born or naturalized in the U.S. is a citizen of the U.S. and the state where they live;
- Every person has equal protection of the laws;
- No state may curtail the privileges or immunities of citizens;
- No state may deprive any person of life, liberty, or property without due process.

The Fourteenth Amendment only applies to the states and not private parties. However, the United States Supreme Court ruled that a racially restrictive private covenant in a land deed is a violation of the Fourteenth Amendment. The Supreme Court determined that even though the restrictive covenant was between private parties a state court was the entity that had to enforce the covenant, and therefore the covenant violated the Fourteenth amendment.[48]

According to news articles, residents in Florida and across the country have discovered old restrictions and covenants in deeds and community association governing documents that prohibit minorities from owning or renting property. These restrictions cannot be enforced because they violate the Fourteenth Amendment as well as the Federal Fair Housing Act and the Florida Fair Housing Act, which applies if the property is in Florida.[49] However, these restrictions and covenants can be difficult to remove.[50]

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[45] Ss. 718.5011 & 718.5012, F.S.

[46] *Id.*

[47] U.S. Const. amend. XIV, §1.

[48] *Shelley v. Kramer*, 68 S.Ct. 836 (U.S. 1948).

[49] The Federal Fair Housing Act and the Florida Fair Housing Act prohibit discrimination in home sales, financing, and rentals based on race, color, sex, pregnancy, disability, nationality, religion, and familial status. *See* 42 U.S.C. § 3601-189; *See* Ch. 760, part II, F.S.

[50] TaMaryn Waters, *Attorney Wants outdated, racist covenant language in Betton Hills stripped*, Tallahassee Democrat (July 1, 2019) https://www.tallahassee.com/story/news/money/2019/07/01/attorney-wants-outdated-racist-covenant-language-betton-hills-stripped-tallahassee/1546406001/ (last visited Dec. 3, 2019); *Judy L. Thomas, 'Curse of covenant' persists — restrictive rules, while unenforceable, have lingering legacy*, The Kansas City Star (July 27, 2016) https://www.kansascity.com/news/local/article92156112.html (last visited Dec. 3, 2019); Rachel Spacek, *'No persons other than persons of the White race': Racist language remains in older Idaho homes' documents*, Idaho Press (Nov. 5, 2019)

Article II of the Florida Constitution is made up of the following nine sections:[51]

- Section 1. State boundaries.
- Section 2. Seat of government.
- Section 3. Branches of government.
- Section 4. State seal and flag.
- Section 5. Public officers.
- Section 6. Enemy attack.
- Section 7. Natural resources and scenic beauty.
- Section 8. Ethics in government.
- Section 9. English is the official language of Florida.

Effect of the Bill

The bill restates that any provision in a community association's declaration, bylaws, or rules that violates any right under the Fourteenth Amendment of the U.S. Constitution or article II of the Florida Constitution is void and unenforceable, and no action is required by an association to remove or amend such provisions because they cannot be enforced.

The bill also provides that a community association may record a notice in the county in which it is located indicating that it does not intend to enforce any regulation in its declaration, bylaws, or rules that infringes on the Fourteenth Amendment of the U.S. constitution or article II of the Florida Constitution. However, the failure to record notice may not be the basis for liability or evidence of discrimination or an intent to discriminate by the association.

B. SECTION DIRECTORY:

Section 1: Amends s. 514.0015, F.S., providing that certain property association pools are exempt from regulation.

Section 2: Amends s. 627.714, F.S., prohibiting condominium unit owner's insurance policies from having certain subrogation rights.

Section 3: Amends s. 718.111, F.S., amending the official records for a condominium association.

Section 4: Amends s. 718.112, F.S, prohibiting certain provisions, authorizing certain notice, amending board member term limits, required notices, transfer costs, and repealing the prohibition of certain contracts.

Section 5: Amends s. 718.113, F.S., amending the requirement for electric car charging stations.

Section 6: Amends s. 718.303, F.S., amending condominium association fines.

Section 7: Amends s. 718.5014, F.S., relating to ombudsman location.

Section 8: Amends s. 719.103, F.S., amending the definition of a cooperative unit.

Section 9: Amends s. 719.104, F.S., amending the official records for a cooperative.

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https://www.idahopress.com/news/local/no-persons-other-than-persons-of-the-white-race-racist/article_167d13e1-59ce-5f03-b1e1-771709da5e4b.html (last visited Dec. 4, 2019).

[51] Art. II, Fla. Const.

Section 10: Amends s. 719.106, F.S., amending video conferencing rules for meetings, prohibiting certain provisions, and authorizing certain notice.

Section 11: Amends s. 720.303, F.S., amending HOA notice requirements and official records.

Section 12: Amends s. 720.305, F.S., amending the requirements for fining HOA members.

Section 13: Amends s. 720.306, F.S., amending HOA notice requirements.

Section 14: Amends s. 720.3075, F.S, prohibiting certain provisions and authorizing certain notice.

Section 15: Providing an effective date of July 1, 2020.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   See Fiscal Comments.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

It is unknown if prohibiting condominium owners' insurance policies from providing rights of subrogation against the association will increase or decrease the cost of condominium unit owners' insurance policies.

D. FISCAL COMMENTS:

It is unknown whether the change in classification of cooperatives from personal to real property for the purpose of estate taxes or laws related to devise and descent will have an impact on state revenue.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   None.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that any community association's declaration, bylaws, or rules that violates any right under article II of the Florida Constitution are void and unenforceable. However, article II of the Florida Constitution is made up of general provisions that do not appear to relate to equal protection rights.

It is likely a scrivener's error. The sponsor likely meant to reference article I, section 2 of the Florida Constitution. Section II of article I of the Florida Constitution is similar to the Fourteenth Amendment in the U.S. Constitution, and it establishes the basic rights of all natural persons in Florida and provides that all natural persons in Florida:[52]

- Are equal before the law;
- Have inalienable rights including:
  - the right to enjoy and defend life and liberty;
  - the right to pursue happiness;
  - the right to be rewarded for industry; and
  - the right to acquire, possess, and protect property.
- May not be deprived of any right because of race, religion, national origin, or physical disability.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

[52] Art. I, s. 2, Fla. Const.

A bill to be entitled

An act relating to community associations; amending s. 514.0115, F.S.; exempting certain property association pools from Department of Health regulations; amending s. 627.714, F.S.; prohibiting subrogation rights against a condominium association under certain circumstances; amending s. 718.111, F.S.; requiring certain records to be maintained for a specified time; prohibiting an association from requiring certain actions related to the inspection of records; revising requirements relating to certain condominium associations posting digital copies of certain documents; amending s. 718.112, F.S.; prohibiting certain provisions in governing documents; authorizing the association to record certain notice in the public record; limiting liability; specifying that only board service that occurs on or after a specified date may be used for calculating a board member's term limit; providing requirements for certain notices; prohibiting an association from charging certain fees; providing an exception; deleting a prohibition against employing or contracting with certain service providers; amending s. 718.113, F.S.; revising regulations for electric vehicles; amending s. 718.303, F.S.; revising requirements for certain

actions for failure to comply with specified provisions; revising requirements for certain fines; amending s. 718.5014, F.S.; revising the location of the principal office of the Office of the Condominium Ombudsman; amending s. 719.103, F.S.; revising the definition of the term "unit" to specify that an interest in a cooperative unit is an interest in real property; amending s. 719.104, F.S.; prohibiting an association from requiring certain actions related to the inspection of records; amending s. 719.106, F.S.; revising provisions related to a quorum and voting rights for members remotely participating in meetings; prohibiting certain provisions in governing documents; authorizing the association to record certain notice in the public record; limiting liability; amending s. 720.303, F.S.; authorizing an association to adopt procedures for electronic meeting notices; revising the documents that constitute the official records of an association; amending s. 720.305, F.S.; providing requirements for certain fines; amending s. 720.306, F.S.; revising requirements for providing certain notices; amending s. 720.3075, F.S.; prohibiting certain provisions in governing documents; authorizing the association to record certain notice in the public record; limiting liability; 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) Pools serving condominium, cooperative, and homeowners' associations, as well as other property associations, which have no more than 32 ~~condominium or cooperative~~ units or parcels and which are not operated as ~~a~~ public lodging establishments are ~~establishment shall be~~ exempt from supervision under this chapter, except for water quality.

Section 2. Subsection (4) of section 627.714, Florida Statutes, is amended to read:

627.714 Residential condominium unit owner coverage; loss assessment coverage required.—

(4) Every individual unit owner's residential property policy must contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property. If a condominium association's insurance policy does not provide rights for subrogation against the unit owners in the association, an insurance policy issued to an individual unit

owner located in the association may not provide rights of subrogation against the condominium association.

Section 3. Paragraphs (a), (b), (c), and (g) of subsection (12) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

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

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

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

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

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

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if

known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)3.e. However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not

limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association for at least 1 year after receipt of the bid.

12. Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

~~15. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.~~

15.~~16.~~ A copy of the inspection report as described in s. 718.301(4)(p).

16.~~17.~~ Bids for materials, equipment, or services.

17. All other records of the association not specifically included in subparagraphs 1.-16. which are related to the operation of the association.

(b) The official records specified in subparagraphs (a)1.-6. must be permanently maintained from the inception of the association. Bids for work to be performed or for materials, equipment, or services must be maintained for at least 1 year after receipt of the bid. All other official records must be maintained within the state for at least 7 years, unless otherwise provided by general law. The records of the association shall 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. However, such distance requirement does not apply to an association governing a timeshare condominium. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association may offer 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. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative in ~~pursuant to the~~ compliance with ~~requirements of~~ this chapter unless the association has an affirmative duty not to disclose such information under ~~pursuant to~~ this chapter.

(c)1. The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. A renter of a unit has a right to inspect and copy the association's bylaws and rules. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying, but may not require a member to demonstrate any purpose or state any reason for the inspection. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The

failure 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.

2. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty under ~~pursuant to~~ s. 718.501(1)(d).

3. The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the

association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

a. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

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

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

d. Medical records of unit owners.

e. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph, an association may print and distribute to unit ~~parcel~~ owners a directory containing the name, unit ~~parcel~~ address, and all telephone numbers of each unit ~~parcel~~ owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

f. Electronic security measures that are used by the association to safeguard data, including passwords.

g. The software and operating system used by the

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

(g)1. By January 1, 2019, an association managing a condominium with 150 or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website or make such documents available through an application that can be downloaded on a mobile device.

a. The association's website or application must be:

(I) An independent website, application, or web portal wholly owned and operated by the association; or

(II) A website, application, or web portal operated by a third-party provider with whom the association owns, leases, rents, or otherwise obtains the right to operate a web page, subpage, web portal, ~~or~~ collection of subpages or web portals, or application which is dedicated to the association's activities and on which required notices, records, and documents may be posted or made available by the association.

b. The association's website or application must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner's written request, the association

must provide the unit owner with a username and password and access to the protected sections of the association's website or application that contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website or application:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment to the articles of incorporation or other documents ~~thereto~~. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or

services which exceed $500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2)(b)6. and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website or application, or on a separate subpage of the website or application labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website or application any

document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

1. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice under ~~pursuant to~~ s. 718.112(2)(c).

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's website or application, the association shall ensure the information is redacted before posting the documents ~~online~~. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted under ~~pursuant to~~ this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

Section 4. Paragraphs (d), (i), and (p) of subsection (2) of section 718.112, Florida Statutes, are amended, and paragraph (c) of subsection (1) is added to that section, to read:

718.112 Bylaws.—

(1) GENERALLY.—

(c) Any provision of the declaration, the association bylaws, or reasonable rules or regulations of the association which diminish or infringe upon any right protected under the Fourteenth Amendment to the United States Constitution or Art. II of the State Constitution is void and unenforceable without further action of the association. The association may record a notice in the public records of the county in which the condominium is located evidencing its intention to not enforce such provision. The failure of the association to record a notice in the public record may not be the basis for liability or evidence of discrimination or a discriminatory intention.

(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. Only board service that occurs on or after July 1, 2018, may be used when calculating a board member's term limit. 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 monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any

offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice of an annual meeting 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. Written notice of a meeting other than an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner; and be posted in a conspicuous place on the condominium property in accordance with the minimum period of time for posting a notice as set forth in the bylaws, and if the bylaws do not provide such notice requirements, then at least 14 continuous days before the 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 <u>not less than 14 days or more than 34 days before the date of the election</u>. 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 e-mails ~~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.

(i) Transfer fees.—An association may not ~~no~~ charge an applicant any fees, except the actual costs of any background check or screening performed ~~shall be made~~ by the association, ~~or any body thereof~~ in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the declaration, articles, or bylaws. Except for the actual costs of any background check or screening performed by the association, any such fee may be preset, but may not ~~in no event may such fee~~ exceed $100 per applicant other than spouses or parent and dependent child, who ~~husband/wife or parent/dependent child, which~~ are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, a charge may not ~~no charge shall~~ be made. The foregoing notwithstanding, an association may, if the authority to do so appears in the declaration, articles, or bylaws, require that a prospective lessee place a security deposit, in an amount not to exceed the equivalent of 1 month's rent, into an escrow account maintained

by the association. The security deposit shall protect against damages to the common elements or association property. Payment of interest, claims against the deposit, refunds, and disputes under this paragraph shall be handled in the same fashion as provided in part II of chapter 83.

~~(p) Service providers; conflicts of interest.—An association, which is not a timeshare condominium association, may not employ or contract with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer. This paragraph does not apply to a service provider in which a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer, owns less than 1 percent of the equity shares.~~

Section 5. Paragraphs (a) and (c) of subsection (8) of section 718.113, Florida Statutes, are amended to read:

718.113 Maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.—

(8) The Legislature finds that the use of electric vehicles conserves and protects the state's environmental resources, provides significant economic savings to drivers, and serves an important public interest. The participation of

condominium associations is essential to the state's efforts to conserve and protect the state's environmental resources and provide economic savings to drivers. Therefore, the installation of an electric vehicle charging station shall be governed as follows:

(a) A declaration of condominium or restrictive covenant may not prohibit or be enforced so as to prohibit any unit owner from installing an electric vehicle charging station within the boundaries of the unit owner's limited common element or exclusively designated parking area. The board of administration of a condominium association may not prohibit a unit owner from installing an electric vehicle charging station for an electric vehicle, as defined in s. 320.01, within the boundaries of his or her limited common element or exclusively designated parking area. The installation of such charging stations are subject to the provisions of this subsection.

(c) The electricity for the electric vehicle charging station must be separately metered or must use an embedded meter and be payable by the unit owner installing such charging station.

Section 6. Subsection (1) and paragraph (b) of subsection (3) of section 718.303, Florida Statutes, are amended to read:

718.303 Obligations of owners and occupants; remedies.—

(1) Each unit owner, ~~each~~ tenant and other invitee, and ~~each~~ association is governed by, and must comply with the

provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws which are ~~shall be deemed~~ expressly incorporated into any lease of a unit. Actions at law or in equity ~~for damages or for injunctive relief~~, or both, for failure to comply with these provisions may be brought by the association or by a unit owner against:

(a) The association.

(b) A unit owner.

(c) Directors designated by the developer, for actions taken by them before control of the association is assumed by unit owners other than the developer.

(d) Any director who willfully and knowingly fails to comply with these provisions.

(e) Any tenant leasing a unit, and any other invitee occupying a unit.

The prevailing party in any such action or in any action in which the purchaser claims a right of voidability based upon contractual provisions as required in s. 718.503(1)(a) is entitled to recover reasonable attorney ~~attorney's~~ fees. A unit owner prevailing in an action between the association and the unit owner under this subsection ~~section~~, in addition to recovering his or her reasonable attorney ~~attorney's~~ fees, may recover additional amounts as determined by the court to be necessary to reimburse the unit owner for his or her share of

assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. Actions arising under this subsection are not considered ~~may not be deemed to be~~ actions for specific performance.

(3) The association may levy reasonable fines for the failure of the owner of the unit or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. A fine may not become a lien against a unit. A fine may be levied by the board on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before a committee as provided in paragraph (b). However, the fine may not exceed $100 per violation, or $1,000 in the aggregate.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' written notice to the unit owner and, if applicable, any tenant ~~occupant~~, licensee, or invitee of the unit owner sought to be fined or suspended, and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If

the committee does not approve the proposed fine or suspension by majority vote, the fine or suspension may not be imposed. If the proposed fine or suspension is approved by the committee, the fine payment is due 5 days after notice of the approved fine is provided to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner ~~the date of the committee meeting at which the fine is approved~~. The association must provide written notice of such fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner.

Section 7. Section 718.5014, Florida Statutes, is amended to read:

718.5014 Ombudsman location.—The ombudsman shall maintain his or her principal office in a ~~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 8. Subsection (25) of section 719.103, Florida Statutes, is amended to read:

719.103 Definitions.—As used in this chapter:

(25) "Unit" means a part of the cooperative property which is subject to exclusive use and possession. A unit may be

improvements, land, or land and improvements together, as specified in the cooperative documents. An interest in a unit is an interest in real property.

Section 9. Paragraph (c) of subsection (2) of section 719.104, Florida Statutes, is amended to read:

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

(2) OFFICIAL RECORDS.—

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying, but may not require a member to demonstrate any purpose or state any reason for the inspection. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A member ~~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 minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written

request. The failure 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. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty under ~~pursuant to~~ s. 719.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 719.504 and year-end financial information required by the department, on the cooperative property to ensure their availability to members ~~unit owners~~ and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the

association providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records shall not be accessible to members ~~unit owners~~:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including any record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

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

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

management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to unit ~~parcel~~ owners a directory containing the name, unit ~~parcel~~ address, and all telephone numbers of each unit ~~parcel~~ owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

6. Electronic security measures that are used by the

association to safeguard data, including passwords.

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

Section 10. Paragraph (b) of subsection (1) of section 719.106, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(b) Quorum; voting requirements; proxies.—

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

2. Except as specifically otherwise provided herein, after January 1, 1992, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a

limited proxy form adopted by the division. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (j)2., for votes taken to waive the financial reporting requirements of s. 719.104(4)(b), for votes taken to amend the articles of incorporation or bylaws pursuant to this section, and for any other matter for which this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), after January 1, 1992, no proxy, limited or general, shall be used in the election of board members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding the provisions of this section, unit owners may vote in person at unit owner meetings. Nothing contained herein shall limit the use of general proxies or require the use of limited proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare cooperative.

3. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the unit owner executing it.

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

5. A board or committee member participating in a meeting via telephone, real-time video conferencing, or similar real-time electronic or video communication counts toward a quorum, and such member may vote as if physically present ~~When some or all of the board or committee members meet by telephone conference, those board or committee members attending by telephone conference may be counted toward obtaining a quorum and may vote by telephone~~. A ~~telephone~~ speaker must ~~shall~~ be used ~~utilized~~ so that the conversation of such ~~those board or committee~~ members ~~attending by telephone~~ may be heard by the board or committee members attending in person, as well as by any unit owners present at a meeting.

(3) GENERALLY.—Any provision of the declaration, the association bylaws, or reasonable rules or regulations of the association which diminish or infringe upon any right protected under the Fourteenth Amendment to the United States Constitution or Art. II of the State Constitution is void and unenforceable without further action of the association. The association may record a notice in the public records of the county in which the

cooperative is located evidencing its intention to not enforce such provision. The failure of the association to record a notice in the public record may not be the basis for liability or evidence of discrimination or a discriminatory intention.

Section 11. Paragraph (l) of subsection (4) of section 720.303, Florida Statutes, is redesignated as paragraph (m), paragraph (c) of subsection (2) is amended, and a new paragraph (l) is added to subsection (4) of that section, to read:

720.303 Association powers and duties; meetings of board; official records; budgets; financial reporting; association funds; recalls.—

(2) BOARD MEETINGS.—

(c) The bylaws shall provide the following for giving notice to parcel owners and members of all board meetings and, if they do not do so, shall be deemed to include the following:

1. Notices of all board meetings must be posted in a conspicuous place in the community at least 48 hours in advance of a meeting, except in an emergency. In the alternative, if notice is not posted in a conspicuous place in the community, notice of each board meeting must be mailed or delivered to each member at least 7 days before the meeting, except in an emergency. Notwithstanding this general notice requirement, for communities with more than 100 members, the association bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of

notice, provision of a schedule of board meetings, or the conspicuous posting and repeated broadcasting of the notice on a closed-circuit cable television system serving the homeowners' association. However, if broadcast notice is used in lieu of a notice posted physically in the community, the notice must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. 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 the association's website for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the association 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 is required for a notice of a meeting of the members, which must include a hyperlink to the website where the notice is posted, to members whose e-mail addresses are included in the association's official records. The association may provide notice by electronic transmission in a manner authorized by law for meetings of the board of directors, committee

meetings requiring notice under this section, and annual and special meetings of the members to any member who has provided a facsimile number or e-mail address to the association to be used for such purposes; however, a member must consent in writing to receiving notice by electronic transmission.

2. An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting.

3. Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This subsection also applies to the meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of association funds, and to any body vested with the power to approve or disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

(4) OFFICIAL RECORDS.—The association shall maintain each

of the following items, when applicable, which constitute the official records of the association:

(l) Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by parcel owners, which must be maintained for at least 1 year after the date of the election, vote, or meeting.

(m) ~~(l)~~ All other ~~written~~ records of the association not specifically included in this subsection ~~the foregoing~~ which are related to the operation of the association.

Section 12. Subsections (1) and (2) of section 720.305, Florida Statutes, are amended to read:

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

(1) Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter and~~,~~ the governing documents of the community~~, and the rules of the association~~. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any member against:

(a) The association;

(b) A member;

(c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and

(d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney fees and costs. A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney fees, may recover additional amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any other available right or remedy.

(2) An ~~The~~ association may levy reasonable fines. A fine may not exceed $100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and opportunity for hearing, except that the fine may not exceed $1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than $1,000 may not become a lien against a parcel. In any action to recover a fine, the

prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.

(a) An association may suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' notice to the parcel owner and, if applicable, any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, the proposed fine or suspension may not be imposed. The role of the committee is limited to determining whether to

confirm or reject the fine or suspension levied by the board. If the proposed fine or suspension levied by the board is approved by the committee, the fine payment is due 5 days after notice of the approved fine is provided to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner ~~the date of the committee meeting at which the fine is approved~~. The association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any occupant ~~tenant~~, licensee, or invitee of the parcel owner.

Section 13. Paragraph (g) of subsection (1) of section 720.306, Florida Statutes, is amended to read:

720.306 Meetings of members; voting and election procedures; amendments.—

(1) QUORUM; AMENDMENTS.—

(g) A notice required under this section must be mailed or delivered to the address identified as the parcel owner's mailing address in the official records of the association as required under s. 720.303(4) ~~on the property appraiser's website for the county in which the parcel is located~~, or electronically transmitted in a manner authorized by the association if the parcel owner has consented, in writing, to receive notice by electronic transmission.

Section 14. Subsection (6) is added to section 720.3075, Florida Statutes, to read:

720.3075 Prohibited clauses in association documents.—

(6) Any provision of the declaration, the association bylaws, or reasonable rules or regulations of the association which diminish or infringe upon any right protected under the Fourteenth Amendment to the United States Constitution or Art. II of the State Constitution is void and unenforceable without further action of the association. The association may record a notice in the public records of the county in which the community is located evidencing its intention to not enforce such provision. The failure of the association to record a notice in the public record may not be the basis for liability or evidence of discrimination or a discriminatory intention.

Section 15. This act shall take effect July 1, 2020.

BUSINESS & PROFESSIONS SUBCOMMITTEE

HB 623 by Rep. Shoaf
Community Associations

AMENDMENT SUMMARY
December 11, 2019

Amendment 1 by Rep. Shoaf (Strike-all amendment):
The strike-all amendment differs from the original bill in the following ways:

- Corrects a scrivener's error by correcting a reference to the Florida Constitution, from article II, to article I, section 2.
- Permits a unit owner in a condominium association to install an alternative fuel station for an alternative fuel motor vehicle within the boundaries of the owner's parking area.

Amendment No. 1.

COMMITTEE/SUBCOMMITTEE ACTION	
ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Committee/Subcommittee hearing bill: Business & Professions Subcommittee

Representative Shoaf offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

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) Pools serving condominium, cooperative, and homeowners' associations, as well as other property associations, which have no more than 32 ~~condominium or cooperative~~ units or parcels and which are not operated as ~~a~~ public lodging establishments are ~~establishment shall~~ be exempt from supervision under this chapter, except for water quality.

Section 2. Subsection (4) of section 627.714, Florida Statutes, is amended to read:

627.714 Residential condominium unit owner coverage; loss assessment coverage required.—

(4) Every individual unit owner's residential property policy must contain a provision stating that the coverage afforded by such policy is excess coverage over the amount recoverable under any other policy covering the same property. If a condominium association's insurance policy does not provide rights for subrogation against the unit owners in the association, an insurance policy issued to an individual unit owner located in the association may not provide rights of subrogation against the condominium association.

Section 3. Paragraphs (a), (b), (c), and (g) of subsection (12) of section 718.111, Florida Statutes, are amended to read:

718.111 The association.—

(12) OFFICIAL RECORDS.—

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

1. A copy of the plans, permits, warranties, and other items provided by the developer pursuant to s. 718.301(4).

2. A photocopy of the recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

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

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

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

6. A book or books that contain the minutes of all meetings of the association, the board of administration, and the unit owners.

7. A current roster of all unit owners and their mailing addresses, unit identifications, voting certifications, and, if known, telephone numbers. The association shall also maintain the e-mail addresses and facsimile numbers of unit owners consenting to receive notice by electronic transmission. The e-mail addresses and facsimile numbers are not accessible to unit owners if consent to receive notice by electronic transmission is not provided in accordance with sub-subparagraph (c)3.e. However, the association is not liable for an inadvertent disclosure of the e-mail address or facsimile number for receiving electronic transmission of notices.

8. All current insurance policies of the association and condominiums operated by the association.

9. A current copy of any management agreement, lease, or other contract to which the association is a party or under which the association or the unit owners have an obligation or

responsibility.

10. Bills of sale or transfer for all property owned by the association.

11. Accounting records for the association and separate accounting records for each condominium that the association operates. Any person who knowingly or intentionally defaces or destroys such records, or who knowingly or intentionally fails to create or maintain such records, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty pursuant to s. 718.501(1)(d). The accounting records must include, but are not limited to:

a. Accurate, itemized, and detailed records of all receipts and expenditures.

b. A current account and a monthly, bimonthly, or quarterly statement of the account for each unit designating the name of the unit owner, the due date and amount of each assessment, the amount paid on the account, and the balance due.

c. All audits, reviews, accounting statements, and financial reports of the association or condominium.

d. All contracts for work to be performed. Bids for work to be performed are also considered official records and must be maintained by the association <u>for at least 1 year after receipt of the bid</u>.

12. Ballots, sign-in sheets, voting proxies, and all other

papers and electronic records relating to voting by unit owners, which must be maintained for 1 year from the date of the election, vote, or meeting to which the document relates, notwithstanding paragraph (b).

13. All rental records if the association is acting as agent for the rental of condominium units.

14. A copy of the current question and answer sheet as described in s. 718.504.

~~15. All other written records of the association not specifically included in the foregoing which are related to the operation of the association.~~

15.~~16.~~ A copy of the inspection report as described in s. 718.301(4)(p).

16.~~17.~~ Bids for materials, equipment, or services.

17. All other records of the association not specifically included in subparagraphs 1.-16. which are related to the operation of the association.

(b) The official records specified in subparagraphs (a)1.-6. must be permanently maintained from the inception of the association. Bids for work to be performed or for materials, equipment, or services must be maintained for at least 1 year after receipt of the bid. All other official records must be maintained within the state for at least 7 years, unless otherwise provided by general law. The records of the association shall 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. However, such distance requirement does not apply to an association governing a timeshare condominium. This paragraph may be complied with by having a copy of the official records of the association available for inspection or copying on the condominium property or association property, or the association may offer 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. The association is not responsible for the use or misuse of the information provided to an association member or his or her authorized representative in ~~pursuant to the~~ compliance with ~~requirements of~~ this chapter unless the association has an affirmative duty not to disclose such information under ~~pursuant to~~ this chapter.

(c)1. The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the member or authorized representative of such member. A renter of a unit has a right to inspect and copy the association's bylaws and rules. The association may adopt reasonable rules regarding the

frequency, time, location, notice, and manner of record inspections and copying, but may not require a member to demonstrate any purpose or state any reason for the inspection. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A unit owner who is denied access to official records is entitled to the actual damages or minimum damages for the association's willful failure to comply. Minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure 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.

2. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty under ~~pursuant to~~ s. 718.501(1)(d).

3. The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws,

and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 718.504 and year-end financial information required under this section, on the condominium property to ensure their availability to unit owners and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the documents. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association's providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records are not accessible to unit owners:

a. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including a record prepared by an association attorney or prepared at the attorney's express direction, which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the

conclusion of the litigation or proceedings.

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

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

d. Medical records of unit owners.

e. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this sub-subparagraph, an association may print and distribute to unit ~~parcel~~ owners a directory containing the name, unit ~~parcel~~ address, and all telephone numbers of each unit ~~parcel~~ owner. However, an owner may exclude his or her

telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this sub-subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this sub-subparagraph if the information is included in an official record of the association and is voluntarily provided by an owner and not requested by the association.

f. Electronic security measures that are used by the association to safeguard data, including passwords.

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

(g)1. By January 1, 2019, an association managing a condominium with 150 or more units which does not contain timeshare units shall post digital copies of the documents specified in subparagraph 2. on its website <u>or make such documents available through an application that can be downloaded on a mobile device</u>.

a. The association's website <u>or application</u> must be:

(I) An independent website<u>, application,</u> or web portal wholly owned and operated by the association; or

(II) A website<u>, application,</u> or web portal operated by a third-party provider with whom the association owns, leases,

rents, or otherwise obtains the right to operate a web page, subpage, web portal, ~~or~~ collection of subpages or web portals, or application which is dedicated to the association's activities and on which required notices, records, and documents may be posted or made available by the association.

b. The association's website or application must be accessible through the Internet and must contain a subpage, web portal, or other protected electronic location that is inaccessible to the general public and accessible only to unit owners and employees of the association.

c. Upon a unit owner's written request, the association must provide the unit owner with a username and password and access to the protected sections of the association's website or application that contain any notices, records, or documents that must be electronically provided.

2. A current copy of the following documents must be posted in digital format on the association's website or application:

a. The recorded declaration of condominium of each condominium operated by the association and each amendment to each declaration.

b. The recorded bylaws of the association and each amendment to the bylaws.

c. The articles of incorporation of the association, or other documents creating the association, and each amendment to

the articles of incorporation or other documents ~~thereto~~. The copy posted pursuant to this sub-subparagraph must be a copy of the articles of incorporation filed with the Department of State.

d. The rules of the association.

e. A list of all executory contracts or documents to which the association is a party or under which the association or the unit owners have an obligation or responsibility and, after bidding for the related materials, equipment, or services has closed, a list of bids received by the association within the past year. Summaries of bids for materials, equipment, or services which exceed $500 must be maintained on the website or application for 1 year. In lieu of summaries, complete copies of the bids may be posted.

f. The annual budget required by s. 718.112(2)(f) and any proposed budget to be considered at the annual meeting.

g. The financial report required by subsection (13) and any monthly income or expense statement to be considered at a meeting.

h. The certification of each director required by s. 718.112(2)(d)4.b.

i. All contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium association or any other entity in which an association director is also a director or

officer and financially interested.

j. Any contract or document regarding a conflict of interest or possible conflict of interest as provided in ss. 468.436(2)(b)6. and 718.3027(3).

k. The notice of any unit owner meeting and the agenda for the meeting, as required by s. 718.112(2)(d)3., no later than 14 days before the meeting. The notice must be posted in plain view on the front page of the website or application, or on a separate subpage of the website or application labeled "Notices" which is conspicuously visible and linked from the front page. The association must also post on its website or application any document to be considered and voted on by the owners during the meeting or any document listed on the agenda at least 7 days before the meeting at which the document or the information within the document will be considered.

l. Notice of any board meeting, the agenda, and any other document required for the meeting as required by s. 718.112(2)(c), which must be posted no later than the date required for notice under ~~pursuant to~~ s. 718.112(2)(c).

3. The association shall ensure that the information and records described in paragraph (c), which are not allowed to be accessible to unit owners, are not posted on the association's website or application. If protected information or information restricted from being accessible to unit owners is included in documents that are required to be posted on the association's

website or application, the association shall ensure the information is redacted before posting the documents ~~online~~. Notwithstanding the foregoing, the association or its agent is not liable for disclosing information that is protected or restricted under ~~pursuant to~~ this paragraph unless such disclosure was made with a knowing or intentional disregard of the protected or restricted nature of such information.

4. The failure of the association to post information required under subparagraph 2. is not in and of itself sufficient to invalidate any action or decision of the association's board or its committees.

Section 4. Section 4. Paragraphs (d), (i), and (p) of subsection (2) of section 718.112, Florida Statutes, are amended, and paragraph (c) of subsection (1) is added to that section, to read:

718.112 Bylaws.—

(1) GENERALLY.—

(c) Any provision of the declaration, the association bylaws, or reasonable rules or regulations of the association which diminish or infringe upon any right protected under the Fourteenth Amendment to the United States Constitution or s. 2, Art. I of the State Constitution is void and unenforceable without further action of the association. The association may record a notice in the public records of the county in which the condominium is located evidencing its intention to not enforce

such provision. The failure of the association to record a notice in the public record may not be the basis for liability or evidence of discrimination or a discriminatory intention.

(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. Only board service that occurs on or after July 1, 2018, may be used when calculating a board member's term limit. 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 monetary obligation due to the association, is not eligible to be a candidate for board membership and may not be listed on the ballot. A person who has been convicted of any felony in this state or in a United States District or Territorial Court, or who has been convicted of any offense in another jurisdiction which would be considered a felony if committed in this state, is not eligible for board membership unless such felon's civil rights have been restored for at least 5 years as of the date such person seeks election to the board. The validity of an action by the board is not affected if it is later determined that a board member is ineligible for board membership due to having been convicted of a felony. This subparagraph does not limit the term of a member of the board of a nonresidential or timeshare condominium.

3. The bylaws must provide the method of calling meetings of unit owners, including annual meetings. Written notice <u>of an annual meeting</u> must include an agenda<u>;</u> ~~, 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. Written notice of a meeting other than an annual meeting must include an agenda; be mailed, hand delivered, or electronically transmitted to each unit owner; and be posted in a conspicuous place on the condominium property in accordance with the minimum period of time for posting a notice as set forth in the bylaws, and if the bylaws do not provide such notice requirements, then at least 14 continuous days before the 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 not less than 14 days or more than 34 days before the date of the election. 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 e-mails ~~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.

(i) Transfer fees.—An association may not ~~no~~ charge an applicant any fees, except the actual costs of any background check or screening performed ~~shall be made~~ by the association, ~~or any body thereof~~ in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the declaration, articles, or

bylaws. Except for the actual costs of any background check or screening performed by the association, any such fee may be preset, but may not ~~in no event may such fee~~ exceed $100 per applicant other than spouses or parent and dependent child, who ~~husband/wife or parent/dependent child, which~~ are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, a charge may not ~~no charge shall~~ be made. The foregoing notwithstanding, an association may, if the authority to do so appears in the declaration, articles, or bylaws, require that a prospective lessee place a security deposit, in an amount not to exceed the equivalent of 1 month's rent, into an escrow account maintained by the association. The security deposit shall protect against damages to the common elements or association property. Payment of interest, claims against the deposit, refunds, and disputes under this paragraph shall be handled in the same fashion as provided in part II of chapter 83.

~~(p) Service providers; conflicts of interest.—An association, which is not a timeshare condominium association, may not employ or contract with any service provider that is owned or operated by a board member or with any person who has a financial relationship with a board member or officer, or a relative within the third degree of consanguinity by blood or marriage of a board member or officer. This paragraph does not apply to a service provider in which a board member or officer,~~

~~or a relative within the third degree of consanguinity by blood or marriage of a board member or officer, owns less than 1 percent of the equity shares.~~

Section 5. Subsection (8) of section 718.113, Florida Statutes, is amended to read:

718.113 Maintenance; limitation upon improvement; display of flag; hurricane shutters and protection; display of religious decorations.—

(8) The Legislature finds that the use of electric vehicles and alternative fuel vehicles conserves and protects the state's environmental resources, provides significant economic savings to drivers, and serves an important public interest. The participation of condominium associations is essential to the state's efforts to conserve and protect the state's environmental resources and provide economic savings to drivers. For purposes of this subsection "alternative fuel" has the same meaning as provided in s. 403.42. For purposes of this section "alternative fuel vehicle" means any motor vehicle, as defined in s. 320.01, that is powered by an alternative fuel or a combination of alternative fuels. Therefore, the installation of an electric vehicle charging station or alternative fuel station shall be governed as follows:

(a) A declaration of condominium or restrictive covenant may not prohibit or be enforced so as to prohibit any unit owner from installing an electric vehicle charging station or

alternative fuel station within the boundaries of the unit owner's limited common element or exclusively designated parking area. The board of administration of a condominium association may not prohibit a unit owner from installing an electric vehicle charging station for an electric vehicle, as defined in s. 320.01, or an alternative fuel station for an alternative fuel vehicle within the boundaries of his or her limited common element or exclusively designated parking area. The installation of such charging or fueling stations are subject to the provisions of this subsection.

(b) The installation may not cause irreparable damage to the condominium property.

(c) The electricity for the electric vehicle charging station or the alternative fuel station must be separately metered or must use an embedded meter and be payable by the unit owner installing such charging station.

(d) The supply and storage of the alternative fuel must be paid by the unit owner installing such fuel station.

(e) ~~(d)~~ The unit owner who is installing an electric vehicle charging station or an alternative fuel station is responsible for the costs of installation, operation, maintenance, and repair, including, but not limited to, hazard and liability insurance. The association may enforce payment of such costs pursuant to s. 718.116.

(f) ~~(e)~~ If the unit owner or his or her successor decides there is no longer a need for the electronic vehicle charging station or alternative fuel station, such person is responsible for the cost of removal of the electronic vehicle charging station or alternative fuel station. The association may enforce payment of such costs pursuant to s. 718.116.

(g) The unit owner installing the electronic vehicle charging station or alternative fuel station or his or her successor shall be responsible for complying with all federal, state, or local laws or regulations that apply to the installation, maintenance, or removal of such charging or fueling stations.

(h) ~~(f)~~ The association may require the unit owner to:

1. Comply with bona fide safety requirements, consistent with applicable building codes or recognized safety standards, for the protection of persons and property.

2. Comply with reasonable architectural standards adopted by the association that govern the dimensions, placement, or external appearance of the electric vehicle charging station or alternative fuel station, provided that such standards may not prohibit the installation of such charging or fuel station or substantially increase the cost thereof.

3. Engage the services of a licensed and registered electrical contractor or engineer familiar with the installation and core requirements of an electric vehicle charging station,

or licensed engineer familiar with the installation and core requirements of an alternative fuel charging station.

4. Provide a certificate of insurance naming the association as an additional insured on the owner's insurance policy for any claim related to the installation, maintenance, or use of the electric vehicle charging station or alternative fuel charging station within 14 days after receiving the association's approval to install such charging or fuel station.

5. Reimburse the association for the actual cost of any increased insurance premium amount attributable to the electric vehicle charging station or alternative fuel charging station within 14 days after receiving the association's insurance premium invoice.

(i) ~~(g)~~ The association provides an implied easement across the common elements of the condominium property to the unit owner for purposes of the installation of the electric vehicle charging station or alternative fuel charging station and the furnishing of electrical power, including any necessary equipment, and the storage of any alternative fuel, including any necessary equipment, to such charging or fuel station, subject to the requirements of this subsection.

Section 6. Section 6. Subsection (1) and paragraph (b) of subsection (3) of section 718.303, Florida Statutes, are amended to read:

718.303 Obligations of owners and occupants; remedies.—

(1) Each unit owner, ~~each~~ tenant and other invitee, and ~~each~~ association is governed by, and must comply with the provisions of, this chapter, the declaration, the documents creating the association, and the association bylaws which are ~~shall be deemed~~ expressly incorporated into any lease of a unit. Actions at law or in equity ~~for damages or for injunctive relief~~, or both, for failure to comply with these provisions may be brought by the association or by a unit owner against:

(a) The association.

(b) A unit owner.

(c) Directors designated by the developer, for actions taken by them before control of the association is assumed by unit owners other than the developer.

(d) Any director who willfully and knowingly fails to comply with these provisions.

(e) Any tenant leasing a unit, and any other invitee occupying a unit.

The prevailing party in any such action or in any action in which the purchaser claims a right of voidability based upon contractual provisions as required in s. 718.503(1)(a) is entitled to recover reasonable attorney ~~attorney's~~ fees. A unit owner prevailing in an action between the association and the unit owner under this subsection ~~section~~, in addition to recovering his or her reasonable attorney ~~attorney's~~ fees, may

recover additional amounts as determined by the court to be necessary to reimburse the unit owner for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. Actions arising under this subsection are not considered ~~may not be deemed to be~~ actions for specific performance.

(3) The association may levy reasonable fines for the failure of the owner of the unit or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. A fine may not become a lien against a unit. A fine may be levied by the board on the basis of each day of a continuing violation, with a single notice and opportunity for hearing before a committee as provided in paragraph (b). However, the fine may not exceed $100 per violation, or $1,000 in the aggregate.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' written notice to the unit owner and, if applicable, any tenant ~~occupant~~, licensee, or invitee of the unit owner sought to be fined or suspended, and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or sister of an officer, director, or employee. The

role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the committee does not approve the proposed fine or suspension by majority vote, the fine or suspension may not be imposed. If the proposed fine or suspension is approved by the committee, the fine payment is due 5 days after notice of the approved fine is provided to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner ~~the date of the committee meeting at which the fine is approved~~. The association must provide written notice of such fine or suspension by mail or hand delivery to the unit owner and, if applicable, to any tenant, licensee, or invitee of the unit owner.

Section 7. Section 718.5014, Florida Statutes, is amended to read:

718.5014 Ombudsman location.—The ombudsman shall maintain his or her principal office in a ~~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 8. Subsection (25) of section 719.103, Florida Statutes, is amended to read:

719.103 Definitions.—As used in this chapter:

(25) "Unit" means a part of the cooperative property which is subject to exclusive use and possession. A unit may be improvements, land, or land and improvements together, as specified in the cooperative documents. An interest in a unit is an interest in real property.

Section 9. Paragraph (c) of subsection (2) of section 719.104, Florida Statutes, is amended to read:

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

(2) OFFICIAL RECORDS.—

(c) The official records of the association are open to inspection by any association member or the authorized representative of such member at all reasonable times. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the association member. The association may adopt reasonable rules regarding the frequency, time, location, notice, and manner of record inspections and copying, but may not require a member to demonstrate any purpose or state any reason for the inspection. The failure of an association to provide the records within 10 working days after receipt of a written request creates a rebuttable presumption that the association willfully failed to comply with this paragraph. A member ~~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 minimum damages are $50 per calendar day for up to 10 days, beginning on the 11th working day after receipt of the written request. The failure 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. Any person who knowingly or intentionally defaces or destroys accounting records that are required by this chapter to be maintained during the period for which such records are required to be maintained, or who knowingly or intentionally fails to create or maintain accounting records that are required to be created or maintained, with the intent of causing harm to the association or one or more of its members, is personally subject to a civil penalty under ~~pursuant to~~ s. 719.501(1)(d). The association shall maintain an adequate number of copies of the declaration, articles of incorporation, bylaws, and rules, and all amendments to each of the foregoing, as well as the question and answer sheet as described in s. 719.504 and year-end financial information required by the department, on the cooperative property to ensure their availability to members ~~unit owners~~ and prospective purchasers, and may charge its actual costs for preparing and furnishing these documents to those requesting the same. An association shall allow a member or his or her authorized representative to use a portable device, including a smartphone, tablet, portable scanner, or any

other technology capable of scanning or taking photographs, to make an electronic copy of the official records in lieu of the association providing the member or his or her authorized representative with a copy of such records. The association may not charge a member or his or her authorized representative for the use of a portable device. Notwithstanding this paragraph, the following records shall not be accessible to members ~~unit owners~~:

1. Any record protected by the lawyer-client privilege as described in s. 90.502 and any record protected by the work-product privilege, including any record prepared by an association attorney or prepared at the attorney's express direction which reflects a mental impression, conclusion, litigation strategy, or legal theory of the attorney or the association, and which was prepared exclusively for civil or criminal litigation or for adversarial administrative proceedings, or which was prepared in anticipation of such litigation or proceedings until the conclusion of the litigation or proceedings.

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

3. Personnel records of association or management company employees, including, but not limited to, disciplinary, payroll, health, and insurance records. For purposes of this

subparagraph, the term "personnel records" does not include written employment agreements with an association employee or management company, or budgetary or financial records that indicate the compensation paid to an association employee.

4. Medical records of unit owners.

5. Social security numbers, driver license numbers, credit card numbers, e-mail addresses, telephone numbers, facsimile numbers, emergency contact information, addresses of a unit owner other than as provided to fulfill the association's notice requirements, and other personal identifying information of any person, excluding the person's name, unit designation, mailing address, property address, and any address, e-mail address, or facsimile number provided to the association to fulfill the association's notice requirements. Notwithstanding the restrictions in this subparagraph, an association may print and distribute to unit ~~parcel~~ owners a directory containing the name, unit ~~parcel~~ address, and all telephone numbers of each unit ~~parcel~~ owner. However, an owner may exclude his or her telephone numbers from the directory by so requesting in writing to the association. An owner may consent in writing to the disclosure of other contact information described in this subparagraph. The association is not liable for the inadvertent disclosure of information that is protected under this subparagraph if the information is included in an official record of the association and is voluntarily provided by an

owner and not requested by the association.

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

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

Section 10. Paragraph (b) of subsection (1) of section 719.106, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

719.106 Bylaws; cooperative ownership.—

(1) MANDATORY PROVISIONS.—The bylaws or other cooperative documents shall provide for the following, and if they do not, they shall be deemed to include the following:

(b) Quorum; voting requirements; proxies.—

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

2. Except as specifically otherwise provided herein, after

January 1, 1992, unit owners may not vote by general proxy, but may vote by limited proxies substantially conforming to a limited proxy form adopted by the division. Limited proxies and general proxies may be used to establish a quorum. Limited proxies shall be used for votes taken to waive or reduce reserves in accordance with subparagraph (j)2., for votes taken to waive the financial reporting requirements of s. 719.104(4)(b), for votes taken to amend the articles of incorporation or bylaws pursuant to this section, and for any other matter for which this chapter requires or permits a vote of the unit owners. Except as provided in paragraph (d), after January 1, 1992, no proxy, limited or general, shall be used in the election of board members. General proxies may be used for other matters for which limited proxies are not required, and may also be used in voting for nonsubstantive changes to items for which a limited proxy is required and given. Notwithstanding the provisions of this section, unit owners may vote in person at unit owner meetings. Nothing contained herein shall limit the use of general proxies or require the use of limited proxies or require the use of limited proxies for any agenda item or election at any meeting of a timeshare cooperative.

3. Any proxy given shall be effective only for the specific meeting for which originally given and any lawfully adjourned meetings thereof. In no event shall any proxy be valid for a period longer than 90 days after the date of the first

meeting for which it was given. Every proxy shall be revocable at any time at the pleasure of the unit owner executing it.

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

5. A board or committee member participating in a meeting via telephone, real-time video conferencing, or similar real-time electronic or video communication counts toward a quorum, and such member may vote as if physically present ~~When some or all of the board or committee members meet by telephone conference, those board or committee members attending by telephone conference may be counted toward obtaining a quorum and may vote by telephone~~. A ~~telephone~~ speaker must ~~shall~~ be used ~~utilized~~ so that the conversation of such ~~those board or committee~~ members ~~attending by telephone~~ may be heard by the board or committee members attending in person, as well as by any unit owners present at a meeting.

(3) GENERALLY.—Any provision of the declaration, the association bylaws, or reasonable rules or regulations of the association which diminish or infringe upon any right protected under the Fourteenth Amendment to the United States Constitution or s. 2, Art. I of the State Constitution is void and

991 unenforceable without further action of the association. The
992 association may record a notice in the public records of the
993 county in which the cooperative is located evidencing its
994 intention to not enforce such provision. The failure of the
995 association to record a notice in the public record may not be
996 the basis for liability or evidence of discrimination or a
997 discriminatory intention.
998 Section 11. Section 11. Paragraph (l) of subsection (4)
999 of section 720.303, Florida Statutes, is redesignated as
1000 paragraph (m), paragraph (c) of subsection (2) is amended, and a
1001 new paragraph (l) is added to subsection (4) of that section, to
1002 read:
1003 720.303 Association powers and duties; meetings of board;
1004 official records; budgets; financial reporting; association
1005 funds; recalls.—
1006 (2) BOARD MEETINGS.—
1007 (c) The bylaws shall provide the following for giving
1008 notice to parcel owners and members of all board meetings and,
1009 if they do not do so, shall be deemed to include the following:
1010 1. Notices of all board meetings must be posted in a
1011 conspicuous place in the community at least 48 hours in advance
1012 of a meeting, except in an emergency. In the alternative, if
1013 notice is not posted in a conspicuous place in the community,
1014 notice of each board meeting must be mailed or delivered to each
1015 member at least 7 days before the meeting, except in an

emergency. Notwithstanding this general notice requirement, for communities with more than 100 members, the association bylaws may provide for a reasonable alternative to posting or mailing of notice for each board meeting, including publication of notice, provision of a schedule of board meetings, or the conspicuous posting and repeated broadcasting of the notice on a closed-circuit cable television system serving the homeowners' association. However, if broadcast notice is used in lieu of a notice posted physically in the community, the notice must be broadcast at least four times every broadcast hour of each day that a posted notice is otherwise required. When broadcast notice is provided, the notice and agenda must be broadcast in a manner and for a sufficient continuous length of time so as to allow an average reader to observe the notice and read and comprehend the entire content of the notice and the agenda. 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 the association's website for at least the minimum period of time for which a notice of a meeting is also required to be physically posted on the association 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 is required for a notice of a meeting of the members, which must include a hyperlink to the website where the

notice is posted, to members whose e-mail addresses are included in the association's official records. The association may provide notice by electronic transmission in a manner authorized by law for meetings of the board of directors, committee meetings requiring notice under this section, and annual and special meetings of the members to any member who has provided a facsimile number or e-mail address to the association to be used for such purposes; however, a member must consent in writing to receiving notice by electronic transmission.

2. An assessment may not be levied at a board meeting unless the notice of the meeting includes a statement that assessments will be considered and the nature of the assessments. Written notice of any meeting at which special assessments will be considered or at which amendments to rules regarding parcel use will be considered must be mailed, delivered, or electronically transmitted to the members and parcel owners and posted conspicuously on the property or broadcast on closed-circuit cable television not less than 14 days before the meeting.

3. Directors may not vote by proxy or by secret ballot at board meetings, except that secret ballots may be used in the election of officers. This subsection also applies to the meetings of any committee or other similar body, when a final decision will be made regarding the expenditure of association funds, and to any body vested with the power to approve or

disapprove architectural decisions with respect to a specific parcel of residential property owned by a member of the community.

(4) OFFICIAL RECORDS.—The association shall maintain each of the following items, when applicable, which constitute the official records of the association:

(l) Ballots, sign-in sheets, voting proxies, and all other papers and electronic records relating to voting by parcel owners, which must be maintained for at least 1 year after the date of the election, vote, or meeting.

(m) ~~(l)~~ All other ~~written~~ records of the association not specifically included in this subsection ~~the foregoing~~ which are related to the operation of the association.

Section 12. Subsections (1) and (2) of section 720.305, Florida Statutes, are amended to read:

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

(1) Each member and the member's tenants, guests, and invitees, and each association, are governed by, and must comply with, this chapter and~~,~~ the governing documents of the community~~, and the rules of the association~~. Actions at law or in equity, or both, to redress alleged failure or refusal to comply with these provisions may be brought by the association or by any member against:

(a) The association;

(b) A member;

(c) Any director or officer of an association who willfully and knowingly fails to comply with these provisions; and

(d) Any tenants, guests, or invitees occupying a parcel or using the common areas.

The prevailing party in any such litigation is entitled to recover reasonable attorney fees and costs. A member prevailing in an action between the association and the member under this section, in addition to recovering his or her reasonable attorney fees, may recover additional amounts as determined by the court to be necessary to reimburse the member for his or her share of assessments levied by the association to fund its expenses of the litigation. This relief does not exclude other remedies provided by law. This section does not deprive any person of any other available right or remedy.

(2) An ~~The~~ association may levy reasonable fines. A fine may not exceed $100 per violation against any member or any member's tenant, guest, or invitee for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association unless otherwise provided in the governing documents. A fine may be levied by the board for each day of a continuing violation, with a single notice and

opportunity for hearing, except that the fine may not exceed $1,000 in the aggregate unless otherwise provided in the governing documents. A fine of less than $1,000 may not become a lien against a parcel. In any action to recover a fine, the prevailing party is entitled to reasonable attorney fees and costs from the nonprevailing party as determined by the court.

(a) An association may suspend, for a reasonable period of time, the right of a member, or a member's tenant, guest, or invitee, to use common areas and facilities for the failure of the owner of the parcel or its occupant, licensee, or invitee to comply with any provision of the declaration, the association bylaws, or reasonable rules of the association. This paragraph does not apply to that portion of common areas used to provide access or utility services to the parcel. A suspension may not prohibit an owner or tenant of a parcel from having vehicular and pedestrian ingress to and egress from the parcel, including, but not limited to, the right to park.

(b) A fine or suspension levied by the board of administration may not be imposed unless the board first provides at least 14 days' notice to the parcel owner and, if applicable, any occupant, licensee, or invitee of the parcel owner, sought to be fined or suspended and an opportunity for a hearing before a committee of at least three members appointed by the board who are not officers, directors, or employees of the association, or the spouse, parent, child, brother, or

sister of an officer, director, or employee. If the committee, by majority vote, does not approve a proposed fine or suspension, the proposed fine or suspension may not be imposed. The role of the committee is limited to determining whether to confirm or reject the fine or suspension levied by the board. If the proposed fine or suspension levied by the board is approved by the committee, the fine payment is due 5 days after notice of the approved fine is provided to the parcel owner and, if applicable, to any occupant, licensee, or invitee of the parcel owner ~~the date of the committee meeting at which the fine is approved~~. The association must provide written notice of such fine or suspension by mail or hand delivery to the parcel owner and, if applicable, to any occupant ~~tenant~~, licensee, or invitee of the parcel owner.

Section 13. Paragraph (g) of subsection (1) of section 720.306, Florida Statutes, is amended to read:

720.306 Meetings of members; voting and election procedures; amendments.—

(1) QUORUM; AMENDMENTS.—

(g) A notice required under this section must be mailed or delivered to the address identified as the parcel owner's mailing address in the official records of the association as required under s. 720.303(4) ~~on the property appraiser's website for the county in which the parcel is located~~, or electronically transmitted in a manner authorized by the association if the

parcel owner has consented, in writing, to receive notice by electronic transmission.

Section 14. Subsection (6) is added to section 720.3075, Florida Statutes, to read:

720.3075 Prohibited clauses in association documents.—

(6) Any provision of the declaration, the association bylaws, or reasonable rules or regulations of the association which diminish or infringe upon any right protected under the Fourteenth Amendment to the United States Constitution or s. 2, Art. I of the State Constitution is void and unenforceable without further action of the association. The association may record a notice in the public records of the county in which the community is located evidencing its intention to not enforce such provision. The failure of the association to record a notice in the public record may not be the basis for liability or evidence of discrimination or a discriminatory intention.

Section 15. This act shall take effect July 1, 2020.

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

Remove everything before the enacting clause and insert:

An act relating to community associations; amending s. 514.0115, F.S.; exempting certain property association pools from Department of Health regulations; amending

s. 627.714, F.S.; prohibiting subrogation rights against a condominium association under certain circumstances; amending s. 718.111, F.S.; requiring certain records to be maintained for a specified time; prohibiting an association from requiring certain actions related to the inspection of records; revising requirements relating to certain condominium associations posting digital copies of certain documents; amending s. 718.112, F.S.; prohibiting certain provisions in governing documents; authorizing the association to record certain notice in the public record; limiting liability; specifying that only board service that occurs on or after a specified date may be used for calculating a board member's term limit; providing requirements for certain notices; prohibiting an association from charging certain fees; providing an exception; deleting a prohibition against employing or contracting with certain service providers; amending s. 718.113, F.S.; revising regulations for electric vehicles; providing that an association may not prohibit a unit owner from installing an alternate fuel station; providing requirements for installing such fuel station amending s. 718.303, F.S.; revising requirements for certain actions for failure to comply with specified

provisions; revising requirements for certain fines; amending s. 718.5014, F.S.; revising the location of the principal office of the Office of the Condominium Ombudsman; amending s. 719.103, F.S.; revising the definition of the term "unit" to specify that an interest in a cooperative unit is an interest in real property; amending s. 719.104, F.S.; prohibiting an association from requiring certain actions related to the inspection of records; amending s. 719.106, F.S.; revising provisions related to a quorum and voting rights for members remotely participating in meetings; prohibiting certain provisions in governing documents; authorizing the association to record certain notice in the public record; limiting liability; amending s. 720.303, F.S.; authorizing an association to adopt procedures for electronic meeting notices; revising the documents that constitute the official records of an association; amending s. 720.305, F.S.; providing requirements for certain fines; amending s. 720.306, F.S.; revising requirements for providing certain notices; amending s. 720.3075, F.S.; prohibiting certain provisions in governing documents; authorizing the association to record certain notice in the public record; limiting liability; providing an effective date.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 6037 Individual Wine Containers
SPONSOR(S): LaMarca
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee		Willson MW	Anstead LA
2) Commerce Committee			

SUMMARY ANALYSIS

In Florida, the Beverage Law regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors. The Division of Alcoholic Beverages and Tobacco in the Department of Business and Professional Regulation administers and enforces the Beverage Law.

Section 564.05, F.S., prohibits the sale of wine in an individual container that holds more than one gallon of wine. However, wine may be sold in a reusable container of 5.16 gallons. This applies to persons who sell wine by the bottle, or retail sales. Pursuant to the Beverage Law, only licensed vendors are authorized to sell alcoholic beverages at retail. Distributors and manufacturers may sell wine to other distributors and manufacturers in containers of any size.

The bill repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2020.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Beverage Law

In Florida, the Beverage Law[1] regulates the manufacture, distribution, and sale of wine, beer, and liquor by manufacturers, distributors, and vendors.[2] The Division of Alcoholic Beverages and Tobacco (Division) in the Department of Business and Professional Regulation (DBPR) administers and enforces the Beverage Law.[3]

"Alcoholic beverages" are defined in s. 561.01, F.S., as "distilled spirits and all beverages containing one-half of 1 percent or more alcohol by volume." "Malt beverages" are brewed alcoholic beverages containing malt.[4]

Section 561.14, F.S., specifies the license and registration classifications used in the Beverage Law.

- "Manufacturers" are those "licensed to manufacture alcoholic beverages and distribute the same at wholesale to licensed distributors and to no one else within the state, unless authorized by statute."
- "Distributors" are those "licensed to sell and distribute alcoholic beverages at wholesale to persons who are licensed to sell alcoholic beverages."
- "Importers" are those licensed to sell, or to cause to be sold, shipped, and invoiced, alcoholic beverages to licensed manufacturers or licensed distributors, and to no one else in this state.[5]
- "Vendors" are those "licensed to sell alcoholic beverages at retail only" and may not "purchase or acquire in any manner for the purpose of resale any alcoholic beverages from any person not licensed as a vendor, manufacturer, bottler, or distributor under the Beverage Law."

Wine Containers

Section 564.05, F.S., prohibits the sale of wine in an individual container that holds more than one gallon of wine. However, wine may be sold in a reusable container of 5.16 gallons. This applies to a person who sells wine by the bottle within the state. The size limitations appear to apply to vendors, and thus at retail sales only.

Distributors and manufacturers may sell wine to other distributors and manufacturers in containers of any size.

Any person who violates the prohibition commits a second-degree misdemeanor.[6]

Effect of the Bill

The bill repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

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[1] Section 561.01(6), F.S., provides that the "The Beverage Law" means chs. 561, 562, 563, 564, 565, 567, and 568, F.S.
[2] *See* s. 561.14, F.S.
[3] S. 561.02, F.S.
[4] S. 563.01, F.S.
[5] S. 561.01(5), F.S.
[6] Section 775.082, F.S., provides the penalty for a misdemeanor of the second degree is a term of imprisonment not exceeding 60 days. Section 775.083, F.S., provides the penalty for a misdemeanor of the second degree is a fine not to exceed $500.

B. SECTION DIRECTORY:

Section 1 Repeals s. 564.05, F.S., relating to limitations on the size of individual wine containers.

Section 2 Provides for an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

A bill to be entitled

An act relating to individual wine containers; repealing s. 564.05, F.S., relating to the limitation of size of individual wine containers; providing an effective date.

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

Section 1. Section 564.05, Florida Statutes, is repealed.

Section 2. This act shall take effect July 1, 2020.

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