Judiciary Committee

Wednesday, March 22, 2006
10:15 A.M. – 12:00 P.M.
Morris Hall
(17 HOB)

Amendment Packet

Allan G. Bense
Speaker

David Simmons
Chair

HB 129

EXPLANATION OF AMENDMENTS HB 129:
FIREARMS IN VEHICLES - by Rep. Baxley

Amdt 1 by Reps. Simmons and Baxley (remove everything after the enacting clause):

TEMPORARILY POSTPONED AT LAST MEETING

This strike-all amendment differs from the bill as filed by narrowing the scope of the bill, removing the criminal penalty and providing a civil penalty, and providing exceptions and exemptions to the bill.

Amdt to the Amdt 1a by Rep. Kottkamp (lines 167-198):

This amendment to the amendment proposed to removed some of the immunity language and the opt out provisions for some employers.

FAILED

Amdt 2 by Reps. Baxley and Kottkamp (remove everything after the enacting clause):

This strike-all amendment differs from the bill as filed by narrowing the scope of the bill, removing the criminal penalty and providing a civil penalty, and providing exceptions and exemptions to the bill. The amendment renames the bill "an Act relating to the protection of constitutional rights." The amendment includes public employers, but specifically exempts out schools and prisons, as well as some other employers.

The amendment provides that a public or private entity may not prohibit employees, customers, and other invitees from possessing any **lawfully held personal property** if such property is locked inside or to a private motor vehicle in a parking lot.

The amendment provides for enforcement by the Attorney General with the possibility of injunctive relief and a civil fine of up to $10,000, per aggrieved employee or invitee, for each violation of the prohibition.

Bill No. **HB 129**

COUNCIL/COMMITTEE ACTION

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WITHDRAWN	__	(Y/N)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

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1 Council/Committee hearing bill: Judiciary
2 Representatives Simmons and Baxley offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Section 790.25, Florida Statutes, is amended to
7 read:
8 790.25 Lawful ownership, possession, and use of firearms
9 and other weapons.--
10 (1) DECLARATION OF POLICY.--The Legislature finds as a
11 matter of public policy and fact that it is necessary to promote
12 firearms safety and to curb and prevent the use of firearms and
13 other weapons in crime and by incompetent persons without
14 prohibiting the lawful use in defense of life, home, and
15 property, and the use by United States or state military
16 organizations, and as otherwise now authorized by law, including
17 the right to use and own firearms for target practice and
18 marksmanship on target practice ranges or other lawful places,
19 and lawful hunting and other lawful purposes.
20 (2) USES NOT AUTHORIZED.--

21 (a) This section does not authorize carrying a concealed
22 weapon without a permit, as prohibited by ss. 790.01 and 790.02.
23 (b) The protections of this section do not apply to the
24 following:
25 1. A person who has been adjudged mentally incompetent,
26 who is addicted to the use of narcotics or any similar drug, or
27 who is a habitual or chronic alcoholic, or a person using
28 weapons or firearms in violation of ss. 790.07-790.12, 790.14-
29 790.19, 790.22-790.24.~~;~~
30 2. Vagrants and other undesirable persons as defined in s.
31 856.02.~~;~~
32 3. A person in or about a place of nuisance as defined in
33 s. 823.05, unless such person is there for law enforcement or
34 some other lawful purpose.
35 (3) LAWFUL USES.--The provisions of ss. 790.053 and 790.06
36 do not apply in the following instances, and, despite such
37 sections, it is lawful for the following persons to own,
38 possess, and lawfully use firearms and other weapons,
39 ammunition, and supplies for lawful purposes:
40 (a) Members of the Militia, National Guard, Florida State
41 Defense Force, Army, Navy, Air Force, Marine Corps, Coast Guard,
42 organized reserves, and other armed forces of the state and of
43 the United States, when on duty, when training or preparing
44 themselves for military duty, or while subject to recall or
45 mobilization.~~;~~
46 (b) Citizens of this state subject to duty in the Armed
47 Forces under s. 2, Art. X of the State Constitution, under
48 chapters 250 and 251, and under federal laws, when on duty or
49 when training or preparing themselves for military duty.~~;~~

50 (c) Persons carrying out or training for emergency
51 management duties under chapter 252.~~;~~
52 (d) Sheriffs, marshals, prison or jail wardens, police
53 officers, Florida highway patrol officers, game wardens, revenue
54 officers, forest officials, special officers appointed under the
55 provisions of chapter 354, and other peace and law enforcement
56 officers and their deputies and assistants and full-time paid
57 peace officers of other states and of the Federal Government who
58 are carrying out official duties while in this state.~~;~~
59 (e) Officers or employees of the state or United States
60 duly authorized to carry a concealed weapon.~~;~~
61 (f) Guards or messengers of common carriers, express
62 companies, armored car carriers, mail carriers, banks, and other
63 financial institutions, while actually employed in and about the
64 shipment, transportation, or delivery of any money, treasure,
65 bullion, bonds, or other thing of value within this state.~~;~~
66 (g) Regularly enrolled members of any organization duly
67 authorized to purchase or receive weapons from the United States
68 or from this state, or regularly enrolled members of clubs
69 organized for target, skeet, or trap shooting, while at or going
70 to or from shooting practice; or regularly enrolled members of
71 clubs organized for modern or antique firearms collecting, while
72 such members are at or going to or from their collectors' gun
73 shows, conventions, or exhibits.~~;~~
74 (h) A person engaged in fishing, camping, or lawful
75 hunting or going to or returning from a fishing, camping, or
76 lawful hunting expedition.~~;~~
77 (i) A person engaged in the business of manufacturing,
78 repairing, or dealing in firearms, or the agent or

79 representative of any such person while engaged in the lawful
80 course of such business.~~;~~
81 (j) A person firing weapons for testing or target practice
82 under safe conditions and in a safe place not prohibited by law
83 or going to or from such place.~~;~~
84 (k) A person firing weapons in a safe and secure indoor
85 range for testing and target practice.~~;~~
86 (l) A person traveling by private conveyance when the
87 weapon is securely encased or in a public conveyance when the
88 weapon is securely encased and not in the person's manual
89 possession.~~;~~
90 (m) A person while carrying a pistol unloaded and in a
91 secure wrapper, concealed or otherwise, from the place of
92 purchase to his or her home or place of business or to a place
93 of repair or back to his or her home or place of business.~~;~~
94 (n) A person possessing arms at his or her home or place
95 of business.~~;~~
96 (o) Investigators employed by the several public defenders
97 of the state, while actually carrying out official duties,
98 provided such investigators:
99 1. Are employed full time;
100 2. Meet the official training standards for firearms
101 established by the Criminal Justice Standards and Training
102 Commission as provided in s. 943.12(5) and the requirements of
103 ss. 493.6108(1)(a) and 943.13(1)-(4); and
104 3. Are individually designated by an affidavit of consent
105 signed by the employing public defender and filed with the clerk
106 of the circuit court in the county in which the employing public
107 defender resides.

108 (p) Investigators employed by the capital collateral
109 representative, while actually carrying out official duties,
110 provided such investigators:
111 1. Are employed full time;
112 2. Meet the official training standards for firearms as
113 established by the Criminal Justice Standards and Training
114 Commission as provided in s. 943.12(1) and the requirements of
115 ss. 493.6108(1)(a) and 943.13(1)-(4); and
116 3. Are individually designated by an affidavit of consent
117 signed by the capital collateral representative and filed with
118 the clerk of the circuit court in the county in which the
119 investigator is headquartered.
120 (4) CONSTRUCTION.--This act shall be liberally construed
121 to carry out the declaration of policy herein and in favor of
122 the constitutional right to keep and bear arms for lawful
123 purposes. This act is supplemental and additional to existing
124 rights to bear arms now guaranteed by law and decisions of the
125 courts of Florida, and nothing herein shall impair or diminish
126 any of such rights. This act shall supersede any law, ordinance,
127 or regulation in conflict herewith.
128 (5) POSSESSION IN PRIVATE CONVEYANCE.--Notwithstanding
129 subsection (2), it is lawful and is not a violation of s. 790.01
130 for a person 18 years of age or older to possess a concealed
131 firearm or other weapon for self-defense or other lawful purpose
132 within the interior of a private conveyance, without a license,
133 if the firearm or other weapon is securely encased or is
134 otherwise not readily accessible for immediate use. Nothing
135 herein contained prohibits the carrying of a legal firearm other
136 than a handgun anywhere in a private conveyance when such
137 firearm is being carried for a lawful use. Nothing herein

138 contained shall be construed to authorize the carrying of a
139 concealed firearm or other weapon on the person. This subsection
140 shall be liberally construed in favor of the lawful use,
141 ownership, and possession of firearms and other weapons,
142 including lawful self-defense as provided in s. 776.012.
143 (6) STORAGE AND TRANSPORT OF FIREARMS LOCKED INSIDE OR
144 LOCKED TO A MOTOR VEHICLE IN A PARKING AREA; PENALTY; IMMUNITY
145 FROM LIABILITY.--
146 (a) As used in this subsection, the term:
147 1. "motor vehicle" means any automobile, truck, minivan,
148 sports utility vehicle, motorcycle, motor scooter, or any other
149 similar vehicle required to be registered under Florida law.
150 2. "employee" means any person who works for salary,
151 wages, or other remuneration; is an independent contractor; or
152 is a volunteer, intern, or other similar individual for an
153 employer.
154 3. "employer" means any business that is a sole
155 proprietorship, partnership, corporation, limited liability
156 company, professional association, cooperative, joint venture,
157 trust, firm, institution, or association, with employees.
158 4. "invitee" means any business invitee, including a
159 customer or visitor lawfully on the premises.
160 (b) Except as provided in paragraph (e), no employer, or
161 landlord of an employer, shall establish, maintain, or enforce
162 any policy or rule that prohibits or has the effect of
163 prohibiting an employee or invitee in lawful possession of a
164 firearm from parking a motor vehicle on any property used for
165 that purpose when the employee or invitee is lawfully in such
166 area and the firearm is actually locked inside or locked to the
167 motor vehicle, unless, at its own election, the employer, or

168 landlord of the employer, provides the employee or invitee with
169 the opportunity to:
170 1. check, store, or secure the firearm of the employee or
171 invitee subject to reasonable conditions; or
172 2. park in an onsite area set aside by the employer, or
173 landlord of the employer, for parking motor vehicles with a
174 firearm locked inside or locked to the motor vehicle. In the
175 event the employer, or landlord of the employer, elects to
176 provide such onsite area, it shall be as convenient as other
177 employee or invitee parking and shall not be marked or posted as
178 a special parking area for such purposes; or
179 3. notify the employer, or landlord of the employer, or
180 their designee, that the employee or invitee intends, from time
181 to time, to be in lawful possession of a firearm locked inside
182 or locked to a motor vehicle.
183 (c)1. No employer, or landlord of an employer, or employee
184 imposing or implementing a policy under paragraph (b), shall be
185 liable in any civil or other action for any harm that arises out
186 of, or results from, directly or indirectly, the use or
187 threatened use of a firearm that was being transported and
188 stored by an employee or invitee and was locked inside of or
189 locked to a motor vehicle on any property owned or leased by an
190 employer, or landlord of an employer, and used for parking motor
191 vehicles. The immunity provided in this sub-paragraph extends
192 to the vicarious liability of an employer or landlord of an
193 employer that arises out of, or results from, directly or
194 indirectly, the use or threatened use of a firearm that was
195 being transported and stored by an employee or invitee and was
196 locked inside of or locked to a motor vehicle on any property
197 owned or leased by an employer, or landlord of an employer, and

198 used for parking motor vehicles. The immunity provided in this
199 sub-paragraph shall not apply to any person who uses or
200 threatens to use a firearm or other weapon. The immunity
201 provided in this sub-paragraph shall not apply if the harm
202 involved was caused, in whole or in part, by the willful or
203 criminal misconduct of the employer, or landlord of the
204 employer, or a conscious and flagrant indifference to the safety
205 of the person or persons harmed.
206 2. A civil fine of $10,000, per aggrieved employee or
207 invitee, shall be imposed for each violation of the prohibition
208 in paragraph (b).
209 (d) It is the intent of this subsection to reinforce and
210 protect the right of each law-abiding employee or invitee to
211 enter and exit any property owned or leased by an employer, or
212 landlord of an employer, and used for parking motor vehicles
213 while the employee or invitee is lawfully transporting and
214 storing a firearm in the motor vehicle and the firearm is locked
215 inside or locked to the motor vehicle, to avail himself or
216 herself of temporary or long-term parking or storage of a motor
217 vehicle, and to prohibit any infringement of the right to lawful
218 possession of the firearm when the firearm is being transported
219 and stored inside or locked to a motor vehicle for a lawful
220 purpose.
221 (e) The prohibition in paragraph (b) does not apply to:
222 1. property owned or leased by an employer, or landlord of
223 an employer, upon which are conducted activities involving
224 national defense, aerospace, or domestic security.
225 2. property owned or leased by an employer, or landlord of
226 an employer, upon which a significant portion of the business
227 conducted on such property involves the manufacture, use,

228 storage, sale, or transportation of hazardous or ultra-hazardous
229 materials regulated under state or federal law, including
230 combustible or explosive materials.
231 3. a motor vehicle owned, leased, or rented by an
232 employer, or landlord of an employer, or its agent.
233 4. any other property owned or leased by an employer, or
234 landlord of an employer, where an employee or invitee is
235 prohibited from having a firearm pursuant to any federal law or
236 any existing state general law on the effective date of this
237 act.
238 Section 2. This act shall take effect July 1, 2006.
239
240 ========== T I T L E A M E N D M E N T ==========
241 Remove the entire title and insert:
242 An act relating to lawful ownership, possession, and use of
243 firearms; amending s. 790.25, F.S., relating to lawful
244 ownership, possession, and use of firearms and other weapons;
245 providing definitions; prohibiting specified employers and
246 landlords of employers in certain circumstances from
247 establishing, maintaining, or enforcing any policy or rule that
248 prohibits certain employees and invitees from parking a motor
249 vehicle on property set aside for such purpose when a secured
250 firearm is being lawfully transported and stored in the motor
251 vehicle; providing for specified immunity from liability;
252 providing a civil penalty; providing intent; providing
253 exceptions; providing an effective date.
254

Bill No. **HB 129**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)	
ADOPTED AS AMENDED	__ (Y/N)	
ADOPTED W/O OBJECTION	__ (Y/N)	
FAILED TO ADOPT	✓ (Y/N)	(5/7)
WITHDRAWN	__ (Y/N)	
OTHER	____	

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1 Council/Committee hearing bill: Judiciary
2 Representative Kottkamp offered the following:
3
4 **Amendment to Amendment #1 by Representatives Simmons and**
5 **Baxley**
6 Remove lines 167-198 and insert:
7
8 motor vehicle.
9 (c)1. No employer, or landlord of an employer, or employee
10 imposing or implementing a policy under paragraph (b), shall be
11 liable for any harm that arises out of, or results from, the use
12 of a firearm that was being transported and stored by an
13 employee or invitee and was locked inside of or locked to a
14 motor vehicle on any property owned or leased by an employer, or
15 landlord of an employer, and used for parking motor vehicles.
16 The immunity provided in this
17
18
19

Bill No. **HB 129**

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Judiciary
2 Representative(s) Baxley & Kottkamp offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Section 790.251, Florida Statutes, is created
7 to read:
8 790.251 Privacy and personal property protection; storage
9 and transport of personal property locked inside or locked to a
10 motor vehicle in a parking area; penalty; immunity from
11 liability.--
12 (1) SHORT TITLE.--This act may be cited as the "Individual
13 Personal Private Property Protection Act."
14 (2) LEGISLATIVE INTENT.--This act is intended to codify
15 the longstanding legislative policy of this state that:
16 (a) Citizens have a constitutional right to privacy;
17 (b) Citizens have a constitutional right to possess and
18 securely keep legal private property within their motor
19 vehicles, particularly such property as is necessary for or
20 incidental to their exercise of other constitutional rights; and

21 (c) These rights are not abrogated by virtue of a
22 citizen's becoming a customer, employee, or invitee of a
23 business entity.
24 (3) LEGISLATIVE FINDINGS.--The Legislature finds that
25 citizens' lawful possession, transportation, and secure keeping
26 of certain private property within their motor vehicles is
27 essential to the exercise of fundamental constitutional rights,
28 including freedom of speech, freedom of association, the free
29 exercise of religion, and to keep and bear arms. The Legislature
30 finds that there is a compelling state interest to protect the
31 fundamental private property rights of the citizens of Florida.
32 The Legislature further finds that a citizen is not required and
33 should not be required to waive or abrogate his or her right to
34 possess and securely keep such constitutionally protected
35 private property locked within his or her motor vehicle by
36 virtue of becoming a customer, employee, or invitee of an
37 employer or a business establishment within the state.
38 (4) DEFINITIONS.--As used in this section, the term:
39 (a) "Aggrieved person" means any customer, employee, or
40 invitee as defined in this subsection.
41 (b) "Employee" means a person who works for salary, wages,
42 or other remuneration; is an independent contractor; or is a
43 volunteer, intern, or other similar individual for an employer.
44 (c) "Employer" means a business that is a sole
45 proprietorship, partnership, corporation, limited liability
46 company, professional association, cooperative, joint venture,
47 trust, firm, institution, association, or public-sector entity,
48 which has employees.
49 (d) "Invitee" means any business invitee, including a
50 customer or visitor, who is lawfully on the premises.

51 (e) "Motor vehicle" means any automobile, truck minivan,
52 sports utility vehicle, motor home, recreational vehicle,
53 motorcycle, or motor scooter, or any other vehicle, which is
54 operated on the roads of this state and is required to be
55 registered under Florida law.
56 (f) "Parking lot" means any property that is owned or
57 leased by an employer, or a landlord of an employer, and used
58 for parking motor vehicles and that is available to customers,
59 employees, or invitees for temporary or long-term parking or
60 storage of motor vehicles.
61 (5) PROHIBITED ACTS.--A public or private entity may not
62 violate the constitutional rights of any customer, employee, or
63 invitee as provided in this subsection:
64 (a) A public or private entity may not prohibit any
65 customer, employee or invitee from possessing any lawfully held
66 personal property if such property is locked inside or to a
67 private motor vehicle in a parking lot when the customer,
68 employee, or invitee is lawfully in such area.
69 (b) A public or private entity may not violate the privacy
70 rights of a customer, employee, or invitee by verbal inquiry or
71 actual search of a private motor vehicle in a parking lot. A
72 search of a private motor vehicle may be conducted only by on
73 duty law enforcement personnel and must comply with the due
74 process requirements of the Constitution of the State of Florida
75 and the United States Constitution.
76 (c) An employer may not condition employment upon
77 preventing or prohibiting, or otherwise attempt to prevent or
78 prohibit, any customer, employee, or invitee from keeping locked
79 within the trunk, glove box, other enclosed compartment, or area
80 out of sight within a motor vehicle any property or material the
81 lawful possession of which is protected by, or the lawful use of

82 which is incidental to, the exercise of individual rights
83 protected under the United States Constitution and the State
84 Constitution.
85 (d) An employer may not terminate the employment of or
86 otherwise discriminate against an employee, or expel a customer
87 or invitee, for exercising his or her constitutional right to
88 keep and bear arms or the right of self-defense as long as a
89 firearm is never exhibited on company property except for lawful
90 defensive purposes.
91
92 This section applies to all public-sector employers, including
93 those that are already prohibited from regulating firearms under
94 s. 790.33.
95 (6) IMMUNITY FROM LEGAL LIABILITY.--An employer or a
96 landlord of an employer is not liable in a civil action that
97 arises, directly or indirectly, out of or results from the theft
98 of or the threatened use or accidental or criminal use of a
99 firearm or any other legal property that was stored in the
100 private motor vehicle by a customer, employee, or invitee in a
101 parking lot owned or leased by an employer or the landlord of an
102 employer. The immunity provided in this subsection does not
103 apply to a person who uses or threatens to use a firearm or
104 other weapon in a criminal act. The immunity provided in this
105 subsection does not apply if the harm involved was caused, in
106 whole or in part, by the willful or criminal misconduct of the
107 employer or the landlord of the employer.
108 (7) ENFORCEMENT.--The Attorney General shall enforce the
109 protections of this act on behalf of an aggrieved person if
110 there is reasonable cause to believe that the customer,
111 employee, or invitee's rights under this act have been violated
112 by a public or private entity and shall commence a civil or

113 administrative action for damages, injunctive relief, or civil
114 penalties, and such other relief as may be appropriate under the
115 laws of this state pursuant to s. 760.51, or may negotiate a
116 settlement with an employer on behalf of an aggrieved person.
117 (8) The prohibitions in subsection (5) do not apply to:
118 (a) Property owned or leased by an employer, or the
119 landlord of an employer, upon which are conducted substantial
120 activities involving national defense, aerospace, or domestic
121 security if the presence of such private property in a parking
122 lot presents an increased danger of explosion or reasonably
123 predictable catastrophic event.
124 (b) Property owned or leased by an employer, or the
125 landlord of an employer, upon which the primary business
126 conducted is the manufacture, use, storage, or transportation of
127 combustible or explosive materials regulated under state or
128 federal law if the presence of such products in a parking lot
129 presents an increased danger of explosion or reasonably
130 predictable catastrophic event.
131 (c) A motor vehicle owned, leased, or rented by an
132 employer, or the landlord of an employer, or its agent.
133 (d) Any other property owned or leased by an employer, or
134 the landlord of an employer, if a customer, employee, or invitee
135 is prohibited from having a firearm or other legal product
136 pursuant to any federal law or any general law of this state
137 existing on the effective date of this act.
138 (e) Any school property as defined and regulated under s.
139 790.115.
140 (f) Any prison-facility grounds as defined and regulated
141 under s. 944.47.

142 (g) Uses of firearms and other weapons which are
143 prohibited under s. 790.25(2). The restrictions provided in that
144 subsection are not affected by this section.
145 Section 2. This act shall take effect upon becoming a law
146 and shall apply to causes of action that accrue on or after that
147 date.
148
149 ========== T I T L E A M E N D M E N T ==========
150 Remove the entire title and insert:
151 An act relating to the protection of constitutional rights;
152 creating s. 790.251, F.S.; creating the "Individual Personal
153 Private Property Protection Act"; providing legislative intent
154 and legislative findings; defining terms; prohibiting a public
155 or private entity from violating the constitutional rights of a
156 customer, employee, or invitee by prohibiting or otherwise
157 deterring that person from having certain lawful items locked in
158 or to the person's private motor vehicle while it is in a
159 parking lot or by discouraging exercise of the right to keep and
160 bear arms; providing immunity from legal liability to an
161 employer or landlord of an employer for certain acts arising out
162 of another person's storing legal property in a private motor
163 vehicle parked on the employer's or landlord's property;
164 requiring the Attorney General to enforce this section on behalf
165 of an aggrieved person; providing exceptions to the prohibitions
166 imposed by the act; providing an effective date.
167

EXPLANATION OF AMENDMENTS TO HB 839 CS:
HOMEOWNERS ASSOCIATIONS - by Rep. Kottkamp

Amdt 1 by Rep. Kottkamp (remove everything after the enacting clause):

This strike-all amendment differs from the bill by creating a new section of Florida Statutes to specifically address architectural control covenants and parcel owner improvements. This section also authorizes the review and approval of plans and specifications and provides for rights and privileges of parcel owners as set forth in the declaration of covenants.

The amendment also provides reference to the Florida Board of Accountancy for the generally accepted accounting principles; provides that reserves are not mandatory; and provides that to waive reserves requires a majority vote at a meeting in which a quorum is present.

Finally, the amendment provides that the provision addressing turnover audits would apply to associations with a date of incorporation after December 31, 2006.

COUNCIL/COMMITTEE ACTION

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

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1 Council/Committee hearing bill: Judiciary
2 Representative Kottkamp offered the following:
3
4 **Amendment (with title amendment)**
5 Remove everything after the enacting clause and insert:
6 Section 1. Section 720.3035 is created to read as follows:
7 720.3035 Architectural Control Covenants; Parcel Owner
8 Improvements; Rights and Privileges.-
9 (1) The authority of an association or any committee of an
10 association to review and approve plans and specifications for
11 the location, size, type or appearance of any structure or other
12 improvement on a parcel, or to enforce standards for the
13 external appearance of any structure or improvement located on a
14 parcel, shall only be authorized and permitted to the extent
15 that the authority is specifically stated or reasonably inferred
16 as to such location, size, type or appearance in the declaration
17 of covenants.
18 (2) If the declaration of covenants provides options for
19 the use of material, the size of the structure or improvement,
20 the design of the structure or improvement, or the location of
21 the structure or improvement on the parcel, the association nor

22 any committee of the association shall restrict the right of a
23 parcel owner to select from the options provided in the
24 declaration of covenants.
25 (3) For the purpose of establishing setback lines that are
26 specifically stated in the declaration of covenants, each parcel
27 shall be deemed to have only one front for purposes of
28 determining the required front setback even if the parcel shall
29 be bounded by a roadway or other easement on more than one side.
30 When the declaration of covenants does not provide for specific
31 setback lines, the applicable county or municipal setback lines
32 shall apply, and neither the association nor any committee of
33 the association shall enforce or attempt to enforce any setback
34 line that is inconsistent with the applicable county or
35 municipal standard or standards.
36 (4) Each parcel owner shall be entitled to the rights and
37 privileges set forth in the declaration of covenants concerning
38 the use of the parcel, and the construction of permitted
39 structures and improvements on the parcel and such rights and
40 privileges shall not be unreasonably infringed upon or impaired
41 by the association or any committee of the association. In the
42 event that the association or any committee of the association
43 shall infringe upon or impair the rights and privileges set
44 forth in the declaration of covenants, the adversely affected
45 parcel owner shall be entitled to recover damages caused by such
46 infringement or impairment, including any costs and reasonable
47 attorney's fees incurred in preserving or restoring the rights
48 and privileges of the parcel owner set forth in the declaration
49 of covenants.
50 (5) Neither the association nor any committee of the
51 association shall enforce any policy or restriction that is

52 inconsistent with the rights and privileges of a parcel owner
53 set forth in the declaration of covenants, whether uniformly
54 applied or not. Neither the association nor any committee of the
55 association may rely upon a policy or restriction that is
56 inconsistent with the declaration of covenants, whether
57 uniformly applied or not, in defense of any action taken in the
58 name of or on behalf of the association against a parcel owner.
59 Section 2. Subsections (6) and (7) of section 720.303,
60 Florida Statutes, are amended to read:
61 720.303 Association powers and duties; meetings of board;
62 official records; budgets; financial reporting; association
63 funds; recalls.--
64 (6) BUDGETS.--
65 (a) The association shall prepare an annual budget that
66 sets out the annual operating expenses. The budget must reflect
67 the estimated revenues and expenses for that year and the
68 estimated surplus or deficit as of the end of the current year.
69 The budget must set out separately all fees or charges paid for
70 by the association for recreational amenities, whether owned by
71 the association, the developer, or another person. The
72 association shall provide each member with a copy of the annual
73 budget or a written notice that a copy of the budget is
74 available upon request at no charge to the member. The copy must
75 be provided to the member within the time limits set forth in
76 subsection (5).
77 (b) In addition to annual operating expenses, the budget
78 may include reserve accounts for capital expenditures and
79 deferred maintenance for which the association is responsible to
80 the extent that the governing documents do not limit increases
81 in assessments, including reserves. If the budget of the

82 association includes reserve accounts, such reserves shall be
83 determined, maintained, and waived in the manner provided in
84 this subsection. Once an association provides for reserve
85 accounts in the budget, the association shall thereafter
86 determine, maintain and waive reserves in compliance with the
87 provisions of this subsection.
88 (c) If the budget of the association does not provide for
89 reserve accounts governed by this subsection and the association
90 is responsible for the repair and maintenance of capital
91 improvements that may result in a special assessments if
92 reserves are not provided, each financial report for the
93 preceding fiscal year required by subsection (7) shall contain
94 the following statement in conspicuous type: THE BUDGET OF THE
95 ASSOCIATION DOES NOT PROVIDE FOR RESERVE ACCOUNTS FOR CAPITAL
96 EXPENDITURES AND DEFERRED MAINTENANCE THAT MAY RESULT IN SPECIAL
97 ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE FOR RESERVE ACCOUNTS
98 PURSUANT TO THE PROVISIONS OF SECTION 720.303(6) UPON THE
99 APPROVAL OF NOT LESS THAN A MAJORITY OF THE TOTAL VOTING
100 INTERESTS OF THE ASSOCIATION.
101 (d) An association shall be deemed to have provided for
102 reserve accounts when reserve accounts have been initially
103 established by the developer or when the membership of the
104 association affirmatively elects to provide for reserves. If
105 reserve accounts are not initially provided for by the
106 developer, the membership of the association may elect to do so
107 upon the affirmative approval of not less than a majority of the
108 total voting interests of the association. Such approval may be
109 attained by vote of the members at a duly called meeting of the
110 membership or upon a written consent executed by not less than a
111 majority of the total voting interests in the community. The

112 approval action of the membership shall state that reserve
113 accounts shall be provided for in the budget and the approval
114 action of the membership shall designate the components for
115 which the reserve accounts are to be established. Upon approval
116 by the membership, the board of directors shall provide for the
117 required reserve accounts for inclusion in the budget in the
118 next fiscal year following the approval and in each year
119 thereafter. Once established as herein provided, the reserve
120 accounts shall be funded, maintained or funding waived in the
121 manner hereinafter provided.
122 (e) The amount to be reserved in any account established
123 shall be computed by means of a formula which is based upon
124 estimated remaining useful life and estimated replacement cost
125 or deferred maintenance expense of each reserve item. The
126 association may adjust replacement reserve assessments annually
127 to take into account any changes in estimates of cost or useful
128 life of a reserve item.
129 (f) Once a reserve account or reserve accounts are
130 established, the membership of the association upon a majority
131 vote at a meeting at which a quorum is present may provide for
132 no reserves or less reserves than required by this section. If a
133 meeting of the unit owners has been called to determine whether
134 to waive or reduce the funding of reserves, and no such result
135 is achieved or a quorum is not attained, the reserves as
136 included in the budget shall go into effect. After the turnover,
137 the developer may vote its voting interest to waive or reduce
138 the funding of reserves. Any vote taken pursuant to this
139 subsection to waive or reduce reserves shall be applicable only
140 to one budget year.

141 (g) Funding formulas for reserves authorized by this
142 section shall be based on either a separate analysis of each of
143 the required assets or a pooled analysis of two or more of the
144 required assets.
145 1. If the association maintains separate reserve accounts
146 for each of the required assets, the amount of the contribution
147 to each reserve account shall be the sum of the following two
148 calculations:
149 a. The total amount necessary, if any, to bring a negative
150 component balance to zero; and
151 b. The total estimated deferred maintenance expense or
152 estimated replacement cost of the reserve component less the
153 estimated balance of the reserve component as of the beginning
154 of the period for which the budget will be in effect. The
155 remainder, if greater than zero, shall be divided by the
156 estimated remaining useful life of the component. The formula
157 may be adjusted each year for changes in estimates and deferred
158 maintenance performed during the year and may include factors
159 such as inflation and earnings on invested funds.
160 2. If the association maintains a pooled account of two or
161 more of the required reserve assets, the amount of the
162 contribution to the pooled reserve account as disclosed on the
163 proposed budget shall not be less than that required to ensure
164 that the balance on hand at the beginning of the period for
165 which the budget will go into effect plus the projected annual
166 cash inflows over the remaining estimated useful life of all of
167 the assets that make up the reserve pool are equal to or greater
168 than the projected annual cash outflows over the remaining
169 estimated useful lives of all of the assets that make up the
170 reserve pool, based on the current reserve analysis. The

171 projected annual cash inflows may include estimated earnings
172 from investment of principal. The reserve funding formula shall
173 not include any type of balloon payments.
174 (h) Reserve funds and any interest accruing thereon shall
175 remain in the reserve account or accounts, and shall be used
176 only for authorized reserve expenditures unless their use for
177 other purposes is approved in advance by a majority vote at a
178 meeting at which a quorum is present. Prior to turnover of
179 control of an association by a developer to parcel owners, the
180 developer-controlled association shall not vote to use reserves
181 for purposes other than that for which they were intended
182 without the approval of a majority of all non-developer voting
183 interests, voting in person or by limited proxy at a duly called
184 meeting of the association.
185 (7) FINANCIAL REPORTING.--Within 90 days after the end of
186 the fiscal year, or annually on the date provided in the bylaws,
187 the association shall prepare and complete, or contract for the
188 preparation and completion of, a ~~an annual~~ financial report for
189 the preceding fiscal year. Within 21 ~~60~~ days after the final
190 financial report is completed by the association or received
191 from the third party, but not later than 120 days after the end
192 of the fiscal year or other date as provided in the bylaws,
193 ~~close of the fiscal year.~~ the association shall, within the time
194 limits set forth in subsection (5), provide each member with a
195 copy of the annual financial report or a written notice that a
196 copy of the financial report is available upon request at no
197 charge to the member. Financial reports shall be prepared as
198 follows:
199 (a) An association that meets the criteria of this
200 paragraph shall prepare or cause to be prepared a complete set

201 of financial statements in accordance with generally accepted
202 accounting principles as adopted by the Board of Accountancy.
203 The financial statements shall be based upon the association's
204 total annual revenues, as follows:
205 1. An association with total annual revenues of $100,000
206 or more, but less than $200,000, shall prepare compiled
207 financial statements.
208 2. An association with total annual revenues of at least
209 $200,000, but less than $400,000, shall prepare reviewed
210 financial statements.
211 3. An association with total annual revenues of $400,000
212 or more shall prepare audited financial statements.
213 (b)1. An association with total annual revenues of less
214 than $100,000 shall prepare a report of cash receipts and
215 expenditures.
216 2. An association in a community of fewer than 50 parcels,
217 regardless of the association's annual revenues, may prepare a
218 report of cash receipts and expenditures in lieu of financial
219 statements required by paragraph (a) unless the governing
220 documents provide otherwise.
221 3. A report of cash receipts and disbursement must
222 disclose the amount of receipts by accounts and receipt
223 classifications and the amount of expenses by accounts and
224 expense classifications, including, but not limited to, the
225 following, as applicable: costs for security, professional, and
226 management fees and expenses; taxes; costs for recreation
227 facilities; expenses for refuse collection and utility services;
228 expenses for lawn care; costs for building maintenance and
229 repair; insurance costs; administration and salary expenses; and
230 reserves if maintained by the association.

231 (c) If 20 percent of the parcel owners petition the board
232 for a level of financial reporting higher than that required by
233 this section, the association shall duly notice and hold a
234 meeting of members within 30 days of receipt of the petition for
235 the purpose of voting on raising the level of reporting for that
236 fiscal year. Upon approval of a majority of the total voting
237 interests of the parcel owners, the association shall prepare or
238 cause to be prepared, shall amend the budget or adopt a special
239 assessment to pay for the financial report regardless of any
240 provision to the contrary in the governing documents, and shall
241 provide within 90 days of the meeting or the end of the fiscal
242 year, whichever occurs later:
243 1. Compiled, reviewed, or audited financial statements, if
244 the association is otherwise required to prepare a report of
245 cash receipts and expenditures;
246 2. Reviewed or audited financial statements, if the
247 association is otherwise required to prepare compiled financial
248 statements; or
249 3. Audited financial statements if the association is
250 otherwise required to prepare reviewed financial statements.
251 (d) If approved by a majority of the voting interests
252 present at a properly called meeting of the association, an
253 association may prepare or cause to be prepared:
254 1. A report of cash receipts and expenditures in lieu of a
255 compiled, reviewed, or audited financial statement;
256 2. A report of cash receipts and expenditures or a
257 compiled financial statement in lieu of a reviewed or audited
258 financial statement; or

259 3. A report of cash receipts and expenditures, a compiled
260 financial statement, or a reviewed financial statement in lieu
261 of an audited financial statement.
262 Section 3. Paragraph (t) is added to subsection (3) of
263 section 720.307, Florida Statutes, to read:
264 720.307 Transition of association control in a
265 community.--With respect to homeowners' associations:
266 (3) At the time the members are entitled to elect at least
267 a majority of the board of directors of the homeowners'
268 association, the developer shall, at the developer's expense,
269 within no more than 90 days deliver the following documents to
270 the board:
271 (t) The financial records, including financial statements
272 of the association, and source documents from the incorporation
273 of the association through the date of turnover. The records
274 shall be audited by an independent certified public accountant
275 for the period from the incorporation of the association or from
276 the period covered by the last audit, if an audit has been
277 performed for each fiscal year since incorporation. All
278 financial statements shall be prepared in accordance with
279 generally accepted accounting principles and shall be audited in
280 accordance with generally accepted auditing standards, as
281 prescribed by the Board of Accountancy, pursuant to chapter 473.
282 The certified public accountant performing the audit shall
283 examine, to the extent necessary, supporting documents and
284 records, including the cash disbursements and related paid
285 invoices to determine whether expenditures were for association
286 purposes and the billings, cash receipts, and related records of
287 the association to determine that the developer was charged and
288 paid the proper amounts of assessments. This paragraph applies

289 to associations with a date of incorporation after December 31,
290 2006.
291 Section 4. Section 720.308, Florida Statutes, is amended
292 to read:
293 720.308 Assessments and charges.--
294 (1) ASSESSMENTS.--For any community created after October
295 1, 1995, the governing documents must describe the manner in
296 which expenses are shared and specify the member's proportional
297 share thereof. Assessments levied pursuant to the annual budget
298 or special assessment must be in the member's proportional share
299 of expenses as described in the governing document, which share
300 may be different among classes of parcels based upon the state
301 of development thereof, levels of services received by the
302 applicable members, or other relevant factors. While the
303 developer is in control of the homeowners' association, it may
304 be excused from payment of its share of the operating expenses
305 and assessments related to its parcels for any period of time
306 for which the developer has, in the declaration, obligated
307 itself to pay any operating expenses incurred that exceed the
308 assessments receivable from other members and other income of
309 the association. This section does not apply to an association,
310 no matter when created, if the association is created in a
311 community that is included in an effective development-of-
312 regional-impact development order as of the effective date of
313 this act, together with any approved modifications thereto.
314 (2) GUARANTEE OF COMMON EXPENSES.--
315 (a) Establishment of the guarantee.--If a guarantee of the
316 assessments of parcel owners is not included in the purchase
317 contracts or declaration, any agreement establishing a guarantee
318 shall be effective only upon the approval of a majority of the

319 voting interests of the members other than the developer.
320 Approval shall be expressed at a meeting of the members, voting
321 in person or by limited proxy; or by agreement in writing
322 without a meeting if provided in the bylaws. Such guarantee
323 shall meet the requirements of this section.
324 (b) Guarantee period.--The period of time for the
325 guarantee shall be indicated by a specific beginning and ending
326 date or event.
327 1. The ending date or event shall be the same for all of
328 the members of a homeowners' association, including members in
329 different phases of the development.
330 2. The guarantee may provide for different intervals of
331 time during a guarantee period with different dollar amounts for
332 each such interval.
333 3. The guarantee may provide that after the initial stated
334 period, the developer has an option to extend the guarantee for
335 one or more additional stated periods. The extension of a
336 guarantee is limited to extending the ending date or event;
337 therefore, the developer does not have the option of changing
338 the level of assessments guaranteed.
339 (3) MAXIMUM LEVEL OF ASSESSMENTS.--The stated dollar
340 amount of the guarantee shall be an exact dollar amount for each
341 parcel identified in the declaration. Regardless of the stated
342 dollar amount of the guarantee, assessments charged to a member
343 shall not exceed the maximum obligation of the member based on
344 the total amount of the adopted budget and the member's
345 proportionate ownership share of the common elements.
346 (4) CASH FUNDING REQUIREMENTS DURING THE GUARANTEE.--The
347 cash payments required from the guarantor during the guarantee
348 period shall be determined as follows:

349 (a) If at any time during the guarantee period the funds
350 collected from member assessments at the guaranteed level and
351 other revenues collected by the association are not sufficient
352 to provide payment, on a timely basis, of all assessments,
353 including the full funding of the reserves unless properly
354 waived, the guarantor shall advance sufficient cash to the
355 association at the time such payments are due.
356 (b) Expenses incurred in the production of nonassessment
357 revenues, not in excess of the nonassessment revenues, shall not
358 be included in the assessments. If the expenses attributable to
359 nonassessment revenues exceed nonassessment revenues, only the
360 excess expenses must be funded by the guarantor. Interest earned
361 on the investment of association funds may be used to pay the
362 income tax expense incurred as a result of the investment, such
363 expense shall not be charged to the guarantor, and the net
364 investment income shall be retained by the association. Each
365 such nonassessment-revenue-generating activity shall be
366 considered separately. Any portion of the parcel assessment that
367 is budgeted for designated capital contributions of the
368 association shall not be used to pay operating expenses.
369 (5) CALCULATION OF GUARANTOR'S FINAL OBLIGATION.--The
370 guarantor's total financial obligation to the association at the
371 end of the guarantee period shall be determined on the accrual
372 basis using the following formula:
373 (a) The guarantor will pay any deficits that exceed the
374 guaranteed amount; less
375 (b) The total regular periodic assessments earned by the
376 association from the members other than the guarantor during the
377 guarantee period regardless of whether the actual level charged
378 was less than the maximum guaranteed amount.

379 (6) EXPENSES.--Expenses incurred in the production of
380 nonassessment revenues, not in excess of the nonassessment
381 revenues, shall not be included in the operating expenses. If
382 the expenses attributable to nonassessment revenues exceed
383 nonassessment revenues, only the excess expenses must be funded
384 by the guarantor. Interest earned on the investment of
385 association funds may be used to pay the income tax expense
386 incurred as a result of the investment, such expense shall not
387 be charged to the guarantor, and the net investment income shall
388 be retained by the association. Each such nonassessment revenue-
389 generating activity shall be considered separately. Any portion
390 of the parcel assessment that is budgeted for designated capital
391 contributions of the association shall not be used to pay
392 operating expenses.
393 Section 5. This act shall take effect July 1, 2006.
394
395
396 ========== T I T L E A M E N D M E N T ==========
397 Remove the entire title and insert:
398 An act relating to homeowners' associations; creating s.
399 720.3035, F.S.; providing for architectural control covenants
400 and parcel owner improvements; authorizing the review and
401 approval of plans and specifications; providing limitations;
402 providing rights and privileges for parcel owners as set forth
403 in the declaration of covenants; amending s. 720.303, F.S.;
404 requiring the budget to provide for annual operating expenses;
405 requiring the budget to include reserve accounts for capital
406 expenditures and deferred maintenance; providing the amount to
407 be reserved; authorizing the association to adjust replacement
408 reserve assessments annually; authorizing the developer to vote

409 to waive the reserves or reduce the funding of reserves for a
410 certain period; revising provisions relating to financial
411 reporting; revising time periods in which the association must
412 complete its reporting; amending s. 720.307, F.S.; requiring
413 developers to deliver financial records to the board; requiring
414 certain information to be included in the records and for the
415 records to be prepared in a specified manner; amending s.
416 720.308, F.S.; providing that a guarantee of common expenses
417 shall be effective under certain circumstances; requiring the
418 guarantee to meet certain requirements; authorizing the
419 guarantee to provide certain requirements; requiring the stated
420 dollar amount of the guarantee to be an exact dollar amount for
421 each parcel identified in the declaration; providing payments
422 required from the guarantor to be determined in a certain
423 manner; providing a formula to determine the guarantor's total
424 financial obligation to the association; providing that certain
425 expenses incurred in the production of certain revenues shall
426 not be included in the common expenses; providing an effective
427 date.