



Government Operations Appropriations Subcommittee Meeting Packet

**February 22, 2016
1:00 p.m. – 2:30 p.m.
Morris Hall**



AGENDA

Government Operations Appropriations Subcommittee

February 22, 2016

1:00 p.m. – 2:30 p.m.

Morris Hall

I. Call to Order/Roll Call

II. Consideration of Bills

CS/HB 1289 Elevators by Business & Professions Subcommittee, Steube

CS/HB 1383 International Trust Company Representative Offices by
Insurance & Banking Subcommittee, Moraitis

CS/HB 1405 Community Associations by Business & Professions
Subcommittee, Bracy

III. Closing Remarks/Adjourn

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1289 Elevators
SPONSOR(S): Business & Professions Subcommittee; Steube
TIED BILLS: IDEN./SIM. BILLS: SB 1602

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Whittier	Anstead
2) Government Operations Appropriations Subcommittee		White CCW	Topp BDT
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

This bill creates s. 399.031, F.S., the "Maxwell Erik 'Max' Grablin Act," to provide requirements for new elevators in private residences.

The bill provides specific measurements for clearances and requires specified force amounts for doors and gates of elevators within private residences.

The bill also provides that the underside of the platform of an elevator car is required to be equipped with a device that, if the platform of the elevator car is obstructed anywhere on its underside in its downward travel, interrupts the electric power to the driving machine motor and brake, if provided, and stops the elevator car's downward motion within two inches. The downward motion can only be resumed after the elevator has been manually reset.

There is no fiscal impact on state government. Local governments will enforce the provisions of the bill while conducting building inspections, so no fiscal impact is anticipated on local governments

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Relevant Residential Elevator Requirements

Chapter 399, F.S., Elevator Safety, is enforced by the Division of Hotels and Restaurants within the Department of Business and Professional Regulation. Section 399.02(3)(u), F.S., lists elevators located in private residences as equipment not covered by the chapter.

The Florida Building Code, Residential (Code) provides the requirements for “the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal and demolition of detached one- and two-family dwellings and townhouses not more than three stories above grade plane in height...¹ The Code provides that private residence elevators shall comply with American Society of Mechanical Engineers (ASME) requirements.²

ASME develops and maintains major codes addressing safety in design, construction, installation, operation, inspection, testing, maintenance, alteration, and repair of elevators, dumbwaiters, escalators, moving walks, material lifts, and dumbwaiters with automatic transfer devices, wheelchair lifts, or inclined-stairway chair lifts.³

With regard to private residence elevator hoistway doors or gates,⁴ the ASME requires the following:

The clearance between the hoistway doors or gates and the hoistway edge of the landing sill shall not exceed 75 mm (3 inches). The distance between the hoistway face of the landing door or gate and the car door or gate shall not exceed 125 mm (5 inches).⁵

Residential Elevator Accidents

In the last few years, the media has reported several private residential elevator accidents involving children.⁶ A major concern is that many residential elevators have a dangerous gap between the elevator and hoistway door allowing children as old as 12 to fit between them. When the elevator is called to another floor, the hoistway door automatically locks, and the child’s body is carried along with the elevator car, often crushing the child leading to death or permanent injuries.⁷

¹ Section R101.2 of the 2014 Florida Building Code, Residential.

² Section R321.1 of the 2014 Florida Building Code, Residential.

³ American Society of Mechanical Engineers, <https://www.asme.org/about-asme/standards/safety-codes-for-elevators-and-escalators> (last visited Jan. 24, 2016).

⁴ A hoistway door or gate is the door between an elevator shaft or hoistway and the floor landing and is normally closed except when the elevator is stopped at the floor for passengers or freight.

⁵ Section 5.3.1.7.2 of ASME A17.1-2007/CSA B44-07.

⁶ See The Safety Institute, *Safety Advocates Petition CPSC for Mandatory Residential Elevator Standard Citing Numerous at Deaths* <http://www.thesafetyinstitute.org/safety-advocates-petition-cpsc-for-mandatory-residential-elevator-standard-citing-numerous-deaths/> (last visited January 25, 2016), and CBS News, *In-home elevator accidents causing catastrophic harm to kids* at <http://www.cbsnews.com/news/in-home-elevator-accidents-causing-catastrophic-harm-to-kids/> (last visited January 25, 2016).

⁷ The Safety Institute, *Safety Advocates Petition CPSC for Mandatory Residential Elevator Standard Citing Numerous at Deaths* <http://www.thesafetyinstitute.org/safety-advocates-petition-cpsc-for-mandatory-residential-elevator-standard-citing-numerous-deaths/> (last visited January 25, 2016)

In November 2014, safety advocates filed a petition with the U.S. Consumer Product Safety Commission requesting mandatory safety standards for the design and installation of residential elevators to eliminate excessive space between the elevator car door/gate (interior door) and the hoistway or swing door (exterior door).⁸ The Miami Herald reports that, "Elevator deaths are not common - incidents involving both elevators and escalators kill about 30 people every year and seriously injure about 17,000 people a year, according to the U.S. Bureau of Labor Statistics and the Consumer Product Safety Commission. The two major causes of death are falls and being caught between moving parts... ."

Most recently, in January 2015, 12-year-old Maxwell Erik "Max" Grablin crawled into the elevator shaft in his home in Bradenton to find his pet hamster. The hoistway door to the elevator locked behind him, trapping him below the elevator. The elevator, having no sensor to detect that something was in the shaft, was lowered and crushed him.⁹

Effects of Proposed Changes

This bill creates s. 399.031, F.S., the "Maxwell Erik 'Max' Grablin Act," to provide requirements for new elevators in private residences.

The bill provides specific measurements for clearances and requires specified force amounts for doors and gates of elevators within private residences.

The bill also provides that the underside of the platform of an elevator car is required to be equipped with a device that, if the platform of the elevator car is obstructed anywhere on its underside in its downward travel, interrupts the electric power to the driving machine motor and brake, if provided, and stops the elevator car's downward motion within two inches. The downward motion can only be resumed after the elevator has been manually reset.

B. SECTION DIRECTORY:

Section 1. Creates s. 399.031, F.S., relating to elevators within private residences. Provides clearance requirements for elevators installed in private residences; requires certain doors and gates to withstand a specified amount of force; requires certain doors to reject a sphere of a specified size under certain circumstances; and requires all such elevators to be equipped with a certain device.

Section 2. Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

⁸ Petition for Recall to Repair/Retrofit and Rulemaking by petitioners The Safety Institute, Carol Pollack-Nelson, Ph.D., and Cash, Krugler and Fredricks, L.L.C., filed with the United States Consumer Products Safety Commission on November 13, 2014. A copy of the petition is available at: <http://www.regulations.gov/#!documentDetail;D=CPSC-2015-0001-0002> (last visited January 25, 2016).

⁹ Irby, Kate, *After Florida boy suffocates in elevator shaft chasing pet hamster, his parents on safety mission*, The Miami Herald, January 18, 2016 at <http://www.miamiherald.com/news/state/florida/article55252190.html> (last visited January 25, 2016).

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

See *Fiscal Comments*.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Homeowners will incur indeterminate costs of complying with the new provisions when installing new residential elevators.

D. FISCAL COMMENTS:

Residential elevators are not regulated by DBPR, so there is no fiscal impact to the state.¹⁰ Local governments will enforce the provisions of the bill while conducting building inspections, so no fiscal impact is anticipated on local governments.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Chapter 399, F.S., Elevator Safety, is enforced by the Division of Hotels and Restaurants within DBPR. This chapter currently does not apply to elevators within private residences.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2016, the Business & Professions Subcommittee considered and adopted a strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Provides specific clearances for several types of elevators that may be found in private residences;
- More precisely describes the action that the device on the platform of the elevator car is supposed to perform with regard to stopping the elevator car's downward motion;
- Removes the retroactive provision; and
- Makes technical changes with regard to terms and definitions.

This staff analysis is drafted to reflect the committee substitute.

27 | designed and installed to withstand a force of 75 pounds applied
 28 | horizontally on an area 4 inches by 4 inches at right angles to,
 29 | and at any location on, the car door without permanent
 30 | deformation. The deflection may not exceed 3/4 of an inch and
 31 | may not displace the door from its guides or tracks. The force
 32 | must be applied while the door is in the fully closed position.

33 | 2. Folding car doors shall be designed and installed to
 34 | withstand a force of 75 pounds applied horizontally using a 4-
 35 | inch-diameter sphere at any location within the folds on the car
 36 | door without permanent deformation. The deflection may not
 37 | exceed 3/4 of an inch and may not displace the door from its
 38 | guides or tracks. The force must be applied while the door is in
 39 | the fully closed position.

40 | (c) The distance between the hoistway face of the landing
 41 | door and the hoistway face of the car door or gate shall conform
 42 | to one of the following:

43 | 1. If a power-operated horizontally sliding hoistway and
 44 | car doors are used, the measurement between the leading edge of
 45 | the doors or sight guard, if provided, may not exceed 4 inches.
 46 | If it is possible for a user to detach or disconnect either door
 47 | from the operator and such detachment or disconnection allows
 48 | the user to operate the door manually, the requirement in
 49 | subparagraph 5. applies.

50 | 2. If swinging hoistway doors and folding car doors are
 51 | used and both doors are in the fully closed position, the space
 52 | between the hoistway door and the folding door must reject a 4-

53 | inch-diameter sphere at all points.

54 | 3. If swinging hoistway doors and car gates are used, the
 55 | space between the hoistway door and the car gate must reject a
 56 | 4-inch-diameter sphere at all points.

57 | 4. If the car doors are powered and arranged so that they
 58 | cannot be closed until after the hoistway door is closed, and
 59 | the car doors automatically open when the car is at a landing
 60 | and the hoistway door is opened, the measurement between the
 61 | hoistway face of the hoistway door and the hoistway face of the
 62 | car door at its leading edge may not exceed 4 inches. If it is
 63 | possible for a user to detach or disconnect either door from the
 64 | operator and such detachment or disconnection allows the user to
 65 | operate the door manually, the requirement in subparagraph 5.
 66 | applies.

67 | 5. If swinging or horizontally sliding hoistway doors and
 68 | manual horizontally sliding car doors are used and both doors
 69 | are in the fully closed position, the space between the swinging
 70 | or horizontally sliding hoistway door and the manual
 71 | horizontally sliding car doors must reject a 4-inch-diameter
 72 | sphere at all points.

73 | (3) The underside of the platform of an elevator car
 74 | shall be equipped with a device that, if the platform of the
 75 | elevator car is obstructed anywhere on its underside in its
 76 | downward travel, interrupts the electric power to the driving
 77 | machine motor and brake, if provided, and stops the elevator
 78 | car's downward motion within 2 inches. The stroke of the device

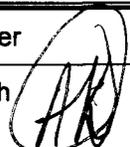
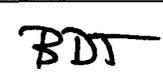
79 | may not be less than the stopping distance of the platform of
80 | the elevator car. The force required to operate the device may
81 | not exceed 15 pounds. Downward motion shall be permitted to
82 | resume only after the elevator has been manually reset.

83 | (4) This section applies to all new elevators in a private
84 | residence.

85 | Section 2. This act shall take effect July 1, 2016.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1383 International Trust Company Representative Offices
SPONSOR(S): Insurance & Banking Subcommittee; Moraitis
TIED BILLS: HB 1385 **IDEN./SIM. BILLS:** SB 1106

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Insurance & Banking Subcommittee	9 Y, 3 N, As CS	Bauer	Luczynski
2) Government Operations Appropriations Subcommittee		Keith 	Topp 
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Office of Financial Regulation (OFR) charters and regulates entities that engage in financial institution business in Florida, in accordance with the Florida Financial Institutions Codes (Codes), and ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness. In addition, the OFR regulates international banking corporations (IBCs) that transact business in Florida. International banking entities enable depository institutions in the United States to offer deposit and loan services to foreign residents and institutions, and are subject to the jurisdiction of the Board of Governors of the Federal Reserve. An IBC may operate through a variety of business models, all of which must be licensed, and include international trust company representative offices (ITCROs). If an IBC wants to maintain any of these offices in this state, the IBC is required to meet licensure requirements, ongoing safety and soundness requirements, and is subject to the examination and enforcement authority of the OFR including state and federal anti-money laundering and anti-terrorism laws.

In 2010, the OFR pursued legislation to close a regulatory gap in the international banking statutes and to strengthen oversight of international banking entities operating in Florida. Specifically, the 2010 legislation requires licensure (through the IBC) of international trust company representative offices (ITCROs) which are organized and licensed under the laws of a foreign country, but are established or maintained in Florida for engaging in non-fiduciary activities. ITCROs are not banks and may not accept deposits or make loans. The activities of a licensed ITCRO are limited to engaging in the following non-fiduciary activities that are ancillary to the trust business of the international banking corporation, such as advertising, marketing, communicating with customers, and providing customer account service information for the IBC.

The bill creates a new section of ch. 663, F.S., to impose a moratorium on the OFR's enforcement of ch. 663, F.S., with respect to any ITCRO or any person who manages or controls or is employed by such ITCRO, if such person meets certain requirements and provides written assurances to the OFR. The moratorium does not affect the OFR's authority to otherwise enforce applicable provisions of the Codes or to prevent the unlawful conduct of banking or trust business in Florida, fraud, and violations of anti-money laundering and anti-terrorism laws. The bill also directs the OFR to deliver a report to the Financial Services Commission, the Speaker of the House of Representatives, and the President of the Senate by September 1, 2016, regarding state and federal ITCRO laws and to list jurisdictions raising supervisory concerns for the OFR. The bill contains a repeal date of July 1, 2017.

The bill has a nonrecurring negative fiscal impact on state trust fund expenditures. The OFR indicates that workload associated with the reporting requirements of the bill will require additional temporary staffing resources to review international trust laws of over 250 states, jurisdictions, and countries, and increased staff time to track the ITCRO entities seeking to qualify for the moratorium under the bill. Specifically, the OFR indicates the need for eight temporary positions and \$98,250 in nonrecurring funds from the Regulatory Trust Fund within the OFR to implement provisions in the bill. The bill has no impact on local governments and an indeterminate impact on the private sector.

The bill is effective upon becoming law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h1383a.GOAS.DOCX

DATE: 2/5/2016

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

International Financial Services

A longstanding niche market within the international financial services market is the provision of fiduciary (trustee) services required for the implementation of estate, tax and asset protection planning. These services traditionally have comprised the administration (documentation preparation, accounting, compliance, and accounting) for a trust and its underlying investments. Services such as banking, asset management, and tax advice are provided by third parties.¹ Industry representatives provided the following example:

Example: A family from Latin America purchasing a residence in Florida has a banking relationship with a Florida-based bank and is advised by Florida counsel. To avoid exposure to U.S. estate tax, the family will be advised to own the property through a non-U.S. company, as the shares in the non-U.S. company are not subject to U.S. estate tax. To provide for the family's long-term planning (local and foreign tax laws and political and security risks), the family may be advised to place the shares in the company's foreign trust.²

According to the Florida International Administrators Association (FIAA), in the above example, responsibility for the administration of the trust and the underlying company is given to a trust company, which provides this service for an agreed upon fee. The trust company generally will be part of an organization that provides this service in multiple jurisdictions. The trust company, which acts as a trustee, is licensed and regulated in the jurisdiction in which it is domiciled. The trust company does not promote, sell, or accept any financial investments, money, or provide depository or custodial accounts.

The Florida-based marketing office for the aforementioned fiduciary services provided by a foreign trust company is an international trust company representative office (ITCRO). Industry advocates state that the primary function of the ITCRO of the foreign trust company and the organization of which it is a member is to market the trust company's services to lawyers, accountants, and financial advisors - not the general public.³ Because many of the families who establish foreign trusts travel to Miami, the ITCROs provide a convenient way for these families to monitor the services of the international trust company without having to travel to the jurisdiction where the trust company has its operations. Thus, advocates of the bill assert that ITCROs represent an important part of Miami's role as the financial capital of the Americas and contribute in an important way to the state's economy.⁴ FIAA seeks to create a limited purpose ITCRO (LPITCRO) regulatory framework that would be subject to registration; clarify that the administrative and compliance services do not involve discretionary investment, distribution of funds and do not constitute the activities of a financial institution; and should be exempt from licensure and capital requirements that apply to financial institutions.

State Regulation of International Banking Activities

The Office of Financial Regulation (OFR) is charged with regulating depository and non-depository financial institutions and financial services companies. The OFR's Division of Financial Institutions charters and regulates entities that engage in financial institution business in Florida, in accordance

¹ Memorandum from McDonald Hopkins LLC, *International Trust Company Representative Offices*, (Mar. 8, 2015), on file with Insurance & Banking Subcommittee staff.

² Id.

³ Id.

⁴ Id.

with the Florida Financial Institutions Codes (Codes) and the Florida Financial Institutions Rules,⁵ and ensures Florida-chartered financial institutions' compliance with state and federal requirements for safety and soundness.

International Banking Corporations

The OFR regulates international banking corporations⁶ that transact business in Florida. Such entities are subject to licensure by the OFR⁷ to transact business in Florida. International banking entities enable depository institutions in the United States to offer deposit and loan services to foreign residents and institutions, and are subject to the jurisdiction of the Board of Governors of the Federal Reserve. The OFR does not regulate institutions that are chartered and regulated by foreign institutions, except to the extent that those foreign institutions seek to engage in the business of banking or trust business in Florida, which requires a Florida charter and compliance with the provisions of ch. 663, F.S., and the applicable provisions of the Codes.

An international banking corporation may operate through a variety of business models, all of which must be licensed,⁸ and include: international bank agencies;⁹ international representative offices;¹⁰ international trust company representative offices;¹¹ international administrative offices;¹² and international branches.¹³ The definition of "financial institution" includes the following: international bank agency; international banking corporation; international branch; international representative office; international administrative office; and international trust company representative office.¹⁴

If an international banking corporation (IBC) wants to maintain any office in this state, including an international trust company representative office, the IBC is required to meet minimum licensure requirements, ongoing safety and soundness requirements, and is subject to the examination and enforcement authority of the OFR including state anti-money laundering and anti-terrorism laws. The OFR may not issue a license to an international banking corporation unless it:

- Holds an unrestricted license to conduct trust business in the foreign country under the law of which it is organized and chartered;
- Has been authorized by the foreign country's trust business regulatory authority to establish the proposed international trust representative office;
- Is adequately supervised by the central bank or trust regulatory agency in the foreign country in which it is organized and chartered;
- Meets all requirements under the Financial Institutions Codes for the operation of a trust company or trust department as if it was a state-chartered trust company or bank authorized to exercise fiduciary powers; and
- Meets a minimum capital requirement of \$20 million.

Section 663.02, F.S., provides in general that international banking corporations having offices in Florida are subject to the provisions of ch. 655, F.S., as though such corporations were state banks or trust companies. Further, s. 663.02, F.S., provides that neither an international bank agency nor an

⁵ Chs. 655, 657, 658, 660, 663, 665, and 667, F.S.; ch. 69U-100 through 69U-150, F.A.C.

⁶ An international banking corporation, such as a foreign commercial bank, foreign merchant bank, or other foreign institution that engages in banking activities usual in connection with the business of banking in the country where such foreign institution is organized or operating. The term also includes foreign trust companies, or any similar business entities, including, but not limited to, foreign banks with fiduciary powers, that conduct trust business as defined in the codes. See s. 663.01(6), F.S.

⁷ ss. 663.04 and 663.05, F.S.

⁸ s. 663.06(1), F.S.

⁹ s. 663.061, F.S.

¹⁰ s. 663.062, F.S.

¹¹ s. 663.0625, F.S.

¹² s. 663.063, F.S.

¹³ s. 663.064, F.S.

¹⁴ s. 655.005(i), F.S.

international branch shall have any greater right under, or by virtue of s. 663.02, F.S., than is granted to banks organized under the laws of this state. Section 663.02, F.S., provides that it is the intent of the Legislature that the following provisions apply to such entities:

- s. 655.031, F.S., relating to administrative enforcement guidelines;
- s. 655.032, F.S., relating to investigations, subpoenas, hearings, and witnesses;
- s. 655.0321, F.S., relating to hearings, proceedings, related documents, and restricted access;
- s. 655.033, F.S., relating to cease and desist orders;
- s. 655.037, F.S., relating to removal by the office of an officer, director, committee member, employee, or other person;
- s. 655.041, F.S., relating to administrative fines and enforcement; and
- s. 655.50, F.S., relating to the control of money laundering and terrorist financing; and any law for which the penalty is increased under s. 775.31, F.S., for facilitating or furthering terrorism.

International Bank Agencies and International Branches

International bank agencies and international branches are permitted to conduct activities similar to those of a domestic bank. An international bank agency may make and service loans, act as a custodian, furnish investment advice, conduct foreign exchange activities and trade in securities and commercial paper.¹⁵ An international branch has the same rights and privileges as a federally licensed international branch.¹⁶

International Representative Offices and International Administrative Offices

International representative offices and international administrative offices perform activities that are more limited. An international representative office may solicit business, provide information to customers concerning their accounts, answer questions, receive applications for extensions of credit and other banking services, transmit documents on behalf of customers, and make arrangements for customers to transact business on their accounts.¹⁷ An administrative office may provide personnel administration, data processing or recordkeeping, and negotiate, approve, or service loans or extensions of credit and investments.¹⁸

International Trust Company Representative Offices (ITCROs)

An international trust company representative office (ITCRO) is an office of an international banking corporation or trust company organized and licensed under the laws of a foreign country, which is established or maintained in Florida for engaging in non-fiduciary activities described in s. 663.0625, F.S. An ITCRO may also include any affiliate, subsidiary, or other person that engages in such activities on behalf of such international banking corporation or trust company from an office located in Florida.¹⁹

ITCROs are not banks and may not accept deposits or make loans. The activities of a licensed ITCRO are limited to engaging in the following non-fiduciary activities that are ancillary to the trust business of the international banking corporation:

- Advertising, marketing, and soliciting for fiduciary business on behalf of an international banking corporation or trust company;
- Contacting existing or potential customers;
- Answering questions and providing information about matters related to customer accounts;

¹⁵ s. 663.061, F.S.

¹⁶ s. 663.064, F.S.

¹⁷ s. 663.062, F.S.

¹⁸ s. 663.063, F.S.

¹⁹ s. 663.01(9), F.S.

- Serving as a liaison in Florida between the international banking corporation or trust company and its existing or potential customers (e.g., forwarding requests for distribution or changes in investment objectives, or forwarding forms and funds received from the customer); and
- Such other activities as may be approved by the OFR or rules of the Financial Services Commission.²⁰

Robert Allen Stanford & 2010 International Banking Legislation

In 2010, the Florida Legislature amended ch. 663, F.S., to establish the OFR's oversight responsibilities for "offshore" international non-depository trust companies that wish to establish an international trust company representative office (ITCRO) in Florida.²¹ The legislation defined the ITCRO entity and established the licensing and regulatory requirements for these entities. The legislation was due, in part, to the exposure of the \$7 billion dollar Ponzi scheme perpetrated by former Texas billionaire Robert Allen Stanford.

Since the late 1990s, Stanford controlled an international group of privately-held financial services companies under the umbrella organization Stanford Financial Group, which included Stanford Trust Company Limited, a non-depository trust company organized under the laws of Antigua and Barbuda. In the Ponzi scheme, certificates of deposits that promised above market rate returns were sold to customers of the Stanford Financial Group through offices in the United States and abroad with the sales of new accounts being used to fund payments on older certificates and fund Stanford's business operations and lifestyle. Because Florida law did not address representative offices of international non-depository trust companies at that time, Mr. Stanford was able to facilitate his scheme in Florida through the establishment of a representative office of Stanford Trust Company Limited in Miami, Florida. In late 1998, the Division of Banking of the Department of Banking and Finance (the OFR's predecessor agency) entered into a memorandum of understanding (MOU)²² with the Stanford Trust Company Limited (Stanford Trust), an offshore trust company organized under the laws of Antigua and Barbuda. This MOU allowed the Stanford Trust to establish a trust representative office in Florida, and delineated permissible and impermissible activities.

The OFR, along with federal regulatory and law enforcement agencies, coordinated an investigation into the operations of Stanford Trust's Miami trust company representative offices. In 2009, Mr. Stanford was charged by the U.S. Securities and Exchange Commission for operating an \$8 billion Ponzi scheme involving overvalued certificates of deposit (CD) issued by Stanford International Bank, LTD, located in Antigua. These CDs were marketed by representative offices in the U.S., some of which were located in Florida. The scheme is alleged to have involved over 30,000 clients in 136 countries on six continents. In 2012, Mr. Stanford was federally prosecuted and convicted of multiple counts of mail and wire fraud, obstruction, and conspiracy (including conspiracy to commit money laundering). He was sentenced to 110 years in prison for orchestrating a 20-year investment fraud scheme in which he misappropriated over \$7 billion from Stanford International Bank. Only recently did federal authorities and the U.S. receiver reach a settlement agreement to expedite the distribution of assets back to victims of Stanford's Ponzi scheme.²³

In addition to attempting to address and prevent the type of scheme perpetrated by Mr. Stanford, the OFR also sought the legislation in 2010 to address issues posed by shadow banking activities conducted by unregulated entities in Florida that present a high risk of allowing money laundering, terrorist financing, and other illicit activities to go undetected. The 2010 legislation sought to address those issues and brought ITCRO's under the already established regulatory oversight capabilities of the

²⁰ Section 663.0625, F.S.

²¹ Ch. 2010-9, Laws of Fla.

²² Florida Department of Banking and Finance and Stanford Trust Company Limited, Memorandum of Agreement (Dec. 1998), on file with Insurance & Banking Subcommittee staff.

²³ U.S. DEPARTMENT OF JUSTICE, *Pending Criminal Division Cases: U.S. v. Robert Allen Stanford et al.*, at <http://www.justice.gov/criminal-vns/case/stanfordr> (last visited February 3, 2016).

OFR. The OFR has the statutory responsibility for the licensing and oversight of international banking corporations that may or may not have trust powers and wish to establish representative offices, administrative offices, branches, and agencies in Florida. By specifically providing for the licensure of representative offices of international non-depository trust companies, the OFR was better positioned to provide for regulatory oversight of offshore trust companies and related operations in Florida. To date, no ITCRO's are licensed with the OFR, although 2 international administrative offices, 10 international bank agencies, 6 international representative offices, and 6 international bank branches are currently licensed with the OFR.²⁴

Industry representatives have indicated that the 2010 legislation created regulatory ambiguity for international trust companies and their Florida-based marketing offices, ITCROs, potentially subjecting them to the \$20 million capital requirements for operating "what is essentially a marketing and liaison office in Florida."²⁵ FIAA seeks to clarify that ITCROs that do not promote, sell, or accept any financial investments, money, or provide depository or custodial accounts and are not "financial institutions"; therefore, they should be exempt from its licensure and capital requirements, but still subject to appropriate registration and supervision by the OFR. CS/HB 1383, as filed, amends ch. 663, F.S., to create a new entity known as limited purpose international trust company representative office (LPITCROs).

Under current law, an offshore entity that proposes the establishment of an ITCRO is required to obtain a license under ch. 663, F.S. CS/HB 1383 would require only the onshore LPITCRO to be registered with the OFR. As a result, the operations and controlling shareholders of the offshore non-depository trust company would be unknown while allowing key regulatory oversight parameters such as capital requirements to be minimized, exposing unascertainable risk to consumers doing business in Florida. The current process for regulation of international entities establishing representative offices in Florida provides for the identification and understanding of the offshore/international entity, not simply the registration of the representative office in Florida.

Effect of the Bill

The bill creates a new section of ch. 663, F.S., to impose a moratorium on the OFR's enforcement of ch. 663, F.S., with respect to any ITCRO or any person who manages or controls or is employed by such ITCRO, if such person:

- Has been organized or qualified to do business in this state since October 1, 2013;
- Has not been the subject of any consumer complaint to the OFR;
- Has not been convicted of a felony or subject to any regulatory penalties within 5 years of the bill's effective date; and
- Does not provide banking or fiduciary trust services, promote or sell investments or accept custody of assets.

The moratorium does not affect the OFR's authority to otherwise enforce ch. 655, F.S., or ch. 663, F.S., or other applicable provisions of the Codes to prevent the unlawful conduct of banking or trust business in Florida, to prevent fraud and violations of anti-money laundering and anti-terrorism laws or to protect the public from imminent harm. The bill provides that companies may qualify for this moratorium by providing written assurances of the conditions above. The bill provides a repeal date of July 1, 2017. The bill also directs the OFR to deliver a report to the Financial Services Commission, the Speaker of the House of Representatives, and the President of the Senate by September 1, 2016, describing current state and federal laws regarding ITCRO's, particularly permissible, restricted, or prohibited activities and licensure requirements. The report must also include a list of international trust jurisdictions that the OFR does not consider to provide adequate supervision and regulation of

²⁴ OFFICE OF FINANCIAL REGULATION, *Financial Institution Search*, at <https://real.flofr.com/ConsumerServices/FinancialInstitutions/InstSrch.aspx> (search conducted Jan. 28, 2016).

²⁵ Memorandum from McDonald Hopkins LLC (Mar. 8, 2015), on file with Insurance & Banking Subcommittee staff.

international trust companies or are "at risk" jurisdictions for money laundering or terrorist financing. The report must also provide authorities or sources that the OFR relied upon to prepare this list of international trust jurisdictions.

B. SECTION DIRECTORY:

Section 1. Creates s. 663.041, F.S., regarding a licensing moratorium, reporting requirements, and report.

Section 2. Provides the bill takes effect upon becoming a law, and shall be repealed on July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The OFR indicates that it will not be able to absorb the additional workload associated with the reporting requirements of the bill and will require temporary additional staffing resources. The additional resources will be utilized to review the international trust laws of over 250 states, territories, jurisdictions, and countries. In addition, OFR will have increased workload to track the ITCRO entities seeking to qualify for the moratorium under the bill.

Specifically, the OFR indicates the need for eight temporary employees and \$98,250 in nonrecurring funds (from the Regulatory Trust Fund within the OFR) to implement the moratorium provisions of the bill and to also prepare and timely deliver the report due to the Speaker of the House of Representatives, President of the Senate, and the Financial Services Commission by the September 1, 2016 deadline.²⁶

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. The bill provides a limited moratorium on ITCRO licensing requirements.

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:

None provided by the bill

C. DRAFTING ISSUES OR OTHER COMMENTS:

The OFR has also expressed numerous policy, other regulatory, technical, and implementation concerns about the proposed LPITCRO regulatory framework.²⁷ Although the substance of the bill characterizes the newly created statute as a “moratorium,” the OFR states that the bill is effectively an exemption that prevents the OFR’s enforcement of provisions in ch. 663, F.S., relating to ITCROs. This would permit ITCROs to operate in Florida without proper oversight. The OFR maintains that, by enacting the 2010 legislation, the Legislature established effective regulation of the activities of offshore trust companies that wish to have offices in Florida, and the current regulatory structure serves to impede fraudulent and other illicit activities that could be perpetrated by “offshore” international non-depository trust companies through the entities on Florida soil.²⁸

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 1, 2016, the Insurance & Banking Subcommittee considered and adopted a proposed committee substitute (PCS) and an amendment to the PCS and reported the bill favorably as a committee substitute. The amended PCS created a moratorium on the OFR’s enforcement of ch. 663, F.S., as they relate to ITCROs and persons related to ITCROs, if such person meets certain requirements and provides written assurances to the OFR. The moratorium does not affect the OFR’s authority to otherwise enforce applicable provisions of the Codes or to prevent the unlawful conduct of banking or trust business in Florida, fraud, and violations of anti-money laundering and anti-terrorism laws. The amended PCS also directs the OFR to deliver a report to the Financial Services Commission, the Speaker of the House, and the President of the Senate by September 1, 2016, regarding state and federal ITCRO laws and to list jurisdictions raising supervisory concerns for the OFR. The amended PCS contains a repeal date of July 1, 2017.

The staff analysis is drafted to reflect the committee substitute as passed by the Insurance & Banking Subcommittee.

²⁷ Office of Financial Regulation, 2016 Agency Analysis of House Bill 1383, pp. 12-22 (Jan. 19, 2016).

²⁸ *Id.* at 6.

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A bill to be entitled
 An act relating to international trust company
 representative offices; creating s. 663.041, F.S.;
 providing a moratorium on licensing requirements by
 the Office of Financial Regulation for certain
 international trust company representative offices;
 specifying parameters of the moratorium; requiring
 written submissions to be provided to the office;
 requiring a report to the Financial Services
 Commission and the Legislature; providing for
 expiration; providing an effective date.

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

Section 1. Section 663.041, Florida Statutes, is created
 to read:

663.041 International trust company representative
 offices.-

(1) The Office of Financial Regulation may not enforce the
 provisions of this chapter relating to an international trust
 company representative office, or a person who manages,
 controls, or is employed by an international trust company
 representative office, if the international trust company
 representative office:

(a) Has been organized or qualified to do business in this
 state since October 1, 2013;

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27 (b) Has not been the subject of any consumer complaint to
28 the office;

29 (c) Has not been convicted of a felony or ordered to pay a
30 fine or penalty in any proceeding initiated by any federal,
31 state, foreign, or local law enforcement or regulatory agency
32 within the 5 years preceding the effective date of this section;
33 and

34 (d) Does not provide banking or fiduciary trust services,
35 promote or sell investments, or accept custody of assets.

36 (2) This moratorium does not prevent the office from
37 enforcing chapter 655, this chapter, or other applicable
38 provisions of the financial institutions codes to prevent the
39 unlawful conduct of the banking or trust business in this state,
40 to prevent fraud or violations of anti-money laundering and
41 anti-terrorism laws, and to protect the public from imminent
42 harm.

43 (3) An international trust company that seeks to qualify
44 for this moratorium shall notify the office, and provide the
45 following information to the office, in writing by May 1, 2016:

46 (a) Proof that the company has been organized or qualified
47 to do business in this state since October 1, 2013;

48 (b) The name or names under which the company conducts
49 business in this state, the address of its registered office,
50 and the locations from which it conducts business;

51 (c) A declaration under penalty of perjury, signed by the
52 company's executive officer, that:

53 1. It has not been the subject of any consumer complaint
54 to the office;

55 2. It has not been convicted of a felony or ordered to pay
56 a fine or penalty in any proceeding initiated by any federal,
57 state, foreign, or local law enforcement or regulatory agency
58 within the 5 years preceding the effective date of this section;
59 and

60 3. It does not provide banking or fiduciary trust
61 services, promote or sell investments, or accept custody of
62 assets.

63 (4) By September 1, 2016, the office shall deliver a
64 report to the Financial Services Commission, the Speaker of the
65 House of Representatives, and the President of the Senate
66 describing existing legislation or regulations of the United
67 States or of any state or territory of the United States
68 regarding international trust company representative offices or
69 any entity providing marketing or client liaison services for
70 foreign trust companies. The report shall:

71 (a) Address the specific activities that are authorized,
72 restricted, or prohibited in any state or territory of the
73 United States and the specific requirements for licensure, if
74 any.

75 (b) Highlight the absence of any legislation or regulation
76 in any state or territory of the United States.

77 (c) List the jurisdictions that the office considers
78 provide inadequate supervision and regulation of international

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79 trust company representative offices or are considered "at-risk"
 80 jurisdictions for money laundering or terrorist financing and
 81 explain the reasons for its conclusions.

82 (d) List the authorities or sources the office relied upon
 83 to develop the list prepared pursuant to paragraph (c).

84 (5) This section expires July 1, 2017.

85 Section 2. This act shall take effect upon becoming a law.

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	_____	

1 Committee/Subcommittee hearing bill: Government Operations
 2 Appropriations Subcommittee
 3 Representative Moraitis offered the following:

Amendment (with title amendment)

Remove lines 63-83

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

Remove lines 9-10 and insert:

providing for

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1405 Community Associations
SPONSOR(S): Business & Professions Subcommittee; Bracy
TIED BILLS: IDEN./SIM. **BILLS:** SB 1292

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Business & Professions Subcommittee	13 Y, 0 N, As CS	Brown-Blake	Anstead
2) Government Operations Appropriations Subcommittee		White <i>CCW</i>	Topp <i>BDT</i>
3) Regulatory Affairs Committee			

SUMMARY ANALYSIS

The Division of Florida Condominiums, Timeshares, and Mobile Homes (Division), housed under the Department of Business and Professional Regulation (Department), has limited regulatory authority over condominium associations, cooperative associations, and homeowners' associations (limited only to arbitration of election and recall disputes). A condominium is a form of real property ownership created pursuant to ch. 718, F.S. A cooperative is a form of real property ownership created pursuant to ch. 719, F.S. A homeowners' association is a corporation responsible for the operation of a community or mobile home subdivision and is created pursuant to ch. 720, F.S.

The bill amends current law relating to condominiums and homeowners' associations. Specifically, the bill:

- Requires the Division to contact an association and request the association provide a copy of a financial report to a unit owner or a member when contacted by the unit owner or member regarding the association's failure to provide a financial report in the required time;
- Removes the provision permitting an association operating fewer than 50 units, regardless of the association's annual revenues, to prepare a report of cash receipts and expenditures in lieu of financial statements;
- Revises records retention provisions to require that condominium associations and homeowners' associations maintain the same official records;
- Requires a condominium association with 500 or more units and a homeowners' association with 7,500 or more parcels to provide a secure website for association members to view specified official records and meeting notices; and
- Requires an outgoing or recalled board member to turn over the administrative rights or controls of the condominium association's website to the incoming board.

There is an insignificant negative fiscal impact on the state and no fiscal impact on local governments.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

General

The Division provides consumer protection for Florida residents living in regulated communities through education, complaint resolution, mediation and arbitration, and developer disclosure. The Division has limited 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).¹

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 but have an undivided share of access to common facilities.² A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.³ A declaration governs the relationships among condominium unit owners and the condominium association.

A cooperative is a form of real property ownership created pursuant to ch. 719, F.S. The real property is owned by the cooperative association,⁴ and individual units are leased to the residents, who own shares in the cooperative association.⁵ 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.

A homeowners' association is a corporation responsible for the operation of a community or mobile home subdivision and is created pursuant to ch. 720, F.S. Only homeowners' associations whose covenants and restrictions include mandatory assessments are regulated by the statute. The Department currently only provides arbitration for election and recall disputes for homeowners' associations but does not regulate homeowners' associations. However, the Department does regulate the community association managers which often manage homeowners' associations.

Providing a Financial Report

Background

In accordance with ss. 718.111(13), 719.104(4), and 720.303(7), F.S., within 90 days after the end of the fiscal year or calendar year, or annually on a date provided in the bylaws, the association is required to prepare and complete, or contract for the preparation and completion of, a financial report for the preceding fiscal year. Within 21 days after the final financial report is completed by the association or received from the third party, but not later than 120 days after the end of the fiscal year or calendar year, or other date as provided in the bylaws, the association must provide each member⁶

¹ *Id.*

² s. 718.103(11), F.S.

³ s. 718.104(2), F.S.

⁴ s. 719.103(2), F.S.

⁵ s. 719.103(26), F.S.

⁶ s. 718.111(13), F.S., requires that the condominium association "mail a copy of the financial report to each unit owner at the last address furnished to the association by the unit owner, or hand deliver to each unit owner, a copy of the financial report or a notice

a copy of the financial report or a notice that a copy of the financial report is available upon request without charge, upon receipt of a written request from the member or unit owner.

Effect of the Bill

Under the financial reporting requirements for condominium associations, cooperative associations, and homeowners' associations, the bill provides that a member or unit owner may contact the Division to report an association's failure to provide a copy of the financial report within the required time. Upon notification, the Division is required to contact the association to request the association comply with the requirement to provide a copy of the financial report to the unit owner or member. If the association fails to comply further, the association is then required to provide a copy of the financial report for the current fiscal year and the two subsequent fiscal years to the Division. The Division shall maintain the records and provide a copy to a member of the public upon request.

Preparing a Financial Report

Background

Condominium associations, cooperative associations, and homeowners' associations are required to comply with financial reporting requirements enumerated in ss. 718.111, 719.104, and 720.303, F.S. Those associations whose total annual revenues meet the following criteria shall prepare a complete set of financial statements according to the generally accepted accounting principles. The associations shall prepare the financial statements as follows:

- An association with total annual revenues between \$150,000 and \$299,999 shall prepare a compiled financial statement;
- An association with total annual revenues between \$300,000 and \$499,999 shall prepare a reviewed financial statement; and
- An association with total annual revenues of \$500,000 or more shall prepare an audited financial statement.

Some associations are exempt from the preceding requirements if they do not meet the total annual revenue requirements or are of a certain size. Such associations must comply with the following requirements:

- An association with total annual revenues of less than \$150,000 shall prepare a report of cash receipts and expenditures.⁷
- An association in a community of fewer than 50 units, regardless of the association's annual revenues, **shall** prepare a report of cash receipts and expenditures in lieu of the financial statements.⁸

Effect of the Bill

Under the financial reporting requirements for condominium associations, cooperative associations, and homeowners' associations, the bill removes the provisions that an association operating fewer than 50 units or parcels, regardless of the association's annual revenues, shall ["may" for homeowners'

that a copy of the financial report will be mailed or hand delivered to the unit owner, without charge, upon receipt of a written request from the unit owner."

⁷ A report of cash receipts and expenditures must disclose the amount of receipts by accounts and receipt classifications and the amount of expenses by accounts and expense classifications, including, but not limited to the following, as applicable: costs for security, professional, and management fees and expenses; taxes; costs for recreation facilities; expenses for refuse collection and utility services; expenses for lawn care; costs for building maintenance and repair; insurance costs; administration and salary expenses; and reserves, if maintained by the association. For condominium associations, "reserves" could include reserves accumulated and expended for capital expenditures, deferred maintenance and any other category for which the association maintains reserves.

⁸ ss. 719.104(4) and 720.303(7), F.S., provides that this exemption from the requirement to prepare a financial report applies unless the declaration or other recorded governing documents provide otherwise.

associations] prepare a report of cash receipts and expenditures in lieu of financial statements; thereby the type of year-end financial reports required to be completed by the association would be based solely on the level of annual revenues.

Condominium and Homeowners' Association Official Records

Background

Condominium and homeowners' associations are currently required to maintain official records, which include:

- A copy of the articles of incorporation, declaration, bylaws of and rules of the association;
- Meeting minutes;
- A roster of all unit 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; and
- All other written records which are related to the operation of the association.⁹

Effect of the Bill

The bill makes the following changes to the official records that a condominium association is required to maintain:

- The association must retain plans, permits, and warranties related to improvements to the common areas or other property that the association is obligated to maintain, repair, or replace;
- The association must remove from its official records the e-mail address and fax number of a unit owner who revokes his or her consent to receive notice by electronic transmission;
- The association must retain bids for materials, equipment, or services for a period of one year;
- Financial records, tax returns, and any records that identify, measure, record, or communicate financial information must be retained; and
- Physical copies of the association's official records must be open to inspection by a member or his or her authorized representative.

The bill makes the following changes to the official records that a homeowners' association is required to maintain:

- The association must retain the documents and items provided by the developer when control of the association transfers to members of the association;¹⁰
- The association must retain a certified copy of its articles of incorporation as well as audits and reviews;
- Ballots, sign-in sheets, voting proxies, and all other papers relating to voting by members, must be maintained for one year after the date of the election, vote, or meeting.

Condominium and Homeowners' Association Access to Records

Background

The condominium association shall provide access to the official records for inspection by any association member or the authorized representative of the member at reasonable times.¹¹ The right to

⁹ ss. 718.111(12)(a), and 720.303(4), F.S.

¹⁰ See s. 720.307(4), F.S.

¹¹ s. 718.111(12)(c), F.S.

inspect includes the right to make or obtain copies at the expense of the member. Currently, law does not require a condominium or homeowners' association to maintain a website.

Current law requires an outgoing board member of a condominium association to turn over all official records and property of the association in his or her possession or control to the incoming board within five days after the election.¹²

Effect of the Bill

The bill requires a condominium association with 500 more units and a homeowners' association with 7,500 or more parcels to provide certain specified documents on the association's website. The website must:

- Be independently owned and operated by the association or operated by a third-party provider with whom the association has the right to operate a web page dedicated to the association's activities, notices and records; and
- Contain a protected location that is accessible only to the unit owners and employees of the association.

The association must provide each member access to the protected sections of the association's website that contain any required notices, records, or documents. The following documents must be placed on the website:

- Copies of the association's official records;
- The annual budget and financial report, and any proposed budget and financial reports to be considered at the annual meeting;
- Any document created by the association or a board member relating to the recall of a director;
- Documentation reporting the compensation of directors, officers, or members;
- A list of all contracts or transactions between the association and any director, officer, corporation, firm, or association that is not an affiliated condominium or homeowners' association, or other entity in which an association director is also a director or officer is financially interested;
- Any fidelity bond entered into by the association;
- Any contract or document regarding a conflict of interest or possible conflict of interest; and
- Notice of any board meeting and the agenda for the meeting, placed online no later than 14 days before the meeting posted in plain view on the front page, or on a separate subpage labeled "Notices" which is conspicuously visible and linked from the front page of the association's website. The association must post on the website any documents to be considered during the meeting or listed on the agenda no later than 7 days before the meeting.

A homeowners' association website required by the bill must also contain:

- A copy of the information submitted to the division to comply with the reporting requirement in s. 720.303(14), F.S.; and
- The certification of each director required by s. 720.3033(1), F.S.¹³

A condominium or homeowners' association must ensure that information and records that members are not permitted to access are not placed on its website. If protected information is included in documents that are required to be placed on the website, the association must redact such information before placing the documents online.

¹² s. 718.111(12)(f), F.S.

¹³ s. 720.3033(1), F.S., requires each director of a homeowners' association to certify "that he or she has read the association's declaration of covenants, articles of incorporation, bylaws, and current written rules and 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 such written certification, the director may submit a certificate of having satisfactorily completed a certified educational curriculum.

The current roster of all members with their mailing addresses and parcel identifications may not be placed on the website. The website must include the following statement: "A current roster of all members and their mailing addresses and parcel identifications is available at the request of any association member." The notice must include the e-mail address of the person to contact for a copy of the roster.

A condominium association with 500 or more units or a homeowners' association with 7,500 or more parcels located within the physical boundaries of an affiliated condominium association with 500 or more units or homeowners' association with 7,500 or more parcels must provide digital copies of the specified documents on the larger affiliated association's website. An condominium association with fewer than 500 units or a homeowners' association with fewer than 7,500 parcels located within the physical boundaries of a condominium association with 500 or more units or homeowners' association with 7,500 or more parcels, but that is not affiliated with the larger association, may provide digital copies of certain documents on its website if the association so chooses.

The bill requires an outgoing board member of a condominium association, including a member who has been recalled, to turn over the administrative rights or controls of an association's website or other digital or electronic asset to the incoming board.

B. SECTION DIRECTORY:

Section 1 amends s. 718.111, F.S., relating to maintaining and providing access to condominium association records and preparing and providing financial reports.

Section 2 amends s. 719.104, F.S., relating to preparing and providing cooperative associations' financial reports.

Section 3 amends s. 720.303, F.S., relating to maintaining and providing access to homeowners' association records and preparing and providing financial reports.

Section 4 provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.

2. Expenditures:
There is an indeterminate but likely insignificant negative fiscal impact to the state. As currently drafted, maintaining associations' financial reports would have a minimal impact that could be addressed by current staffing.

If the language were amended to require the Division to review financial statements to ensure associations are compliant, this would require additional staff. However, this cost may be avoided if the financial reports were required to be submitted electronically.¹⁴

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:
None.

¹⁴ February 4, 2016, Department of Business and Professional Regulation Bill Analysis on CS/HB 1405.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certain associations operating fewer than 50 units or parcels are currently able to prepare a report of cash receipts and expenditures in lieu of a financial statement. The bill would remove this exemption from the financial statements requirement, thus requiring the associations to prepare financial statements according to generally accepted accounting principles. Some of these associations may choose to hire accountants or community association managers to have the financial statements prepared. Associations operating with fewer than 50 units that were previously allowed to prepare a cash receipts and expenditures report in lieu of the financial reporting requirements set under ss. 718.111, 719.104, and 720.303, F.S., would now incur costs ranging from \$1,000-\$5,000 based on their annual revenues. This amount could exceed \$5,000 based on annual revenues, size, amenities and complexity of accounting systems of the associations.¹⁵

The number of associations that would be affected is unknown.

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:

None.

¹⁵ Email from Justin A.Thames, Director of Government Affairs, Florida Institute of CPAs, Re: HB1405, cost of financial reports, January 25, 2016, (on file with the Business and Professions Subcommittee).

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 26, 2016, the Business & Professions Subcommittee considered and adopted a strike-all amendment and two amendments to the strike-all amendment and reported the bill favorably as a committee substitute. The amendment:

- Provides that an association unit owner or member may contact the Division if the association fails to provide a copy of the financial report within the required time and after the unit owner/member has submitted a written request.
- Requires the Division to contact the association within five business days of the unit owner's or member's initial contact, to request the association comply.
- Requires the association to submit a copy of the financial report to the Division within seven business days if the association continues to not provide the copy to the unit owner or member.
- Requires the association to provide a copy of the financial report to the Division for the two subsequent fiscal years within 21 days after the final financial report is completed or received by the association.
- Prohibits the association that fails to provide a copy of the financial report to a unit owner or member from waiving the financial reporting requirement
- Requires the Division to maintain the records and provide a copy to members of the public upon request.
- Amends the official records maintained by condominium associations to mirror the official records maintained by homeowners' associations.
- Requires condominium associations with more than 500 parcels and homeowners' associations with more than 7500 parcels to provide members with access to a protected website that contains specific records and documents.
- Permits condominium associations with less than 500 parcels and homeowners' associations with less than 7500 parcels to provide the documents on a website.
- Requires outgoing board members to turn over administrative rights or controls of a website or other digital or electronic assets to the incoming board.

This staff analysis is drafted to reflect the committee substitute.

1 A bill to be entitled
 2 An act relating to community associations; amending s.
 3 718.111, F.S.; revising records required to be
 4 maintained by a condominium association; providing
 5 requirements relating to the posting of specified
 6 documents on an association's website; providing that
 7 physical copies of the official records of the
 8 association are open to inspection by certain persons;
 9 requiring an outgoing board or committee member to
 10 relinquish administrative rights or controls of an
 11 association's website or other digital or electronic
 12 asset of the association; deleting a provision
 13 authorizing certain associations to prepare a report
 14 of cash receipts and expenditures in lieu of certain
 15 financial statements; providing a remedy for an
 16 association's failure to provide a unit owner with a
 17 copy of the financial report; requiring the Division
 18 of Florida Condominiums, Timeshares, and Mobile Homes
 19 to maintain and provide copies of financial reports;
 20 amending s. 719.104, F.S.; deleting a provision
 21 authorizing cooperative associations to prepare a
 22 report of cash receipts and expenditures in lieu of
 23 certain financial statements; providing a remedy for
 24 an association's failure to provide a unit owner with
 25 a copy of the financial report; requiring the division
 26 to maintain and provide copies of financial reports;

27 | amending s. 720.303, F.S., revising records required
 28 | to be maintained by a homeowners' association;
 29 | providing requirements relating to the posting of
 30 | specified documents on an association's website;
 31 | deleting a provision authorizing associations to
 32 | prepare a report of cash receipts and expenditures in
 33 | lieu of certain financial statements; providing a
 34 | remedy for an association's failure to provide a
 35 | member with a copy of the financial report; requiring
 36 | the division to maintain and provide copies of
 37 | financial reports; amending ss. 720.306 and 720.311,
 38 | F.S.; conforming cross-references; providing an
 39 | effective date.

40 |

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

42 |

43 | Section 1. Subsections (12) and (13) of section 718.111,
 44 | Florida Statutes, are amended to read:

45 | 718.111 The association.—

46 | (12) OFFICIAL RECORDS.—

47 | (a) From the inception of the association, the association
 48 | shall maintain each of the following items, if applicable, which
 49 | constitutes the official records of the association:

50 | 1. A copy of the plans, specifications, permits, and
 51 | warranties related to improvements to the common areas or other
 52 | property that the association is obligated to maintain, repair,

53 | or replace, and other items provided by the developer pursuant
 54 | to s. 718.301(4).

55 | 2. A photocopy of the recorded declaration of condominium
 56 | of each condominium operated by the association and each
 57 | amendment to each declaration.

58 | 3. A photocopy of the recorded bylaws of the association
 59 | and each amendment to the bylaws.

60 | 4. A certified copy of the articles of incorporation of
 61 | the association, or other documents creating the association,
 62 | and each amendment thereto.

63 | 5. A copy of the current rules of the association.

64 | 6. A book or books that contain the minutes of all
 65 | meetings of the association, the board of administration, and
 66 | the unit owners, which minutes must be retained for at least 7
 67 | years.

68 | 7. A current roster of all unit owners and their mailing
 69 | addresses, unit identifications, voting certifications, and, if
 70 | known, telephone numbers. The association shall also maintain
 71 | the e-mail ~~electronic mailing~~ addresses and facsimile numbers of
 72 | unit owners consenting to receive notice by electronic
 73 | transmission. The e-mail ~~electronic mailing~~ addresses and
 74 | facsimile numbers are not accessible to unit owners if consent
 75 | to receive notice by electronic transmission is not provided in
 76 | accordance with subparagraph (d)5. The e-mail addresses and
 77 | facsimile numbers provided by unit owners to receive notice by
 78 | electronic transmission must be removed from association records

79 if the unit owner revokes his or her consent to receive notice
 80 by electronic transmission ~~(e)~~5. However, the association is not
 81 liable for an inadvertent disclosure of the e-mail ~~electronic~~
 82 ~~mail~~ address or facsimile number for receiving electronic
 83 transmission of notices.

84 8. All current insurance policies of the association and
 85 condominiums operated by the association.

86 9. A current copy of any management agreement, lease, or
 87 other contract to which the association is a party or under
 88 which the association or the unit owners have an obligation or
 89 responsibility. Bids for materials, equipment, or services are
 90 official records and must be maintained by the association for 1
 91 year.

92 10. Bills of sale or transfer for all property owned by
 93 the association.

94 11. Financial and accounting records for the association
 95 and separate financial and accounting records for each
 96 condominium that the association operates. All financial and
 97 accounting records must be maintained for at least 7 years. Any
 98 person who knowingly or intentionally defaces or destroys such
 99 records, or who knowingly or intentionally fails to create or
 100 maintain such records, with the intent of causing harm to the
 101 association or one or more of its members, is personally subject
 102 to a civil penalty pursuant to s. 718.501(1)(d). The financial
 103 and accounting records must include, but are not limited to:

104 a. Accurate, itemized, and detailed records of all

105 receipts and expenditures.

106 b. A current account and a monthly, bimonthly, or
 107 quarterly statement of the account for each unit designating the
 108 name of the unit owner, the due date and amount of each
 109 assessment, the amount paid on the account, and the balance due.

110 c. All tax returns, audits, reviews, accounting
 111 statements, and financial reports of the association or
 112 condominium.

113 d. Any records that identify, measure, record, or
 114 communicate financial information ~~All contracts for work to be~~
 115 ~~performed. Bids for work to be performed are also considered~~
 116 ~~official records and must be maintained by the association.~~

117 12. Ballots, sign-in sheets, voting proxies, and all other
 118 papers relating to voting by unit owners, which must be
 119 maintained for 1 year from the date of the election, vote, or
 120 meeting to which the document relates, notwithstanding paragraph
 121 (b).

122 13. All rental records if the association is acting as
 123 agent for the rental of condominium units.

124 14. A copy of the current question and answer sheet as
 125 described in s. 718.504.

126 15. All other written records of the association not
 127 specifically included in the foregoing which are related to the
 128 operation of the association.

129 16. A copy of the inspection report as described in s.
 130 718.301(4) (p).

131 (b) The official records of the association must be
 132 maintained within the state for at least 7 years. The records of
 133 the association shall be made available to a unit owner within
 134 45 miles of the condominium property or within the county in
 135 which the condominium property is located within 5 working days
 136 after receipt of a written request by the board or its designee.
 137 However, such distance requirement does not apply to an
 138 association governing a timeshare condominium. This paragraph
 139 may be complied with by having a copy of the official records of
 140 the association available for inspection or copying on the
 141 condominium property or association property, or the association
 142 may offer the option of making the records available to a unit
 143 owner electronically via the Internet or by allowing the records
 144 to be viewed in electronic format on a computer screen and
 145 printed upon request. The association is not responsible for the
 146 use or misuse of the information provided to an association
 147 member or his or her authorized representative pursuant to the
 148 compliance requirements of this chapter unless the association
 149 has an affirmative duty not to disclose such information
 150 pursuant to this chapter.

151 (c)1. An association with 500 or more units shall post
 152 digital copies of the documents specified in subparagraph 2. on
 153 the association's website.

154 a. An association's website must be:

155 (I) An independent website or web portal wholly owned and
 156 operated by the association; or

157 (II) A website or web portal operated by a third party
 158 provider with whom the association owns, leases, rents, or
 159 otherwise obtains the right to operate a web page, subpage, web
 160 portal, or collection of subpages or web portals dedicated to
 161 the association's activities and where required notices,
 162 records, and documents may be posted by the association.

163 b. The association's website must be accessible through
 164 the Internet and must contain a subpage, web portal, or other
 165 protected electronic location that is inaccessible to the
 166 general public and accessible only to unit owners and employees
 167 of the association.

168 c. The association must provide each unit owner with
 169 access to the protected sections of the association's website
 170 that contain any notices, records, or documents that must be
 171 electronically provided.

172 2. The following documents must be posted in digital
 173 format on the website:

174 a. Copies of the official records described in paragraph
 175 (a). However, the current roster of all unit owners with their
 176 mailing addresses and unit identifications may not be posted in
 177 digital format on the website. The website must include the
 178 following statement: "A current roster of all unit owners and
 179 their mailing addresses and unit identifications is available at
 180 the request of any unit owner or unit owner representative,
 181 including the e-mail addresses of the unit owners who have
 182 consented to receive notice by electronic transmission." The

183 notice shall include the e-mail address of the person to contact
 184 for a copy of the roster.

185 b. The annual budget required by s. 718.112(2)(f) and any
 186 proposed budget to be considered at the annual meeting.

187 c. The financial report required by subsection (13) and
 188 any proposed financial report to be considered at a meeting.

189 d. Any document created by the association or a board
 190 member relating to the recall of a member, pursuant to s.
 191 718.112(2)(j), or any document created for or filed by the
 192 association in an arbitration proceeding conducted by the
 193 division regarding the recall of a member.

194 e. The certification of each director required by s.
 195 718.112(2)(d)4.b.

196 f. A list of all contracts or transactions between the
 197 association and any director, officer, corporation, firm, or
 198 association that is not an affiliated condominium association or
 199 any other entity in which an association director is also a
 200 director or officer and financially interested.

201 g. Any fidelity bond entered into by the association.

202 h. Any contract or document regarding a conflict of
 203 interest or possible conflict of interest as provided in ss.
 204 468.436(2) and 718.3026(3).

205 i. Notice of any board meeting and the agenda for the
 206 meeting, as required by s. 718.112(2)(d)3., no later than 14
 207 days before the meeting. The notice must be posted in plain view
 208 on the front page, or on a separate subpage labeled "Notices"

209 which is conspicuously visible and linked from the front page of
 210 the association's website. The association must post on the
 211 association's website any documents to be considered during the
 212 meeting or listed on the agenda at least 7 days before the
 213 meeting at which the document or the information within the
 214 document will be considered, unless otherwise stated, including
 215 the following documents:

216 (I) The proposed annual budget required by s.
 217 718.112(2)(f), which must be provided at least 14 days before
 218 the meeting.

219 (II) The proposed financial report required by subsection
 220 (13).

221 (III) A list of persons seeking to be elected to the
 222 board.

223 3. The association shall ensure that the information and
 224 records described in paragraph (d), which are not permitted to
 225 be accessible to unit owners, are not posted on the
 226 association's website. If protected information or information
 227 restricted from being accessible to unit owners is included in
 228 documents that are required to be posted on the association's
 229 website, the association shall ensure the information is
 230 redacted before posting the documents online.

231 (d)~~(e)~~ Physical copies of the official records of the
 232 association are open to inspection by any association member or
 233 the authorized representative of such member at all reasonable
 234 times. The right to inspect the records includes the right to

235 | make or obtain copies, at the reasonable expense, if any, of the
 236 | member. The association may adopt reasonable rules regarding the
 237 | frequency, time, location, notice, and manner of record
 238 | inspections and copying. The failure of an association to
 239 | provide the records within 10 working days after receipt of a
 240 | written request creates a rebuttable presumption that the
 241 | association willfully failed to comply with this paragraph. A
 242 | unit owner who is denied access to official records is entitled
 243 | to the actual damages or minimum damages for the association's
 244 | willful failure to comply. Minimum damages are \$50 per calendar
 245 | day for up to 10 days, beginning on the 11th working day after
 246 | receipt of the written request. The failure to permit inspection
 247 | entitles any person prevailing in an enforcement action to
 248 | recover reasonable attorney fees from the person in control of
 249 | the records who, directly or indirectly, knowingly denied access
 250 | to the records. Any person who knowingly or intentionally
 251 | defaces or destroys accounting records that are required by this
 252 | chapter to be maintained during the period for which such
 253 | records are required to be maintained, or who knowingly or
 254 | intentionally fails to create or maintain accounting records
 255 | that are required to be created or maintained, with the intent
 256 | of causing harm to the association or one or more of its
 257 | members, is personally subject to a civil penalty pursuant to s.
 258 | 718.501(1)(d). The association shall maintain an adequate number
 259 | of copies of the declaration, articles of incorporation, bylaws,
 260 | and rules, and all amendments to each of the foregoing, as well

261 as the question and answer sheet as described in s. 718.504 and
 262 year-end financial information required under this section, on
 263 the condominium property to ensure their availability to unit
 264 owners and prospective purchasers, and may charge its actual
 265 costs for preparing and furnishing these documents to those
 266 requesting the documents. An association shall allow a member or
 267 his or her authorized representative to use a portable device,
 268 including a smartphone, tablet, portable scanner, or any other
 269 technology capable of scanning or taking photographs, to make an
 270 electronic copy of the official records in lieu of the
 271 association's providing the member or his or her authorized
 272 representative with a copy of such records. The association may
 273 not charge a member or his or her authorized representative for
 274 the use of a portable device. Notwithstanding this paragraph,
 275 the following records are not accessible to unit owners:

276 1. Any record protected by the lawyer-client privilege as
 277 described in s. 90.502 and any record protected by the work-
 278 product privilege, including a record prepared by an association
 279 attorney or prepared at the attorney's express direction, which
 280 reflects a mental impression, conclusion, litigation strategy,
 281 or legal theory of the attorney or the association, and which
 282 was prepared exclusively for civil or criminal litigation or for
 283 adversarial administrative proceedings, or which was prepared in
 284 anticipation of such litigation or proceedings until the
 285 conclusion of the litigation or proceedings.

286 2. Information obtained by an association in connection

287 with the approval of the lease, sale, or other transfer of a
 288 unit.

289 3. Personnel records of association or management company
 290 employees, including, but not limited to, disciplinary, payroll,
 291 health, and insurance records. For purposes of this
 292 subparagraph, the term "personnel records" does not include
 293 written employment agreements with an association employee or
 294 management company, or budgetary or financial records that
 295 indicate the compensation paid to an association employee.

296 4. Medical records of unit owners.

297 5. Social security numbers, driver license numbers, credit
 298 card numbers, e-mail addresses, telephone numbers, facsimile
 299 numbers, emergency contact information, addresses of a unit
 300 owner other than as provided to fulfill the association's notice
 301 requirements, and other personal identifying information of any
 302 person, excluding the person's name, unit designation, mailing
 303 address, property address, and any address, e-mail address, or
 304 facsimile number provided to the association to fulfill the
 305 association's notice requirements. Notwithstanding the
 306 restrictions in this subparagraph, an association may print and
 307 distribute to parcel owners a directory containing the name,
 308 parcel address, and all telephone numbers of each parcel owner.
 309 However, an owner may exclude his or her telephone numbers from
 310 the directory by so requesting in writing to the association. An
 311 owner may consent in writing to the disclosure of other contact
 312 information described in this subparagraph. The association is

313 | not liable for the inadvertent disclosure of information that is
 314 | protected under this subparagraph if the information is included
 315 | in an official record of the association and is voluntarily
 316 | provided by an owner and not requested by the association.

317 | 6. Electronic security measures that are used by the
 318 | association to safeguard data, including passwords.

319 | 7. The software and operating system used by the
 320 | association which allow the manipulation of data, even if the
 321 | owner owns a copy of the same software used by the association.
 322 | The data is part of the official records of the association.

323 | ~~(e)~~ (d) The association shall prepare a question and answer
 324 | sheet as described in s. 718.504, and shall update it annually.

325 | ~~(f)~~ (e)1. The association or its authorized agent is not
 326 | required to provide a prospective purchaser or lienholder with
 327 | information about the condominium or the association other than
 328 | information or documents required by this chapter to be made
 329 | available or disclosed. The association or its authorized agent
 330 | may charge a reasonable fee to the prospective purchaser,
 331 | lienholder, or the current unit owner for providing good faith
 332 | responses to requests for information by or on behalf of a
 333 | prospective purchaser or lienholder, other than that required by
 334 | law, if the fee does not exceed \$150 plus the reasonable cost of
 335 | photocopying and any attorney ~~attorney's~~ fees incurred by the
 336 | association in connection with the response.

337 | 2. An association and its authorized agent are not liable
 338 | for providing such information in good faith pursuant to a

339 written request if the person providing the information includes
 340 a written statement in substantially the following form: "The
 341 responses herein are made in good faith and to the best of my
 342 ability as to their accuracy."

343 (g)~~(f)~~ An outgoing board or committee member must
 344 relinquish all official records and property of the association
 345 in his or her possession or under his or her control, including
 346 administrative rights or controls of an association's website or
 347 other digital or electronic asset of the association, to the
 348 incoming board within 5 days after the election. The division
 349 shall impose a civil penalty as set forth in s. 718.501(1)(d)6.
 350 against an outgoing board or committee member who willfully and
 351 knowingly fails to relinquish such records and property.

352 (13) FINANCIAL REPORTING.—Within 90 days after the end of
 353 the fiscal year, or annually on a date provided in the bylaws,
 354 the association shall prepare and complete, or contract for the
 355 preparation and completion of, a financial report for the
 356 preceding fiscal year. Within 21 days after the final financial
 357 report is completed by the association or received from the
 358 third party, but not later than 120 days after the end of the
 359 fiscal year or other date as provided in the bylaws, the
 360 association shall mail to each unit owner at the address last
 361 furnished to the association by the unit owner, or hand deliver
 362 to each unit owner, a copy of the financial report or a notice
 363 that a copy of the financial report will be mailed or hand
 364 delivered to the unit owner, without charge, upon receipt of a

365 written request from the unit owner. The division shall adopt
 366 rules setting forth uniform accounting principles and standards
 367 to be used by all associations and addressing the financial
 368 reporting requirements for multicondominium associations. The
 369 rules must include, but not be limited to, standards for
 370 presenting a summary of association reserves, including a good
 371 faith estimate disclosing the annual amount of reserve funds
 372 that would be necessary for the association to fully fund
 373 reserves for each reserve item based on the straight-line
 374 accounting method. This disclosure is not applicable to reserves
 375 funded via the pooling method. In adopting such rules, the
 376 division shall consider the number of members and annual
 377 revenues of an association. Financial reports shall be prepared
 378 as follows:

379 (a) An association that meets the criteria of this
 380 paragraph shall prepare a complete set of financial statements
 381 in accordance with generally accepted accounting principles. The
 382 financial statements must be based upon the association's total
 383 annual revenues, as follows:

384 1. An association with total annual revenues of \$150,000
 385 or more, but less than \$300,000, shall prepare compiled
 386 financial statements.

387 2. An association with total annual revenues of at least
 388 \$300,000, but less than \$500,000, shall prepare reviewed
 389 financial statements.

390 3. An association with total annual revenues of \$500,000

391 or more shall prepare audited financial statements.

392 (b)1. An association with total annual revenues of less
 393 than \$150,000 shall prepare a report of cash receipts and
 394 expenditures.

395 ~~2. An association that operates fewer than 50 units,~~
 396 ~~regardless of the association's annual revenues, shall prepare a~~
 397 ~~report of cash receipts and expenditures in lieu of financial~~
 398 ~~statements required by paragraph (a).~~

399 2.3. A report of cash receipts and disbursements must
 400 disclose the amount of receipts by accounts and receipt
 401 classifications and the amount of expenses by accounts and
 402 expense classifications, including, but not limited to, the
 403 following, as applicable: costs for security, professional and
 404 management fees and expenses, taxes, costs for recreation
 405 facilities, expenses for refuse collection and utility services,
 406 expenses for lawn care, costs for building maintenance and
 407 repair, insurance costs, administration and salary expenses, and
 408 reserves accumulated and expended for capital expenditures,
 409 deferred maintenance, and any other category for which the
 410 association maintains reserves.

411 (c) An association may prepare, without a meeting of or
 412 approval by the unit owners:

413 1. Compiled, reviewed, or audited financial statements, if
 414 the association is required to prepare a report of cash receipts
 415 and expenditures;

416 2. Reviewed or audited financial statements, if the

417 association is required to prepare compiled financial
 418 statements; or

419 3. Audited financial statements if the association is
 420 required to prepare reviewed financial statements.

421 (d) If approved by a majority of the voting interests
 422 present at a properly called meeting of the association, an
 423 association may prepare:

424 1. A report of cash receipts and expenditures in lieu of a
 425 compiled, reviewed, or audited financial statement;

426 2. A report of cash receipts and expenditures or a
 427 compiled financial statement in lieu of a reviewed or audited
 428 financial statement; or

429 3. A report of cash receipts and expenditures, a compiled
 430 financial statement, or a reviewed financial statement in lieu
 431 of an audited financial statement.

432
 433 Such meeting and approval must occur before the end of the
 434 fiscal year and is effective only for the fiscal year in which
 435 the vote is taken, except that the approval may also be
 436 effective for the following fiscal year. If the developer has
 437 not turned over control of the association, all unit owners,
 438 including the developer, may vote on issues related to the
 439 preparation of the association's financial reports, from the
 440 date of incorporation of the association through the end of the
 441 second fiscal year after the fiscal year in which the
 442 certificate of a surveyor and mapper is recorded pursuant to s.

443 718.104(4)(e) or an instrument that transfers title to a unit in
 444 the condominium which is not accompanied by a recorded
 445 assignment of developer rights in favor of the grantee of such
 446 unit is recorded, whichever occurs first. Thereafter, all unit
 447 owners except the developer may vote on such issues until
 448 control is turned over to the association by the developer. Any
 449 audit or review prepared under this section shall be paid for by
 450 the developer if done before turnover of control of the
 451 association. An association may not waive the financial
 452 reporting requirements of this section for more than 3
 453 consecutive years.

454 (e) If an association has not provided the unit owner with
 455 a copy of the financial report after receipt of a written
 456 request within the time required pursuant to this section, the
 457 unit owner may contact the division to report the association's
 458 failure to comply. Upon notification, the division shall contact
 459 the association to request that the association provide the copy
 460 of the financial report to the unit owner within 5 business
 461 days. If the association further fails to provide the copy of
 462 the financial report, the association must provide a copy of the
 463 financial report to the division within 7 business days.
 464 Additionally, the association must provide a copy of the
 465 financial report to the division for the 2 subsequent fiscal
 466 years within 21 days after the final financial report is
 467 completed by the association or received from the third party
 468 and may not waive the financial reporting requirement as

469 provided in paragraph (d). The division shall maintain the
 470 financial reports and provide a copy of the financial reports to
 471 members of the public upon request.

472 Section 2. Subsection (4) of section 719.104, Florida
 473 Statutes, is amended to read:

474 719.104 Cooperatives; access to units; records; financial
 475 reports; assessments; purchase of leases.-

476 (4) FINANCIAL REPORT.-

477 (a) Within 90 days following the end of the fiscal or
 478 calendar year or annually on such date as provided in the bylaws
 479 of the association, the board of administration shall prepare
 480 and complete, or contract with a third party to prepare and
 481 complete, a financial report covering the preceding fiscal or
 482 calendar year. Within 21 days after the financial report is
 483 completed by the association or received from the third party,
 484 but no later than 120 days after the end of the fiscal year,
 485 calendar year, or other date provided in the bylaws, the
 486 association shall provide each member with a copy of the annual
 487 financial report or a written notice that a copy of the
 488 financial report is available upon request at no charge to the
 489 member. The division shall adopt rules setting forth uniform
 490 accounting principles, standards, and reporting requirements.

491 (b) Except as provided in paragraph (c), an association
 492 whose total annual revenues meet the criteria of this paragraph
 493 shall prepare or cause to be prepared a complete set of
 494 financial statements according to the generally accepted

495 accounting principles adopted by the Board of Accountancy. The
 496 financial statements shall be as follows:

497 1. An association with total annual revenues between
 498 \$150,000 and \$299,999 shall prepare a compiled financial
 499 statement.

500 2. An association with total annual revenues between
 501 \$300,000 and \$499,999 shall prepare a reviewed financial
 502 statement.

503 3. An association with total annual revenues of \$500,000
 504 or more shall prepare an audited financial statement.

505 4. The requirement to have the financial statement
 506 compiled, reviewed, or audited does not apply to an association
 507 if a majority of the voting interests of the association present
 508 at a duly called meeting of the association have voted to waive
 509 this requirement for the fiscal year. In an association in which
 510 turnover of control by the developer has not occurred, the
 511 developer may vote to waive the audit requirement for the first
 512 2 years of operation of the association, after which time waiver
 513 of an applicable audit requirement shall be by a majority of
 514 voting interests other than the developer. The meeting shall be
 515 held prior to the end of the fiscal year, and the waiver shall
 516 be effective for only one fiscal year. An association may not
 517 waive the financial reporting requirements of this section for
 518 more than 3 consecutive years.

519 (c)1. An association with total annual revenues of less
 520 than \$150,000 shall prepare a report of cash receipts and

521 expenditures.

522 ~~2. An association in a community of fewer than 50 units,~~
 523 ~~regardless of the association's annual revenues, shall prepare a~~
 524 ~~report of cash receipts and expenditures in lieu of the~~
 525 ~~financial statements required by paragraph (b), unless the~~
 526 ~~declaration or other recorded governing documents provide~~
 527 ~~otherwise.~~

528 2.3. A report of cash receipts and expenditures must
 529 disclose the amount of receipts by accounts and receipt
 530 classifications and the amount of expenses by accounts and
 531 expense classifications, including the following, as applicable:
 532 costs for security, professional, and management fees and
 533 expenses; taxes; costs for recreation facilities; expenses for
 534 refuse collection and utility services; expenses for lawn care;
 535 costs for building maintenance and repair; insurance costs;
 536 administration and salary expenses; and reserves, if maintained
 537 by the association.

538 (d) If at least 20 percent of the unit owners petition the
 539 board for a greater level of financial reporting than that
 540 required by this section, the association shall duly notice and
 541 hold a membership meeting within 30 days after receipt of the
 542 petition to vote on raising the level of reporting for that
 543 fiscal year. Upon approval by a majority of the voting interests
 544 represented at a meeting at which a quorum of unit owners is
 545 present, the association shall prepare an amended budget or
 546 shall adopt a special assessment to pay for the financial report

547 regardless of any provision to the contrary in the declaration
 548 or other recorded governing documents. In addition, the
 549 association shall provide within 90 days after the meeting or
 550 the end of the fiscal year, whichever occurs later:

551 1. Compiled, reviewed, or audited financial statements, if
 552 the association is otherwise required to prepare a report of
 553 cash receipts and expenditures;

554 2. Reviewed or audited financial statements, if the
 555 association is otherwise required to prepare compiled financial
 556 statements; or

557 3. Audited financial statements, if the association is
 558 otherwise required to prepare reviewed financial statements.

559 (e) If approved by a majority of the voting interests
 560 present at a properly called meeting of the association, an
 561 association may prepare or cause to be prepared:

562 1. A report of cash receipts and expenditures in lieu of a
 563 compiled, reviewed, or audited financial statement;

564 2. A report of cash receipts and expenditures or a
 565 compiled financial statement in lieu of a reviewed or audited
 566 financial statement; or

567 3. A report of cash receipts and expenditures, a compiled
 568 financial statement, or a reviewed financial statement in lieu
 569 of an audited financial statement.

570 (f) If an association has not provided the unit owner with
 571 a copy of the financial report after receipt of a written
 572 request within the time required as provided in paragraph (a),

573 | the unit owner may contact the division to report the
 574 | association's failure to comply. Upon notification, the division
 575 | shall contact the association to request that the association
 576 | provide the copy of the financial report to the unit owner
 577 | within 5 business days. If the association further fails to
 578 | provide the copy of the financial report, the association must
 579 | provide a copy of the financial report to the division within 7
 580 | business days. Additionally, the association must provide a copy
 581 | of the financial report to the division for the 2 subsequent
 582 | fiscal years within 21 days after the final financial report is
 583 | completed by the association or received from the third party
 584 | and may not waive the financial reporting requirement as
 585 | provided in paragraph (b) or paragraph (e). The division shall
 586 | maintain the financial reports and provide a copy of the
 587 | financial reports to members of the public upon request.

588 | Section 3. Subsections (6) through (13) of section
 589 | 720.303, Florida Statutes, are renumbered as sections (7)
 590 | through (14), respectively, present subsection (4), paragraph
 591 | (c) of present subsection (6), and present subsection (7) of
 592 | that section are amended, and a new subsection (6) is added to
 593 | that section, to read:

594 | 720.303 Association powers and duties; meetings of board;
 595 | official records; budgets; financial reporting; association
 596 | funds; recalls.-

597 | (4) OFFICIAL RECORDS.-The association shall maintain each
 598 | of the following items, when applicable, which constitute the

599 official records of the association:

600 (a) Copies of any plans, specifications, permits, and
 601 warranties related to improvements constructed on the common
 602 areas or other property that the association is obligated to
 603 maintain, repair, or replace, and other items provided by the
 604 developer pursuant to s. 720.307(4).

605 (b) A copy of the bylaws of the association and of each
 606 amendment to the bylaws.

607 (c) A certified copy of the articles of incorporation of
 608 the association and of each amendment thereto.

609 (d) A copy of the declaration of covenants and a copy of
 610 each amendment thereto.

611 (e) A copy of the current rules of the homeowners'
 612 association.

613 (f) The minutes of all meetings of the board of directors
 614 and of the members, which minutes must be retained for at least
 615 7 years.

616 (g) A current roster of all members and their mailing
 617 addresses and parcel identifications. The association shall also
 618 maintain the e-mail ~~electronic mailing~~ addresses and the numbers
 619 designated by members for receiving notice sent by electronic
 620 transmission of those members consenting to receive notice by
 621 electronic transmission. The e-mail ~~electronic mailing~~ addresses
 622 and numbers provided by members ~~unit owners~~ to receive notice by
 623 electronic transmission shall be removed from association
 624 records when consent to receive notice by electronic

625 transmission is revoked. However, the association is not liable
 626 for an erroneous disclosure of the e-mail ~~electronic mail~~
 627 address or the number for receiving electronic transmission of
 628 notices.

629 (h) All of the association's insurance policies or a copy
 630 thereof, which policies must be retained for at least 7 years.

631 (i) A current copy of all contracts to which the
 632 association is a party, including, without limitation, any
 633 management agreement, lease, or other contract under which the
 634 association has any obligation or responsibility. Bids received
 635 by the association for materials, equipment, or services ~~work to~~
 636 ~~be performed~~ must also be considered official records and must
 637 be maintained ~~kept~~ for ~~a period of~~ 1 year.

638 (j) The financial and accounting records of the
 639 association, kept according to good accounting practices. All
 640 financial and accounting records must be maintained for a period
 641 of at least 7 years. The financial and accounting records must
 642 include:

643 1. Accurate, itemized, and detailed records of all
 644 receipts and expenditures.

645 2. A current account and a periodic statement of the
 646 account for each member, designating the name and current
 647 address of each member who is obligated to pay assessments, the
 648 due date and amount of each assessment or other charge against
 649 the member, the date and amount of each payment on the account,
 650 and the balance due.

651 3. All tax returns, audits, reviews, financial statements,
652 and financial reports of the association.

653 4. Any other records that identify, measure, record, or
654 communicate financial information.

655 (k) A copy of the disclosure summary described in s.
656 720.401(1).

657 (l) Ballots, sign-in sheets, voting proxies, and all other
658 papers relating to voting by members, which must be maintained
659 for 1 year after the date of the election, vote, or meeting to
660 which the document relates.

661 (m)~~(l)~~ All other written records of the association not
662 specifically included in the foregoing which are related to the
663 operation of the association.

664 (6) ACCESS TO ASSOCIATION DOCUMENTS AND RECORDS ON AN
665 ASSOCIATION WEBSITE.-

666 (a) An association with 7,500 or more parcels shall post
667 digital copies of the documents specified in paragraph (b) on
668 the association's website. An association with fewer than 7,500
669 parcels located within the physical boundaries of an affiliated
670 association that has more than 7,500 or more parcels shall post
671 digital copies of such documents on the larger affiliated
672 association's website. An association with fewer than 7,500
673 parcels located within the physical boundaries of an association
674 with more than 7,500 or more parcels but that is not affiliated
675 with the larger association may post digital copies of such
676 documents on its website if the association chooses to do so.

- 677 1. An association's website must be:
- 678 a. An independent website or web portal wholly owned and
- 679 operated by the association; or
- 680 b. A website or web portal that is operated by a third-
- 681 party provider with whom the association owns, leases, rents, or
- 682 otherwise obtains the right to operate a web page, subpage, web
- 683 portal, or collection of subpages or web portals dedicated to
- 684 the association's activities and where required notices,
- 685 records, and documents may be posted by the association.
- 686 2. The association's website must be accessible through
- 687 the Internet and must contain a subpage, web portal, or other
- 688 protected electronic location that is inaccessible to the
- 689 general public and accessible only to the members and employees
- 690 of the association.
- 691 3. The association must provide each member with access to
- 692 the protected sections of the association's website that contain
- 693 any notices, records, or documents that must be electronically
- 694 provided.
- 695 (b) The following documents must be posted in digital
- 696 format on the website:
- 697 1. Copies of the official records in described in
- 698 subsection (4). However, the current roster of all members with
- 699 their mailing addresses and parcel identifications may not be
- 700 posted in digital format on the website. The website must
- 701 include the following statement: "A current roster of all
- 702 members and their mailing addresses and parcel identifications

703 is available at the request of any association member." The
 704 notice shall include the e-mail address of the person to contact
 705 for a copy of the roster.

706 2. The annual budget required by subsection (7) and any
 707 proposed budget to be considered at the annual meeting.

708 3. The financial report required by subsection (8) and any
 709 proposed financial report to be considered at a meeting.

710 4. Any document created by the association or a board
 711 member relating to the recall of a director, pursuant to
 712 subsection (11), or any document created for or filed by the
 713 association in an arbitration proceeding conducted by the
 714 division regarding the recall of a director.

715 5. A copy of the information submitted to the division to
 716 comply with the reporting requirement of subsection (15).

717 6. Documentation reporting the compensation of directors,
 718 officers, or members authorized under subsection (15).

719 7. The certification of each director required by s.
 720 720.3033(1).

721 8. A list of all contracts or transactions between the
 722 association and any director, officer, corporation, firm, or
 723 association that is not an affiliated homeowners' association or
 724 any other entity in which an association director is also a
 725 director or officer and financially interested.

726 9. Any fidelity bond entered into by the association.

727 10. A map of the association, including association
 728 boundaries.

729 11. Any contract or document regarding a conflict of
 730 interest or possible conflict of interest as provided in ss.
 731 468.436(2) and 720.3033.

732 12. Notice of any board meeting and the agenda for the
 733 meeting, as required by subsection (2), no later than 14 days
 734 before the meeting. The notice must be posted in plain view on
 735 the front page, or on a separate subpage labeled "Notices" which
 736 is conspicuously visible and linked from the front page of the
 737 association's website. The association must post on the
 738 association's website any documents to be considered during the
 739 meeting or listed on the agenda at least 7 days before the
 740 meeting at which the document or the information within the
 741 document will be considered, including the following documents:

742 a. The proposed annual budget required by subsection (7).
 743 b. The proposed financial report required by subsection
 744 (8).

745 c. A list of persons seeking to be elected to the board.
 746 d. A copy of contracts or transactions listed in
 747 subparagraph 8.

748 e. Any competitive bids for materials, equipment, or
 749 services.

750 f. Any proposed contracts or proposed transactional
 751 documents related to any possible conflict of interest set forth
 752 in ss. 468.436(2) and 720.3033.

753 (c) The association shall ensure that the information and
 754 records described in paragraph (5)(c), which are not permitted

755 | to be accessible to members or parcel owners, are not posted on
 756 | the association's website. If protected information or
 757 | information restricted from being accessible to members or
 758 | parcel owners is included in documents that are required to be
 759 | posted on the association's website, the association shall
 760 | ensure the information is redacted before posting the documents
 761 | online.

762 | (7)~~(6)~~ BUDGETS.—

763 | (c)1. If the budget of the association does not provide
 764 | for reserve accounts pursuant to paragraph (d) and the
 765 | association is responsible for the repair and maintenance of
 766 | capital improvements that may result in a special assessment if
 767 | reserves are not provided, each financial report for the
 768 | preceding fiscal year required by subsection (8) ~~(7)~~ must
 769 | contain the following statement in conspicuous type:

770 | THE BUDGET OF THE ASSOCIATION DOES NOT PROVIDE FOR RESERVE
 771 | ACCOUNTS FOR CAPITAL EXPENDITURES AND DEFERRED MAINTENANCE THAT
 772 | MAY RESULT IN SPECIAL ASSESSMENTS. OWNERS MAY ELECT TO PROVIDE
 773 | FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(7) ~~720.303(6)~~,
 774 | FLORIDA STATUTES, UPON OBTAINING THE APPROVAL OF A MAJORITY OF
 775 | THE TOTAL VOTING INTERESTS OF THE ASSOCIATION BY VOTE OF THE
 776 | MEMBERS AT A MEETING OR BY WRITTEN CONSENT.

777 | 2. If the budget of the association does provide for
 778 | funding accounts for deferred expenditures, including, but not
 779 | limited to, funds for capital expenditures and deferred
 780 | maintenance, but such accounts are not created or established

781 pursuant to paragraph (d), each financial report for the
 782 preceding fiscal year required under subsection (8) ~~(7)~~ must
 783 also contain the following statement in conspicuous type:

784 THE BUDGET OF THE ASSOCIATION PROVIDES FOR LIMITED VOLUNTARY
 785 DEFERRED EXPENDITURE ACCOUNTS, INCLUDING CAPITAL EXPENDITURES
 786 AND DEFERRED MAINTENANCE, SUBJECT TO LIMITS ON FUNDING CONTAINED
 787 IN OUR GOVERNING DOCUMENTS. BECAUSE THE OWNERS HAVE NOT ELECTED
 788 TO PROVIDE FOR RESERVE ACCOUNTS PURSUANT TO SECTION 720.303(7)
 789 ~~720.303(6)~~, FLORIDA STATUTES, THESE FUNDS ARE NOT SUBJECT TO THE
 790 RESTRICTIONS ON USE OF SUCH FUNDS SET FORTH IN THAT STATUTE, NOR
 791 ARE RESERVES CALCULATED IN ACCORDANCE WITH THAT STATUTE.

792 (8) ~~(7)~~ FINANCIAL REPORTING.—Within 90 days after the end
 793 of the fiscal year, or annually on the date provided in the
 794 bylaws, the association shall prepare and complete, or contract
 795 with a third party for the preparation and completion of, a
 796 financial report for the preceding fiscal year. Within 21 days
 797 after the final financial report is completed by the association
 798 or received from the third party, but not later than 120 days
 799 after the end of the fiscal year or other date as provided in
 800 the bylaws, the association shall, within the time limits set
 801 forth in subsection (5), provide each member with a copy of the
 802 annual financial report or a written notice that a copy of the
 803 financial report is available upon request at no charge to the
 804 member. Financial reports shall be prepared as follows:

805 (a) An association that meets the criteria of this
 806 paragraph shall prepare or cause to be prepared a complete set

807 of financial statements in accordance with generally accepted
 808 accounting principles as adopted by the Board of Accountancy.
 809 The financial statements shall be based upon the association's
 810 total annual revenues, as follows:

811 1. An association with total annual revenues of \$150,000
 812 or more, but less than \$300,000, shall prepare compiled
 813 financial statements.

814 2. An association with total annual revenues of at least
 815 \$300,000, but less than \$500,000, shall prepare reviewed
 816 financial statements.

817 3. An association with total annual revenues of \$500,000
 818 or more shall prepare audited financial statements.

819 (b)1. An association with total annual revenues of less
 820 than \$150,000 shall prepare a report of cash receipts and
 821 expenditures.

822 ~~2. An association in a community of fewer than 50 parcels,~~
 823 ~~regardless of the association's annual revenues, may prepare a~~
 824 ~~report of cash receipts and expenditures in lieu of financial~~
 825 ~~statements required by paragraph (a) unless the governing~~
 826 ~~documents provide otherwise.~~

827 2.3. A report of cash receipts and disbursement must
 828 disclose the amount of receipts by accounts and receipt
 829 classifications and the amount of expenses by accounts and
 830 expense classifications, including, but not limited to, the
 831 following, as applicable: costs for security, professional, and
 832 management fees and expenses; taxes; costs for recreation

833 facilities; expenses for refuse collection and utility services;
 834 expenses for lawn care; costs for building maintenance and
 835 repair; insurance costs; administration and salary expenses; and
 836 reserves if maintained by the association.

837 (c) If 20 percent of the parcel owners petition the board
 838 for a level of financial reporting higher than that required by
 839 this section, the association shall duly notice and hold a
 840 meeting of members within 30 days of receipt of the petition for
 841 the purpose of voting on raising the level of reporting for that
 842 fiscal year. Upon approval of a majority of the total voting
 843 interests of the parcel owners, the association shall prepare or
 844 cause to be prepared, shall amend the budget or adopt a special
 845 assessment to pay for the financial report regardless of any
 846 provision to the contrary in the governing documents, and shall
 847 provide within 90 days of the meeting or the end of the fiscal
 848 year, whichever occurs later:

849 1. Compiled, reviewed, or audited financial statements, if
 850 the association is otherwise required to prepare a report of
 851 cash receipts and expenditures;

852 2. Reviewed or audited financial statements, if the
 853 association is otherwise required to prepare compiled financial
 854 statements; or

855 3. Audited financial statements if the association is
 856 otherwise required to prepare reviewed financial statements.

857 (d) If approved by a majority of the voting interests
 858 present at a properly called meeting of the association, an

859 association may prepare or cause to be prepared:

860 1. A report of cash receipts and expenditures in lieu of a
861 compiled, reviewed, or audited financial statement;

862 2. A report of cash receipts and expenditures or a
863 compiled financial statement in lieu of a reviewed or audited
864 financial statement; or

865 3. A report of cash receipts and expenditures, a compiled
866 financial statement, or a reviewed financial statement in lieu
867 of an audited financial statement.

868 (e) If an association has not provided the member with a
869 copy of the financial report after receipt of a written request
870 within the time required pursuant to this section, the member
871 may contact the division to report the association's failure to
872 comply. Upon notification, the division shall contact the
873 association to request that the association provide the copy of
874 the financial report to the member within 5 business days. If
875 the association further fails to provide the copy of the
876 financial report, the association must provide a copy of the
877 financial report to the division within 7 business days.
878 Additionally, the association must provide a copy of the
879 financial report to the division for the 2 subsequent fiscal
880 years within 21 days after the final financial report is
881 completed by the association or received from the third party
882 and may not waive the financial reporting requirement as
883 provided in paragraph (d). The division shall maintain the
884 financial reports and provide a copy of the financial reports to

885 | members of the public upon request.

886 | Section 4. Paragraph (c) of subsection (9) of section
887 | 720.306, Florida Statutes, is amended to read:

888 | 720.306 Meetings of members; voting and election
889 | procedures; amendments.—

890 | (9) ELECTIONS AND BOARD VACANCIES.—

891 | (c) Any election dispute between a member and an
892 | association must be submitted to mandatory binding arbitration
893 | with the division. Such proceedings must be conducted in the
894 | manner provided by s. 718.1255 and the procedural rules adopted
895 | by the division. Unless otherwise provided in the bylaws, any
896 | vacancy occurring on the board before the expiration of a term
897 | may be filled by an affirmative vote of the majority of the
898 | remaining directors, even if the remaining directors constitute
899 | less than a quorum, or by the sole remaining director. In the
900 | alternative, a board may hold an election to fill the vacancy,
901 | in which case the election procedures must conform to the
902 | requirements of the governing documents. Unless otherwise
903 | provided in the bylaws, a board member appointed or elected
904 | under this section is appointed for the unexpired term of the
905 | seat being filled. Filling vacancies created by recall is
906 | governed by s. 720.303(11) ~~720.303(10)~~ and rules adopted by the
907 | division.

908 | Section 5. Subsection (1) of section 720.311, Florida
909 | Statutes, is amended to read:

910 | 720.311 Dispute resolution.—

911 (1) The Legislature finds that alternative dispute
 912 resolution has made progress in reducing court dockets and
 913 trials and in offering a more efficient, cost-effective option
 914 to litigation. The filing of any petition for arbitration or the
 915 serving of a demand for presuit mediation as provided for in
 916 this section shall toll the applicable statute of limitations.
 917 Any recall dispute filed with the department pursuant to s.
 918 720.303(11) ~~720.303(10)~~ shall be conducted by the department in
 919 accordance with the provisions of ss. 718.112(2)(j) and 718.1255
 920 and the rules adopted by the division. In addition, the
 921 department shall conduct mandatory binding arbitration of
 922 election disputes between a member and an association pursuant
 923 to s. 718.1255 and rules adopted by the division. Neither
 924 election disputes nor recall disputes are eligible for presuit
 925 mediation; these disputes shall be arbitrated by the department.
 926 At the conclusion of the proceeding, the department shall charge
 927 the parties a fee in an amount adequate to cover all costs and
 928 expenses incurred by the department in conducting the
 929 proceeding. Initially, the petitioner shall remit a filing fee
 930 of at least \$200 to the department. The fees paid to the
 931 department shall become a recoverable cost in the arbitration
 932 proceeding, and the prevailing party in an arbitration
 933 proceeding shall recover its reasonable costs and attorney's
 934 fees in an amount found reasonable by the arbitrator. The
 935 department shall adopt rules to effectuate the purposes of this
 936 section.

937

Section 6. This act shall take effect July 1, 2016.

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 _____

1 Committee/Subcommittee hearing bill: Government Operations
2 Appropriations Subcommittee
3 Representative Sprowls offered the following:

Amendment (with title amendment)

Between lines 471 and 472, insert:

Section 2. Paragraph (c) of subsection (3) of section 718.117, Florida Statutes, is amended to read:

718.117 Termination of condominium.—

(3) OPTIONAL TERMINATION.—Except as provided in subsection (2) or unless the declaration provides for a lower percentage, the condominium form of ownership may be terminated for all or a portion of the condominium property pursuant to a plan of termination approved by at least 80 percent of the total voting interests of the condominium. If 10 percent or more of the total voting interests of the condominium have rejected the plan of

Amendment No. 1

17 termination by negative vote or by providing written objections,
18 the plan of termination may not proceed.

19 (c) For purposes of this subsection, the term "bulk owner"
20 means the single holder of such voting interests or an owner
21 together with a related entity or entities that would be
22 considered an insider, as defined in s. 726.102, holding such
23 voting interests. If the condominium association is a
24 residential association proposed for termination pursuant to
25 this section and, at the time of recording the plan of
26 termination, at least 80 percent of the total voting interests
27 are owned by a bulk owner, the plan of termination is subject to
28 the following conditions and limitations:

29 1. If the former condominium units are offered for lease
30 to the public after the termination, each unit owner in
31 occupancy immediately before the date of recording of the plan
32 of termination may lease his or her former unit and remain in
33 possession of the unit for 12 months after the effective date of
34 the termination on the same terms as similar unit types within
35 the property are being offered to the public. In order to obtain
36 a lease and exercise the right to retain exclusive possession of
37 the unit owner's former unit, the unit owner must make a written
38 request to the termination trustee to rent the former unit
39 within 90 days after the date the plan of termination is
40 recorded. Any unit owner who fails to timely make such written
41 request and sign a lease within 15 days after being presented
42 with a lease is deemed to have waived his or her right to retain

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43 possession of his or her former unit and shall be required to
44 vacate the former unit upon the effective date of the
45 termination, unless otherwise provided in the plan of
46 termination.

47 2. Any former unit owner whose unit was granted homestead
48 exemption status by the applicable county property appraiser as
49 of the date of the recording of the plan of termination shall be
50 paid a relocation payment in an amount equal to 1 percent of the
51 termination proceeds allocated to the owner's former unit. Any
52 relocation payment payable under this subparagraph shall be paid
53 by the single entity or related entities owning at least 80
54 percent of the total voting interests. Such relocation payment
55 shall be in addition to the termination proceeds for such
56 owner's former unit and shall be paid no later than 10 days
57 after the former unit owner vacates his or her former unit.

58 3. For their respective units, all unit owners other than
59 the bulk owner must be compensated at least 100 percent of the
60 fair market value of their units. The fair market value shall be
61 determined as of a date that is no earlier than 90 days before
62 the date that the plan of termination is recorded and shall be
63 determined by an independent appraiser selected by the
64 termination trustee. For an original purchaser from the
65 developer who rejects the plan of termination ~~and whose unit was~~
66 ~~granted homestead exemption status by the applicable county~~
67 ~~property appraiser,~~ or was an owner-occupied operating business,
68 as of the date that the plan of termination is recorded and who

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69 is current in payment of both assessments and other monetary
70 obligations to the association and any mortgage encumbering the
71 unit as of the date the plan of termination is recorded, the
72 fair market value for the unit owner rejecting the plan shall be
73 at least the original purchase price paid for the unit. For
74 purposes of this subparagraph, the term "fair market value"
75 means the price of a unit that a seller is willing to accept and
76 a buyer is willing to pay on the open market in an arms-length
77 transaction based on similar units sold in other condominiums,
78 including units sold in bulk purchases but excluding units sold
79 at wholesale or distressed prices. The purchase price of units
80 acquired in bulk following a bankruptcy or foreclosure shall not
81 be considered for purposes of determining fair market value.

82 4. The plan of termination must provide for payment of a
83 first mortgage encumbering a unit to the extent necessary to
84 satisfy the lien, but the payment may not exceed the unit's
85 share of the proceeds of termination under the plan. If the unit
86 owner is current in payment of both assessments and other
87 monetary obligations to the association and any mortgage
88 encumbering the unit as of the date the plan of termination is
89 recorded, the receipt by the holder of the unit's share of the
90 proceeds of termination under the plan or the outstanding
91 balance of the mortgage, whichever is less, shall be deemed to
92 have satisfied the first mortgage in full.

93 5. Before a plan of termination is presented to the unit
94 owners for consideration pursuant to this paragraph, the plan

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95 must include the following written disclosures in a sworn
96 statement:

97 a. The identity of any person or entity that owns or
98 controls 50 percent or more of the units in the condominium and,
99 if the units are owned by an artificial entity or entities, a
100 disclosure of the natural person or persons who, directly or
101 indirectly, manage or control the entity or entities and the
102 natural person or persons who, directly or indirectly, own or
103 control 20 percent or more of the artificial entity or entities
104 that constitute the bulk owner.

105 b. The units acquired by any bulk owner, the date each
106 unit was acquired, and the total amount of compensation paid to
107 each prior unit owner by the bulk owner, regardless of whether
108 attributed to the purchase price of the unit.

109 c. The relationship of any board member to the bulk owner
110 or any person or entity affiliated with the bulk owner subject
111 to disclosure pursuant to this subparagraph.

112

113 -----

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

115 Between lines 19 and 20, insert:
116 amending s. 718.117, F.S.; revising applicability of
117 certain provisions related to the determination of
118 fair market value for a unit owner rejecting a plan of
119 termination;