1988

Session Law 88-148

Florida Senate & House of Representatives

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A bill to be entitled
An act relating to condominiums and
cooperatives; amending ss. 718.401 and 719.401, P.S., providing for the application of certain options available to condominium and cooperative leases governing recreational facilities or other common elements; prohibiting escalation clauses in certain condominium and cooperative leases; providing an effective date.

WHEREAS, ss. 718.401(8) and 719.401(8), Florida Statutes, declare that the public policy of this state "prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving condominiums and cooperatives, and such escalation clauses are declared void, and

WHEREAS, the Florida Supreme Court has held that s. 718.401(8), Florida Statutes, is not retroactive and may not apply to leases entered into prior to June 4 because such application would violate the contract clause of the Florida and Federal Constitutions, and

WHEREAS, the United States Supreme Court has since decided the case of Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 104 S.Ct. 2321 (1984), wherein it upheld a Hawaiian statutory scheme which authorizes the State of Hawaii to purchase land being used for residential rental housing pursuant to its powers of eminent domain, and in turn to sell the land to private citizens in order to attain the public good of land ownership being had by a broad spectrum of the

CODING: Words stricken are deletions; words underlined are additions.
citizenship. The court held that the public use requirement
of an eminent domain taking is "coterminous with the scope of
a sovereign's police power," and

WHEREAS, it is well recognized that the contract
clauses of the Federal and State Constitutions are not
absolute and may be required to yield to competing
constitutional provisions, including the state's police power
(see, e.g., Tampa Northern R., Co. v. City of Tampa, et al,
107 So. 364 (Fla. 1926)), and

WHEREAS, an estimated 58,894 condominium units are
subject to escalation clauses in land or recreational leases.
These leases are spread throughout 27 counties of this state,
and

WHEREAS, the State of Florida has an exceptionally
large population of elderly and retired citizens, a large
number of whom reside in condominiums and cooperatives and an
overwhelming number of whom are living on a fixed income, and

WHEREAS, in the early years of the development of the
condominium and cooperative industry, the national inflation
rate was less than 3 percent per year, but in the early
seventies the inflation rate, and thus the consumer price
indices, rose dramatically, providing windfall profits to
owners of such condominium and cooperative leaseholds, and

WHEREAS, escalation clauses cause a rise in the cost of
operations of recreational and common land and facilities
which has no relation to the increase in costs of bringing
those lands and facilities to the unit owners, and

WHEREAS, in recent years, inflation has drastically
increased the cost of living in the state; the spiraling cost
of living affects all people through erosion of the purchasing
power of whatever monetary resources they command. For a
growing proportion of Florida's population, quite possibly a
majority, the high cost of living is denying them such basic
necessities as sufficient nutritional intake, safe and healthy
housing accommodations, clothing, and adequate preventive and
curative health services. Stabilizing the artificial
inflation of condominium and cooperative housing would help
curb the rising cost of living in Florida and, ultimately,
contribute to the welfare of all people of the state by
improving their standard of living, and

WHEREAS, escalation clauses in leases for recreational
facilities or other commonly used facilities or land serving
condominiums are inflationary in nature, and

WHEREAS, inflation lessens the quality of life of all
members of this state and is particularly invidious in its
impact on the elderly and others on fixed incomes. The state
has limited abilities to curb inflation and, perhaps, the only
useful means available is the state's power to control housing
costs. There is a pressing public necessity for the state to
do whatever it can to curb inflation and to keep the cost of
living at a level where it is possible and manageable to
provide citizens a decent and healthful standard of life. The
public use and purpose of providing all citizens a decent and
healthful standard of life will be directly and substantially
furthered by the retroactive application of ss. 718.401(8) and
719.401(8), Florida Statutes, and

WHEREAS, leases involving the use of recreational or
other common facilities or land by purchasers of condominiums
and cooperatives and which contain escalation clauses tied to
a nationally recognized consumer price index, entered into by
parties wholly representative of the interests of a
condominium or cooperative developer at a time when the

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condominium or cooperative unit owners not only did not
close the administration of their condominium or
cooperative, but also had little or no voice in such
administration, have resulted in onerous obligations and
circumstances, and

WHEREAS, the State of Florida has made substantial
efforts to eliminate unscrupulous real estate and securities
operations which, in the past, resulted in Florida's gaining a
poor reputation for protecting consumers. Comprehensive laws
have been adopted and scrupulously enforced in the areas of
land sales, condominiums, cooperatives, time-share, and
securities. It is in the public's interest and welfare that
the state maintain its image of protecting Florida purchasers
and dealing harshly with those who would take advantage of
them, and

WHEREAS, the Legislature of the State of Florida finds
that the legislation herein proposed is necessary to meet a
broad and pressing social and economic need as described
herein, NOW, THEREFORE,

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

Section 1. Paragraph (a) of subsection (6) and
paragraph (a) of subsection (8) of section 718.401, Florida
Statutes, are amended to read:

718.401 Leaseholds.—A condominium may be created on
lands held under lease or may include recreational facilities
or other common elements or commonly used facilities on a
leasehold if, on the date the first unit is conveyed by the
developer to a bona fide purchaser, the lease has an unexpired
term of at least 50 years. If rent under the lease is payable

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by the association or by the unit owners, the lease shall
include the following requirements:

(6)(a) A lease of recreational or other commonly used
facilities entered into by the association or unit owners
prior to the time when the control of the association is
turned over to unit owners other than the developer shall
grant to the lessee an option to purchase the leased property,
payable in cash, on any anniversary date of the beginning of
the lease term after the 10th anniversary, at a price then
determined by agreement. If there is no agreement as to the
price, then the price shall be determined by arbitration.
This paragraph shall be applied to contracts entered into
prior to January 1, 1977.

(8)(a) It is declared that the public policy of this
state prohibits the inclusion or enforcement of escalation
clauses in land leases or other leases or agreements for
recreational facilities, land, or other commonly used
facilities serving residential condominiums, and such clauses
are hereby declared void for public policy. For the purposes
of this section, an escalation clause is any clause in a
condominium lease or agreement which provides that the rental
under the lease or agreement shall increase at the same
percentage rate as any nationally recognized and conveniently
available commodity or consumer price index. This subsection
shall be applied to contracts entered into prior to June 4,
1975, to the extent of holding invalid any further escalation
of the amount due under condominium contracts entered into
prior to that date.

Section 2. Paragraph (a) of subsection (6) and
paragraph (a) of subsection (8) of section 719.401, Florida
Statutes, 1986 Supplement, are amended to read:

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719.401 Leaseholds.--A cooperative may be created on 
lands held under lease or may include recreational facilities 
or other common elements or commonly used facilities on a 
leasehold, if, on the date the first unit is conveyed by the 
developer to a bona fide purchaser, the lease has an unexpired 
term of at least 50 years. If rent under the lease is payable 
by the association or by the unit owners, the lease shall 
include the following requirements:

(6)(a) A lease of recreational or other commonly used 
facilities entered into by the association or unit owners 
prior to the time the control of the association is turned 
over to unit owners other than the developer shall grant to 
the lessee an option to purchase the leased property, payable 
in cash on any anniversary date of the beginning of the lease 
term after the 10th anniversary, at a price then determined by 
agreement. If there is no agreement as to the price, then the 
price shall be determined by arbitration. This paragraph 
shall be applied to contracts entered into prior to January 1, 
1977.

(8)(a) It is declared that the public policy of this 
state prohibits the inclusion or enforcement of escalation 
clauses in land leases or other leases or agreements for 
recreational facilities, land, or other commonly used 
facilities serving residential cooperatives, and such clauses 
are hereby declared void for public policy. For the purposes 
of this section, an escalation clause is any clause in a 
cooperative lease or agreement which provides that the rental 
under the lease or agreement shall increase at the same 
percentage rate as any nationally recognized and conveniently 
available commodity or consumer price index. This subsection 
shall be applied to contracts entered into prior to June 4.
1975, to the extent of holding invalid any further escalation of the amount due under cooperative contracts entered into prior to that date.

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

______________________________________________________________

LEGISLATIVE SUMMARY

Provides that contracts entered into prior to January 1, 1977, with respect to leases of recreational facilities or other commonly used condominium or cooperative facilities shall be deemed to grant the lessee an option to purchase the leased property for cash under described circumstances. Provides that escalation clauses in condominium or cooperative contracts are declared void for public policy reasons and provides that such a prohibition shall apply retroactively to contracts entered into prior to June 4, 1975.

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A bill to be entitled
An act relating to condominiums and
cooperatives; amending ss. 718.401 and 719.401,
F.S.; providing for the application of certain
options available to condominium and
cooperative leases governing recreational
facilities or other common elements;
prohibiting the enforcement of escalation
clauses in certain existing condominium and
cooperative leases; providing an effective
date.

WHEREAS, ss. 718.401(8) and 719.401(8), Florida
Statutes, declare that the public policy of this state
"prohibits the inclusion or enforcement of escalation clauses
in land leases or other leases or agreements for recreational
facilities, land, or other commonly used facilities serving
condominiums and cooperatives, and such escalation clauses are
declared void, and

WHEREAS, the Florida Supreme Court has held that s.
718.401(8), Florida Statutes, is not retroactive and may not
apply to leases entered into prior to June 4 because such
application would violate the contract clause of the Florida
and Federal Constitutions, and

WHEREAS, the United States Supreme Court has since
decided the case of Hawaii Housing Authority v. Midkiff, 467
U.S. 229, 104 S.Ct. 2321 (1984), wherein it upheld a Hawaiian
statutory scheme which authorizes the State of Hawaii to
purchase land being used for residential rental housing
pursuant to its powers of eminent domain, and in turn to sell
the land to private citizens in order to attain the public

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good of land ownership being had by a broad spectrum of the
citizenship. The court held that the public use requirement
of an eminent domain taking is "coterminous with the scope of
a sovereign's police power," and

WHEREAS, it is well recognized that the contract
clauses of the Federal and State Constitutions are not
absolute and may be required to yield to competing
constitutional provisions, including the state's police power
(see, e.g., Tampa Northern R., Co. v. City of Tampa, et al,
107 So. 364 (Fla. 1926), Pomponio v. Claridge of Pompano
Condominium, Inc., 378 So.2d 774 (Fla. 1979), Yellow Cab
Company of Dade County v. Dade County, 412 So.2d 395 (Fla. 3d
DCA 1982), United States Fidelity and Guaranty Company v.
Department of Insurance, 453 So.2d 1355 (Fla. 1984)), and

WHEREAS, there are an estimated 58,894 condominium
units that are subject to escalation clauses in land or
recreational leases. These leases are spread throughout 27
counties of this state, and

WHEREAS, the State of Florida has an exceptionally
large population of elderly and retired citizens, a large
number of whom reside in condominiums and cooperatives and an
overwhelming number of whom are living on a fixed income, and

WHEREAS, in the early years of the development of the
condominium and cooperative industry, the national inflation
rate was less than 3 percent per year, but in the early
seventies the inflation rate, and thus the consumer price
indices, rose dramatically, providing windfall profits to
owners of such condominium and cooperative leaseholds, and

WHEREAS, escalation clauses cause a rise in the cost of
operations of recreational and common land and facilities

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which has no relation to the increase in costs of bringing
those lands and facilities to the unit owners, and

WHEREAS, in recent years, inflation has drastically
increased the cost of living in the state; the spiraling cost
of living affects all people through erosion of the purchasing
power of whatever monetary resources they command. For a
growing proportion of Florida's population, quite possibly a
majority, the high cost of living is denying them such basic
necessities as sufficient nutritional intake, safe and healthy
housing accommodations, clothing, and adequate preventive and
curative health services. Stabilizing the artificial
inflation of condominium and cooperative housing would help
curb the rising cost of living in Florida and, ultimately,
contribute to the welfare of all people of the state by
improving their standard of living, and

WHEREAS, escalation clauses in leases for recreational
facilities or other commonly used facilities or land serving
condominiums are inflationary in nature, and

WHEREAS, inflation lessens the quality of life of all
members of this state and is particularly invidious in its
impact on the elderly and others on fixed incomes. The state
has limited abilities to curb inflation and, perhaps, the only
useful means available is the state's power to control housing
costs. There is a pressing public necessity for the state to
do whatever it can to curb inflation and to keep the cost of
living at a level where it is possible and manageable to
provide citizens a decent and healthful standard of life. The
public use and purpose of providing all citizens a decent and
healthful standard of life will be directly and substantially
furthered by the retroactive application of ss. 718.401(8) and
719.401(8), Florida Statutes, and

CODING: Words struck through are deletions; words underlined are additions.
WHEREAS, leases involving the use of recreational or other common facilities or land by purchasers of condominiums and cooperatives and which contain escalation clauses tied to a nationally recognized consumer price index, entered into by parties wholly representative of the interests of a condominium or cooperative developer at a time when the condominium or cooperative unit owners not only did not control the administration of their condominium or cooperative, but also had little or no voice in such administration, have resulted in onerous obligations and circumstances, and

WHEREAS, the State of Florida has made substantial efforts to eliminate unscrupulous real estate and securities operations which, in the past, resulted in Florida's gaining a poor reputation for protecting consumers. Comprehensive laws have been adopted and scrupulously enforced in the areas of land sales, condominiums, cooperatives, time-share, and securities. It is in the public's interest and welfare that the state maintain its image of protecting Florida purchasers and dealing harshly with those who would take advantage of them, and

WHEREAS, the Legislature of the State of Florida finds that the legislation herein proposed is necessary to meet a broad and pressing social and economic need as described herein, NOW, THEREFORE,

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

Section 1. Paragraph (a) of subsection (6) and subsection (8) of section 718.401, Florida Statutes, are amended to read:

CODING: Words struck out are deletions; words underlined are additions.
Leaseholds.--A condominium may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(6)(a) A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time when the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash, on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration. This paragraph shall be applied to contracts entered into prior to January 1, 1977.

(8)(a) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a condominium lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.
(b) The provisions of paragraph (a) this-subsection do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof. However, the provisions of paragraph (a) apply to contracts entered into prior to, on, and after June 4, 1975, if the lessor is not the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof. The application of paragraph (a) to contracts entered into prior to June 4, 1975, may not divest the parties of any benefits or obligations arising from the escalation of fees prior to October 1, 1988, but only prohibits further escalation of fees pursuant to the escalation clauses, on or after October 1, 1988.

Section 2. Paragraph (a) of subsection (6) and subsection (8) of section 719.401, Florida Statutes, are amended to read:

719.401 Leaseholds.--A cooperative may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold, if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(6)(a) A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash on any anniversary date of the beginning of the lease

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term after the 10th anniversary, at a price then determined by
agreement. If there is no agreement as to the price, then the
price shall be determined by arbitration. This paragraph
shall be applied to contracts entered into prior to January 1,
1977.

(8)(a) It is declared that the public policy of this
state prohibits the inclusion or enforcement of escalation
clauses in land leases or other leases or agreements for
recreational facilities, land, or other commonly used
facilities serving residential cooperatives, and such clauses
are hereby declared void for public policy. For the purposes
of this section, an escalation clause is any clause in a
cooperative lease or agreement which provides that the rental
under the lease or agreement shall increase at the same
percentage rate as any nationally recognized and conveniently
available commodity or consumer price index.

(b) The provisions of paragraph (a) do not apply if the lessor is the Government of the United
States or the State of Florida or any political subdivision
thereof or any agency of any political subdivision thereof.
However, the provisions of paragraph (a) apply to contracts
entered into prior to, on, and after June 4, 1975, if the
lessor is not the Government of the United States or this
state or any political subdivision thereof or any agency of
any political subdivision thereof. The application of
paragraph (a) to contracts entered into prior to June 4, 1975,
may not divest the parties of any benefits or obligations
arising from the escalation of fees prior to October 1, 1988,
but only prohibits further escalation of fees pursuant to the
escalation clauses, on or after October 1, 1988.

Section 3. This act shall take effect October 1, 1988.

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The bill would apply the prohibition against certain escalation clauses contained in ss. 718.401(8)(a) and 719.401(8)(a), F.S., to land and recreation facility leases entered into prior to June 1, 1975, by prohibiting any further escalation in fees after October 1, 1988, instead of voiding such clauses at their inception.
A bill to be entitled
An act relating to condominiums; amending s.
718.401, F.S.; prohibiting the enforcement of
escalation clauses in certain existing
condominium leases; providing an effective
date.

WHEREAS, the Legislature of the State of Florida has declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases for recreational facilities serving residential condominiums and has declared such clauses void, and

WHEREAS, it is well recognized that the contract clauses of the Federal and State Constitutions are not absolute prohibitions against contract impairment but may be required to yield to competing constitutional provisions, including the state's police power (see, e.g., Pomponio v. Claridge of Pompano Condominium, Inc., 378 So.2d 774 (Fla. 1979), fellow Cab Company of Dade County v. Dade County, 412 So.2d 395 (Fla. 3d DCA 1982), United States Fidelity and Guaranty Company v. Department of Insurance, 453 So.2d 1355 (Fla. 1984)), NOW THEREFORE,

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

Section 1. Subsection (8) of section 718.401, Florida Statutes, is amended to read:

718.401 Leaseholds.—A condominium may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold if, on the date the first unit is conveyed by the

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developer to a bona fide purchaser, the lease has an unexpired
term of at least 50 years. If rent under the lease is payable
by the association or by the unit owners, the lease shall
include the following requirements:

(8)(a) It is declared that the public policy of this
state prohibits the inclusion or enforcement of escalation
clauses in land leases or other leases or agreements for
recreational facilities, land, or other commonly used
facilities serving residential condominiums, and such clauses
are hereby declared void for public policy. For the purposes
of this section, an escalation clause is any clause in a
condominium lease or agreement which provides that the rental
under the lease or agreement shall increase at the same
percentage rate as any nationally recognized and conveniently
available commodity or consumer price index.

(b) The provisions of paragraph (a) this subsection do
not apply if the lessor is the Government of the United States
or this state or any political subdivision thereof or any
agency of any political subdivision thereof. However, the
provisions of paragraph (a) apply to contracts entered into
prior to, on, and after June 4, 1975, if the lessor is not the
Government of the United States or this state or any political
subdivision thereof or any agency of any political subdivision
thereof. The application of paragraph (a) to contracts
entered into prior to June 4, 1975, may not divest the parties
of any benefits or obligations arising from the escalation of
fees prior to October 1, 1988, but only prohibits further
escalation of fees pursuant to the escalation clauses, on or
after October 1, 1988.

Section 2. This act shall take effect October 1, 1988.

CODING: Words struck are deletions; words underlined are additions.
SENATE SUMMARY

Prohibits on or after October 1, 1988, the enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums, regardless of when the lease or agreement was entered.

CODING: Words stricken are deletions; words underlined are additions
A bill to be entitled

An act relating to condominiums; amending s.
718.115, F.S.; providing for additional expense
items to be treated as common expenses;
providing an effective date.

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

Section 1. Subsection (1) of section 718.115, Florida
Statutes, is amended to read

718.115 Common expenses and common surplus.--
(1) Common expenses include the expenses of the
operation, maintenance, repair, or replacement of the common
elements, costs of carrying out the powers and duties of the
association, and any other expense designated as common
expense by this chapter, the declaration, the documents
creating the condominium, or the bylaws. Common expenses also
include transportation services, insurance for officers and
directors, security services, road maintenance and operation
expenses, and assessments to a master association, which are
reasonably related to the general benefit of the unit owners,
even if such expenses do not relate to the common elements or
property of the condominium. For purposes of this subsection,
the term "master association" means any corporation not for
profit, the membership of which is composed of homeowners,
condominium unit owners, or other housing owners and which is
created by a recorded declaration or covenant running with the
land or by court order.

Section 2. This act shall take effect October 1, 1988.
SENATE SUMMARY

Provides that certain additional expenses not related to the common elements or property of condominiums may be treated as common expenses.
Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (l) of section 718.115, Florida Statutes, is amended to read:

718.115 Common expenses and common surplus.--

(l) Common expenses include the expenses of the operation, maintenance, repair, or replacement of the common elements, costs of carrying out the powers and duties of the association, and any other expense designated as common expense by this chapter, the declaration, the documents creating the condominium, or the bylaws. Common expenses also include reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house communications, and security services, which are reasonably related to the general benefit of the unit owners, even if such expenses do not attach to the common elements or property of the condominium. However, such common expenses must either have been services or items provided from the date the control of the board of administration of the association was transferred from the developer to the unit owners or must be services or items provided for in the condominium documents or bylaws.

Section 2. This act shall take effect July 1, 1998, or upon becoming a law, whichever occurs later.
STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN COMMITTEE SUBSTITUTE FOR Senate Bill 54

Clarifies common expenses for condominiums to include inhouse communications. States that common expenses must be provided in documents or by-laws, or be part of transfer from developer.
By Senators Weinstein, Myers, Grizzle, Scott, Hill, Malchon, McPherson and Vogt

A bill to be entitled
An act relating to condominiums and cooperatives; amending ss. 718.401 and 719.401, F.S.; providing for the application of certain options available to condominium and cooperative leases governing recreational facilities or other common elements; prohibiting the enforcement of escalation clauses in certain existing condominium and cooperative leases; providing an effective date.

WHEREAS, ss. 718.401(8) and 719.401(8), Florida Statutes, declare that the public policy of this state "prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving condominiums and cooperatives, and such escalation clauses are declared void, and

WHEREAS, the Florida Supreme Court has held that s. 718.401(8), Florida Statutes, is not retroactive and may not apply to leases entered into prior to June 4 because such application would violate the contract clause of the Florida and Federal Constitutions, and

WHEREAS, the United States Supreme Court has since decided the case of Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 104 S.Ct. 2321 (1984), wherein it upheld a Hawaiian statutory scheme which authorizes the State of Hawaii to purchase land being used for residential rental housing pursuant to its powers of eminent domain, and in turn to sell the land to private citizens in order to attain the public
good of land ownership being had by a broad spectrum of the
citizenship. The court held that the public use requirement
of an eminent domain taking is "coterminous with the scope of
a sovereign's police power," and

WHEREAS, it is well recognized that the contract
clauses of the Federal and State Constitutions are not
absolute and may be required to yield to competing
constitutional provisions, including the state's police power
(see, e.g., Tampa Northern R., Co. v. City of Tampa, et al,
107 So. 364 (Fla. 1926), Pomponio v. Claridge of Pompano
Condominium, Inc., 378 So.2d 774 (Fla. 1979), Yellow Cab
Company of Dade County v. Dade County, 412 So.2d 395 (Fla. 3d
DCA 1982), United States Fidelity and Guaranty Company v.
Department of Insurance, 453 So.2d 1355 (Fla. 1984)), and
WHEREAS, there are an estimated 58,894 condominium
units that are subject to escalation clauses in land or
recreational leases. These leases are spread throughout 27
counties of this state, and
WHEREAS, the State of Florida has an exceptionally
large population of elderly and retired citizens, a large
number of whom reside in condominiums and cooperatives and an
overwhelming number of whom are living on a fixed income, and
WHEREAS, in the early years of the development of the
condominium and cooperative industry, the national inflation
rate was less than 3 percent per year, but in the early
seventies the inflation rate, and thus the consumer price
indices, rose dramatically, providing windfall profits to
owners of such condominium and cooperative leaseholds, and
WHEREAS, escalation clauses cause a rise in the cost of
operations of recreational and common land and facilities

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which has no relation to the increase in costs of bringing
those lands and facilities to the unit owners, and

WHEREAS, in recent years, inflation has drastically
increased the cost of living in the state; the spiraling cost
of living affects all people through erosion of the purchasing
power of whatever monetary resources they command. For a
growing proportion of Florida's population, quite possibly a
majority, the high cost of living is denying them such basic
necessities as sufficient nutritional intake, safe and healthy
housing accommodations, clothing, and adequate preventive and
curative health services. Stabilizing the artificial
inflation of condominium and cooperative housing would help
curb the rising cost of living in Florida and, ultimately,
contribute to the welfare of all people of the state by
improving their standard of living, and

WHEREAS, escalation clauses in leases for recreational
facilities or other commonly used facilities or land serving
condominiums are inflationary in nature, and

WHEREAS, inflation lessens the quality of life of all
members of this state and is particularly invidious in its
impact on the elderly and others on fixed incomes. The state
has limited abilities to curb inflation and, perhaps, the only
useful means available is the state's power to control housing
costs. There is a pressing public necessity for the state to
do whatever it can to curb inflation and to keep the cost of
living at a level where it is possible and manageable to
provide citizens a decent and healthy standard of life. The
public use and purpose of providing all citizens a decent and
healthful standard of life will be directly and substantially
furthered by the retroactive application of ss. 718.401(8) and
719.401(8), Florida Statutes, and

CODING: Words strucken are deletions, words underlined are additions.
WHEREAS, leases involving the use of recreational or other common facilities or land by purchasers of condominiums and cooperatives and which contain escalation clauses tied to a nationally recognized consumer price index, entered into by parties wholly representative of the interests of a condominium or cooperative developer at a time when the condominium or cooperative unit owners not only did not control the administration of their condominium or cooperative, but also had little or no voice in such administration, have resulted in onerous obligations and circumstances, and

WHEREAS, the State of Florida has made substantial efforts to eliminate unscrupulous real estate and securities operations which, in the past, resulted in Florida's gaining a poor reputation for protecting consumers. Comprehensive laws have been adopted and scrupulously enforced in the areas of land sales, condominiums, cooperatives, time-share, and securities. It is in the public's interest and welfare that the state maintain its image of protecting Florida purchasers and dealing harshly with those who would take advantage of them, and

WHEREAS, the Legislature of the State of Florida finds that the legislation herein proposed is necessary to meet a broad and pressing social and economic need as described herein, NOW, THEREFORE,

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

Section 1. Paragraph (a) of subsection (6) and subsection (8) of section 718.401, Florida Statutes, are amended to read.

CODING: Words struck are deletions; words underlined are additions.
(b) The provisions of paragraph (a) of this subsection do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof. However, the provisions of paragraph (a) apply to contracts entered into prior to, on, and after June 4, 1975, if the lessor is not the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof. The application of paragraph (a) to contracts entered into prior to June 4, 1975, may not divest the parties of any benefits or obligations arising from the escalation of fees prior to October 1, 1988, but only prohibits further escalation of fees pursuant to the escalation clauses, on or after October 1, 1988.

Section 2. Paragraph (a) of subsection (6) and subsection (8) of section 719.401, Florida Statutes, are amended to read:

719.401 Leaseholds.—A cooperative may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold, if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(6)(a) A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash on any anniversary date of the beginning of the lease

CODING: Words struck are deletions; words underlined are additions.
718.401 Leaseholds.--A condominium may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(6)(a) A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time when the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash, on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration. This paragraph shall be applied to contracts entered into on, before, or after January 1, 1977.

(8)(a) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a condominium lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

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SENATE SUMMARY

Extends provisions which allow the lessee of a condominium or cooperative recreational lease to purchase the leased property to lessees under contracts entered into on or before January 1, 1977. Extends the prohibition against escalation clauses in recreational leases to leases arising from contracts entered into on or before June 4, 1975.

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term after the 10th anniversary, at a price then determined by
agreement. If there is no agreement as to the price, then the
price shall be determined by arbitration. This paragraph
shall be applied to contracts entered into on, before, or

(8)(a) It is declared that the public policy of this
state prohibits the inclusion or enforcement of escalation
clauses in land leases or other leases or agreements for
recreational facilities, land, or other commonly used
facilities serving residential cooperatives, and such clauses
are hereby declared void for public policy. For the purposes
of this section, an escalation clause is any clause in a
cooperative lease or agreement which provides that the rental
under the lease or agreement shall increase at the same
percentage rate as any nationally recognized and conveniently
available commodity or consumer price index.

(b) The provisions of paragraph (a) do not apply if the lessor is the Government of the United
States or the State of Florida or any political subdivision
ter thereof or any agency of any political subdivision thereof.
However, the provisions of paragraph (a) apply to contracts
entered into prior to, on, and after June 4, 1975, if the
lessor is not the Government of the United States or this
state or any political subdivision thereof or any agency of
any political subdivision thereof. The application of
paragraph (a) to contracts entered into prior to June 4, 1975,
may not divest the parties of any benefits or obligations
arising from the escalation of fees prior to October 1, 1988,
but only prohibits further escalation of fees pursuant to the
escalation clauses, on or after October 1, 1988.

Section 3. This act shall take effect October 1, 1988.
Florida House of Representatives - 1988

By Representatives Sample, Young, Tobin, Simone, Shelley, Northam, Lippman, Diaz-Balart, Rochlin, Bainter, King, Titone, Clark, Logan, Dunbar, Silver, Burke, Ostrau, Meffert, Holland, Gardner, Langton, Gustafson, Mitchell, Healey, Bloom,
(Additional Sponsors on Last Printed Page)

A bill to be entitled

An act relating to condominiums and

cooperatives; amending ss. 718.401 and 719.401,

F.S., providing for the application of certain

options available to condominium and

cooperative leases governing recreational

facilities or other common elements;

prohibiting escalation clauses in certain

condominium and cooperative leases; providing

an effective date.

WHEREAS, ss. 718.401(8) and 719.401(8), Florida

Statutes, declare that the public policy of this state

"prohibits the inclusion or enforcement of escalation clauses

in land leases or other leases or agreements for recreational

facilities, land, or other commonly used facilities serving

condominiums and cooperatives, and such escalation clauses are

declared void, and

WHEREAS, the Florida Supreme Court has held that s.

718.401(8), Florida Statutes, is not retroactive and may not

apply to leases entered into prior to June 4 because such

application would violate the contract clause of the Florida

and Federal Constitutions, and

WHEREAS, the United States Supreme Court has since

decided the case of Hawaii Housing Authority v. Midkiff, 467

U.S. 229, 104 S.Ct. 2321 (1984), wherein it upheld a Hawaiian

statutory scheme which authorizes the State of Hawaii to

purchase land being used for residential rental housing

pursuant to its powers of eminent domain, and in turn to sell

the land to private citizens in order to attain the public

good of land ownership being had by a broad spectrum of the

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citizenship. The court held that the public use requirement of an eminent domain taking is "coterminous with the scope of a sovereign's police power," and

WHEREAS, it is well recognized that the contract clauses of the Federal and State Constitutions are not absolute and may be required to yield to competing constitutional provisions, including the state's police power (see, e.g., Tampa Northern R. Co. v. City of Tampa, et al, 107 So. 364 (Fla. 1926)), and

WHEREAS, there are 58,894 condominium units of which the Legislature is aware that are subject to escalation clauses in land or recreational leases. These leases are spread throughout 27 counties of this state, and

WHEREAS, the State of Florida has an exceptionally large population of elderly and retired citizens, a large number of whom reside in condominiums and cooperatives and an overwhelming number of whom are living on a fixed income, and

WHEREAS, in the early years of the development of the condominium and cooperative industry, the national inflation rate was less than 3 percent per year, but in the early seventies the inflation rate, and thus the consumer price indices, rose dramatically, providing windfall profits to owners of such condominium and cooperative leaseholds, and

WHEREAS, escalation clauses cause a rise in the cost of operations of recreational and common land and facilities which has no relation to the increase in costs of bringing those lands and facilities to the unit owners, and

WHEREAS, in recent years, inflation has drastically increased the cost of living in the state; the spiraling cost of living affects all people through erosion of the purchasing power of whatever monetary resources they command. For a

COOING: Words stricken are deletions; words underlined are additions.
A growing proportion of Florida's population, quite possibly a majority, the high cost of living is denying them such basic necessities as sufficient nutritional intake, safe and healthy housing accommodations, clothing, and adequate preventive and curative health services. Stabilizing the artificial inflation of condominium and cooperative housing would help curb the rising cost of living in Florida and, ultimately, contribute to the welfare of all people of the state by improving their standard of living, and

WHEREAS, escalation clauses in leases for recreational facilities or other commonly used facilities or land serving condominiums are inflationary in nature, and

WHEREAS, inflation lessens the quality of life of all members of this state and is particularly invidious in its impact on the elderly and others on fixed incomes. The state has limited abilities to curb inflation and, perhaps, the only useful means available is the state's power to control housing costs. There is a pressing public necessity for the state to do whatever it can to curb inflation and to keep the cost of living at a level where it is possible and manageable to provide citizens a decent and healthful standard of life. The public use and purpose of providing all citizens a decent and healthful standard of life will be directly and substantially furthered by the retroactive application of ss. 718.401(8) and 719.401(8), Florida Statutes, and

WHEREAS, leases involving the use of recreational or other common facilities or land by purchasers of condominiums and cooperatives and which contain escalation clauses tied to a nationally recognized consumer price index, entered into by parties wholly representative of the interests of a condominium or cooperative developer at a time when the

CODING: Words stricken are deletions; words underlined are additions
WHEREAS, the State of Florida has made substantial efforts to eliminate unscrupulous real estate and securities operations which, in the past, resulted in Florida's gaining a poor reputation for protecting consumers. Comprehensive laws have been adopted and scrupulously enforced in the areas of land sales, condominiums, cooperatives, timeshare, and securities. It is in the public's interest and welfare that the state maintain its image of protecting Florida purchasers and dealing harshly with those who would take advantage of them, and

WHEREAS, the Legislature of the State of Florida finds that the legislation herein proposed is necessary to meet a broad and pressing social and economic need as described herein, NOW, THEREFORE,

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

Section 1. Paragraph (a) of subsection (6) and paragraph (a) of subsection (8) of section 718.401, Florida Statutes, are amended to read:

718.401 Leaseholds.--A condominium may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. If rent under the lease is payable
by the association or by the unit owners, the lease shall include the following requirements:

(6)(a) A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time when the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash, on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration. This paragraph shall be applied to contracts entered into prior to January 1, 1977.

(8)(a) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a condominium lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index. This subsection shall be applied to contracts entered into prior to June 4, 1975, to the extent of holding invalid any further escalation of the amount due under condominium contracts entered into prior to that date.

Section 2. Paragraph (a) of subsection (6) and paragraph (a) of subsection (8) of section 719.401, Florida Statutes, 1986 Supplement, are amended to read:

CODING. Words stricken are deletions; words underlined are additions.
719.401 Leaseholds.--A cooperative may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold, if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(6)(a) A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration. This paragraph shall be applied to contracts entered into prior to January 1, 1977.

(8)(a) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential cooperatives, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a cooperative lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index. This subsection shall be applied to contracts entered into prior to June 4,
1975, to the extent of holding invalid any further escalation of the amount due under cooperative contracts entered into prior to that date.

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

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HOUSE SUMMARY

Provides that contracts entered into prior to January 1, 1977, with respect to leases of recreational facilities or other commonly used condominium or cooperative facilities shall be deemed to grant the lessee an option to purchase the leased property for cash under described circumstances. Provides that escalation clauses in condominium or cooperative contracts are declared void for public policy reasons and provides that such a prohibition shall apply retroactively to contracts entered into prior to June 4, 1975.

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ADDITIONAL SPONSORS


This publication was produced at an average cost of 1.5 cents per single page in compliance with the Rules and for the information of members of the Legislature and the public.

Coding: Words stricken are deletions; words underlined are additions.
I. SUMMARY:

A. Present Situation:

Section 718.401(8)(a), F.S., prohibits the inclusion or enforcement of escalation clauses in leases for recreational facilities serving residential condominiums. The section defines an escalation clause as any clause in a condominium lease which provides that the rental under the lease is to increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index. Section 718.401(8)(a), F.S., is substantially the same as its predecessor s. 711.231, F.S., 1975.

Article I, section 10 of the Florida Constitution prohibits laws impairing the obligation of contracts.

The Florida Supreme Court held in Fleeman v. Case, 342 So.2d 815 (Fla. 1976) that there was no expression of legislative intent that s. 711.231, F.S., 1975, be applied retroactively. The Court further held that even had the Legislature expressed an intent that the statute be applied retroactively, the Court would not uphold such an application because it would result in unconstitutional impairment of the recreation lease contracts. Therefore, based on Fleeman, s. 718.401(8)(a), F.S., applied only to contracts entered into after the effective date of its predecessor, June 4, 1975.

B. Effect of Proposed Changes:

The bill would apply the prohibition against escalation clauses contained in s. 718.401(8)(a), F.S., retroactively to leases entered into prior to June 4, 1975. However, the escalation clauses would not be voided as of their inception. Instead the bill would prohibit any further escalation in fees after October 1, 1988, thereby freezing the rental fees at their level on that date.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Condominium unit owners who are presently subject to such escalation clauses would be relieved of any fee increases due to future enforcement of escalation clauses and the owners of the recreational property would accordingly lose these increased fees.

B. Government:

None.
III. COMMENTS:

Since Fleeman, the Florida Supreme Court has relaxed its standard for contract impairment cases. In Pomponio v. Claridge of Pompano Condominium, Inc., 378 So.2d 774 (Fla. 1979), the Court adopted a new approach to contract clause analysis similar to that of the United States Supreme Court. Under this new approach, state regulations which impair contract obligations must be reasonable and necessary to serve an important public purpose. In discussing this new approach, the Court stated,

To determine how much impairment is tolerable, we must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil which it seeks to remedy. Obviously, this becomes a balancing process to determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the state's objective, or whether it unreasonably intrudes into the parties' bargain to a degree greater than is necessary to achieve that objective.

It should be noted that if the issue of retroactive application of s. 718.401(8)(a), F.S., were again brought before the Supreme Court, it is possible the Court would recede from its position taken in Fleeman, and apply the principals set out in Pomponio. In such event, the case of Wilderness Country Club Partnership, Ltd. v. Groves, 458 So.2d 769 (Fla. 2d DCA 1984) may have a great impact in the "balancing process" test of constitutionality. Wilderness dealt with an unusual fact situation. The recreation lease at issue was entered into prior to June 4, 1975., but the condominium declaration was filed after that date. Both the lease and declaration contained cross-references to the other document and each was dependent on the other document. The trial court invalidated the escalation clause contained in the lease and rescinded the entire lease contract. The district court upheld the invalidation and turned to the issue of rescission of the contract. The court stated that "Where one contractual provision is void, the balance of the contract is also void unless the balance fairly reflects the original intent of the parties to the contract." The court reasoned that without the escalation clause, the land owner would receive only the base rent fee which is only a portion of the rental fees originally contemplated as the contract price. The court stated, "Generally, the price term in a contract is vital; severing the price term eliminates the essence of the contracting parties' agreement." Based on this, the court upheld the rescission of the entire lease. This case would be precedence for judging the severity of the contract impairment.

There is a comparable bill in the House, HB 45.

IV. AMENDMENTS:

None.
I. SUMMARY:

A. Present Situation:

Section 718.401(8)(a), F.S., prohibits the inclusion or enforcement of escalation clauses in leases for recreational facilities serving residential condominiums. The section defines an escalation clause as any clause in a condominium lease which provides that the rental under the lease is to increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index. Section 718.401(8)(a), F.S., is substantially the same as its predecessor s. 711.231, F.S., 1975.

Article I, section 10 of the Florida Constitution prohibits laws impairing the obligation of contracts.

The Florida Supreme Court held in Fleeman v. Case, 342 So.2d 815 (Fla. 1976) that there was no expression of legislative intent that s. 711.231, F.S., 1975, be applied retroactively. The Court further held that even had the Legislature expressed an intent that the statute be applied retroactively, the Court would not uphold such an application because it would result in unconstitutional impairment of the recreation lease contracts. Therefore, based on Fleeman, s. 718.401(8)(a), F.S., applied only to contracts entered into after the effective date of its predecessor, June 4, 1975.

Section 718.401(6), F.S., requires that a lease of recreational or other commonly used facilities which is entered into prior to the time when control of the association is turned over to unit owners other than the developer grant to the lessee an option to purchase the leased property on any anniversary date of the beginning of the lease term after the 10th anniversary at a price to be determined by agreement.

Sections 719.401(6) and (8), F.S., are substantially the same as sections 718.401(6) and (8), F.S., but are applicable to cooperatives instead of condominiums.

B. Effect of Proposed Changes:

The proposed committee substitute would apply the prohibition against escalation clauses contained in ss. 718.401(8)(a) and 719.401(8)(a), F.S., retroactively to leases entered into prior to June 4, 1975. However, the escalation clauses would not be voided as of their inception. Instead the bill would prohibit any further escalation in fees pursuant to these escalation clauses after October 1, 1988, thereby freezing the rental fees at their level on that date.

The proposed committee substitute would apply ss. 718.401(6) and 719.401(6), F.S., retroactively to leases entered into
prior to January 1, 1977, the effective date of the bill creating those portions of the statutes.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Condominium unit owners who are presently subject to such escalation clauses would be relieved of any fee increases due to future enforcement of escalation clauses and the owners of the recreational property would accordingly lose these increased fees.

B. Government:

None.

III. COMMENTS:

When Fleeman was decided in 1976, the rule of law in Florida was that "virtually no degree of contract impairment is tolerable in this state," Yamaha Parts Distributors, Inc. v. Ehrman, 316 So.2d 557 (Fla. 1975). Since then, the Florida Supreme Court has relaxed its standard for contract impairment cases. In 1979, in Pomponio v. Claridge of Pompano Condominium, Inc., 378 So.2d 774 (Fla. 1979), the Court adopted a new contract clause impairment test similar to that of the United States Supreme Court.

The test used by the United States Supreme Court requires that the statute creating the impairment be reasonable and necessary to serve an important public purpose. In testing a statute against this requirement, the U.S. Court balances the degree of impairment against the state's interest and the evil it seeks to remedy, see e.g. United States Trust Co. v. New Jersey, 431 U.S. 1 (1977).

In adopting its new contract clause test, the Florida Supreme Court stated, at page 780:

To determine how much impairment is tolerable, we must weigh the degree to which a party's contract rights are statutorily impaired against both the source of authority under which the state purports to alter the contractual relationship and the evil it seeks to remedy. Obviously, this becomes a balancing process to determine whether the nature and extent of the impairment is constitutionally tolerable in light of the importance of the state's objective, or whether it unreasonably intrudes into the parties' bargain to a degree greater than is necessary to achieve that objective.

If the issue of retroactive application of s. 718.401(8)(a), F.S., were to be brought before the Florida Supreme Court again, it is possible that the Court would recede from Fleeman and apply the test adopted in Pomponio. If so, the Court's initial inquiry would be to determine the degree of contract impairment. The case of Wilderness Country Club Partnership, Ltd. v. Groves, 458 So.2d 769 (Fla. 2d DCA 1984) could have a great impact in this inquiry.

Wilderness dealt with an unusual fact situation. The case was on appeal from an order by the trial court which voided the escalation clause in the recreation lease and rescinded the lease contract. The recreation lease at issue was entered into prior to June 4, 1975, the effective date of s. 718.401(8)(a)'s predecessor, but the condominium declaration was filed after that date. The declaration submitted the property to condominium ownership "pursuant to chapter 711, Florida Statutes, the Condominium Act." Such language had previously been held by the Florida Supreme Court to evidence an intent of the parties to be bound by the statutes as stated, Angora Enterprises, Inc. v. Cole, 439 So.2d 832 (Fla. 1983). The Court had held that in cases involving such language, the application of s. 718.401(8)(a), F.S., is permissible and
nonretroactive. Based on this, the appellate court upheld the voiding of the escalation clause.

The court then turned to the issue of rescission of the lease contract. The court stated that "where one contractual provision is void, the balance of the contract is also void unless the balance fairly reflects the original intent of the parties to the contract." The court reasoned that without the escalation clause, the landowner would receive only the base rent fee, which is only a portion of the rental fees originally contemplated as the contract price. The court stated that "generally, the price term in a contract is vital; severing the price term eliminates the essence of the contracting parties' agreement." Accordingly, the court upheld the rescission of the lease contract.

Wilderness would seem to indicate that the impairment of contract that would be created by the proposed committee substitute would be substantial.

The inquiry would then turn to the state's interest and the evil sought to be remedied. This stage of the process has never been addressed by the Florida courts in connection with the issue of retroactive application of s. 718.401(8)(a), F.S. As such, it is unknown what factors the courts would consider and what weight would be given them in the balancing process.

It should be noted at this point that Wilderness might have yet another precedential importance, if the proposed committee substitute were made law and survived a constitutional challenge. In such a case, Wilderness might be used to rescind the lease contract as modified by the proposed committee substitute. In this hypothetical situation, the court would determine that the harm being done by the escalation clauses and the state's interest in remedying this harm outweighed the impairment of contract, and that the statute was therefore constitutional, but that the loss of the escalation clause was such a severe alteration of the contract as to require rescission of the contract.

It has been suggested that the impairment of contract that would be caused by the proposed committee substitute might be lessened to some extent by instead giving the lessee an option to avoid any further enforcement of the escalation clause and giving the land owner a corresponding option to cancel the lease contract upon the lessee's exercising of the first option. This alternative would appear to lessen the impairment of contract as to the land owner. It provides him a method of avoiding a situation where he is left with the remaining life of a 99 year lease and no way to make any reasonable rent increases. Again, the full analysis of constitutionality cannot be completed as it is uncertain what factors the courts would consider in assessing the state's interest and the evil it seeks to remedy. Also, this alternative involves an even higher possibility of leaving the parties with no lease contract, although here it will at least be by the parties' choice.

Another possibility might be to give the lessee an option to avoid further escalations of the rent and give the land owner a choice of responsive options. These options would be to negotiate a new system for reasonable rent increases, to petition the court for an equitable reformation of the contract to include a system for reasonable rent increases, or to cancel the lease contract. The options would not be mutually exclusive. Again, the impairment would seem to be lessened and again, full constitutional analysis cannot be completed. Here, however, it seems there would be a greater likelihood that the parties would be left with a lease contract.
It should be noted that the same type of argument on contract impairment would apply to the retroactive application of ss. 719.401(8)(a), F.S., and probably to the retroactive application of ss. 718.401(6) and 719.401(6), F.S.

It should be noted that Hawaii Housing Authority v. Midkiff 467 U.S. 229 (1984) can be distinguished from the situation at issue and would probably not be good precedence to justify the enactment of the proposed committee substitute. First, Hawaii was an eminent domain case and the eminent domain power is not involved here. The standard used in judicial review of eminent domain cases is different from that used in police power cases, so Hawaii is distinguishable. Second, the underlying fact situation is so vastly different that even if the test to be used were identical, the evaluation and reasoning involved would be vastly different.

There are two comparable bills, SB 74 and HB 45. Senate bill 74 was passed out of the Committee on Economic, Community, and Consumer Affairs on April 11, 1988 as a committee substitute which combined that bill and the language of SB 176. The committee substitute is now on calendar.

IV. AMENDMENTS:

None.
I. SUMMARY:

A. Present Situation:

Chapter 718, F.S., is the "Condominium Act," and Chapter 719, F.S., is the "Cooperative Act." Sections 718.401 and 719.401, F.S., relate to leaseholds in the condominium and cooperative forms of ownership, respectively. Subsections 718.401(6) and 719.401(6), F.S., provide that a lease of recreational or other commonly used facilities entered into by a condominium or cooperative association or unit owners, respectively, before association control is turned over to the unit owners shall grant the lessee an option to buy the leased property.

Subsections 718.401(8)(a) and 719.401(8)(a), F.S., prohibit the inclusion or enforcement of escalation clauses in land leases or other leases for recreational facilities, land, or facilities serving residential condominiums or cooperatives, respectively.

In Fleeman v. Case, 342 So.2d 815 (Fla. 1976), the Florida Supreme Court held that s. 711.231 (old s. 718.401), F.S., prohibiting rental escalation clauses in leases for condominium recreational facilities, cannot be applied retroactively and, therefore, may not be applied to leases entered into before June 4, 1975. The court found that such application would violate the contract clauses of the Federal and Florida Constitutions, which prohibit the impairment of contract obligations.

In Cove Club Investors, Ltd. v. Sandalfoot South One, Inc., 438 So.2d 354 (Fla. 1983), the Florida Supreme Court, citing Fleeman, again held that the statute could not be applied retroactively finding that the legislature did not intend retroactive application. The court continued that even if the legislature had intended retroactive application, the court would have been compelled to hold it invalid as impairing the obligation of contract absent any agreement to be bound by future amendments to the law.

In Association of Golden Glades, Condominium Club, Inc. v. Golden Glades Club Recreation Corp., App. 3 Dist., 441 So.2d 154 (1983) review denied 455 So.2d 1033, the court held that this section does not apply to prohibit enforcement of such clauses in contracts which antedate the section.

In 1984, the U.S. Supreme Court, in Hawaii Housing Authority v. Midkiff, 104 S. Ct. 2321 (1984), held that the state of Hawaii could, pursuant to its eminent domain power, take title from lessors of land being used for residential housing and confer it to lessees notwithstanding the preexisting leases. The court found that the prohibition against states from impairing the obligation of contracts is not absolute and must be balanced against a compelling state interest to satisfy strong
public policy considerations, such as diffusing the ownership of the land from the few to the many.

B. Effect of Proposed Changes:

The bill amends subsections 718.401(6) and 719.401(6), F.S., to provide that leases entered into before January 1, 1977, with respect to recreational facilities or other commonly used condominium or cooperative facilities, would be deemed to have granted the lessees and option to buy the leased property for cash under described circumstances.

The bill amends subsections 718.401(8)(a) and 719.401(8)(a), F.S., to prohibit the inclusion of escalation clauses in condominium and cooperative leases, respectively, and to provide that such prohibition would apply retroactively to condominium and cooperative leases entered into prior to June 4, 1975, the effective date of the acts.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Leasees who entered into leases relating to recreational facilities or other commonly used condominium or cooperative facilities before January 1, 1977 would benefit to the extent they find it to their advantage to buy the leased property. Lessors who entered into such leases would be adversely affected to the extent lessees elect to buy the leased property.

Condominium and cooperatives unit owners who entered into their leases before June 4, 1975 and were subject to escalation clauses in land or recreational leases would benefit to the extent that they would no longer be subject to increased rent based on such clauses.

Lessors who entered into such leases would be adversely affected to the extent they would no longer benefit from income generated by such escalation clauses.

B. Government:

None.

III. COMMENTS:

Both the Federal and Florida Constitutions prohibit the states from impairing the obligations of contracts, Art. I, s. 10, clause 1. Cases interpreting both the federal and state provisions have held that the contract clause is not absolute and must be balanced when in conflict with the police power of the state. The right of the government to protect the lives, health, morals, and general welfare of the people is paramount to any rights created by contract between individuals. Southern Utilities Co. v. Palatka 99 So 236, (Fla. 1923) affd. 268 US 232, 45 S. Ct. 488; Allied Structural Steel Co. v. Spannus, 578 L Ed. 2d 727, 734; 96 S. Ct. 2716 (1978 US). However, legislation which affects the obligations of existing private contracts must be found to be reasonable and necessary to a legitimate public purpose. Energy Reserves v Kansas Power and Light (1983, US) 74 L Ed. 2d 727, 734; 103 S. Ct. 697. Use of police power which impairs the obligations of existing contracts must be confined to purposes reasonably connected with the public interest, as distinguished from purely private rights. Treigle v. Acme Homestead Assoc. 80 L Ed. 1010, 56 S Ct 587 (1936) It is questionable whether the Florida Supreme Court would find that the relative inequity to lessees resulting from condominium recreational leases entered into before June 4, 1975 is sufficiently compelling to allow the state to retroactively apply
the legislature's 1975 prohibition against the inclusion and enforcement of escalation clauses to such leases.

A similar bill, HB 45, has been filed in the House.

IV. AMENDMENTS:

None.
I. SUMMARY:

A. Present Situation:

Chapter 718, F.S., is the "Condominium Act," and Chapter 719, F.S., is the "Cooperative Act." Sections 718.401 and 719.401, F.S., relate to leaseholds in the condominium and cooperative forms of ownership, respectively. Subsections 718.401(6) and 719.401(6), F.S., provide that a lease of recreational or other commonly used facilities entered into by a condominium or cooperative association or unit owners, respectively, before association control is turned over to the unit owners shall grant the lessee an option to buy the leased property.

Subsections 718.401(8)(a) and 719.401(8)(a), F.S., prohibit the inclusion or enforcement of escalation clauses in land leases or other leases for recreational facilities, land, or facilities serving residential condominiums or cooperatives, respectively.

In Fleeman v. Case, 342 So.2d 815 (Fla. 1976), the Florida Supreme Court held that s.711.231 (old s.718.401), F.S., prohibiting rental escalation clauses in leases for condominium recreational facilities, cannot be applied retroactively and, therefore, may not be applied to leases entered into before June 4, 1975. The court found that such application would violate the contract clauses of the Federal and Florida Constitutions, which prohibit the impairment of contract obligations.

In Cove Club Investors, Ltd. v. Sandalfoot South One, Inc., 438 So.2d 354 (Fla. 1983), the Florida Supreme Court, citing Fleeman, again held that the statute could not be applied retroactively finding that the legislature did not intend retroactive application. The court continued that even if the legislature had intended retroactive application, the court would have been compelled to hold it invalid as impairing the obligation of contract absent any agreement to be bound by future amendments to the law.

In Association of Golden Glades, Condominium Club, Inc. v. Golden Glades Club Recreation Corp., App. 3 Dist., 441 So.2d 154 (1983) review denied 455 So.2d 1033, the court held that this section does not apply to prohibit enforcement of such clauses in contracts which antedate the section.

In 1984, the U.S. Supreme Court, in Hawaii Housing Authority v. Midkiff, 104 S. Ct. 2321 (1984), held that the state of Hawaii could, pursuant to its eminent domain power, take title from lessors of land being used for residential housing and confer it to lessees notwithstanding the preexisting leases. The court found that the prohibition against states from impairing the obligation of contracts is not absolute and must be balanced against a compelling state interest to satisfy strong
public policy considerations, such as diffusing the ownership of the land from the few to the many.

B. Effect of Proposed Changes:

The bill amends subsections 718.401(6)(a) and 719.401(6)(a), F.S., to provide that leases entered into before January 1, 1977, with respect to recreational facilities or other commonly used condominium or cooperative facilities, would be deemed to have granted the lessees an option to buy the leased property for cash under described circumstances.

The bill amends subsections 718.401(8)(b) and 719.401(8)(b), F.S., to prohibit the enforcement, on or after October 1, 1988, of escalation clauses in land leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums and cooperatives, regardless of when the lease or agreement was executed.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Leasees who entered into leases relating to recreational facilities or other commonly used condominium or cooperative facilities before January 1, 1977 would benefit to the extent they find it to their advantage to buy the leased property. Lessors who entered into such leases would be adversely affected to the extent lessees elect to buy the leased property and would no longer be subject to such escalation clauses.

The provision prohibiting any further escalation in fees after October 1, 1988, would benefit condominium and cooperatives unit owners who entered into their leases before June 4, 1975 and are subject to escalation clauses in land or recreational leases to the extent that the bill freezes rental rate fees at that date and unit owners would no longer be subject to increased fees based on such clauses.

Lessors who entered into such leases would be adversely affected to the extent they would no longer benefit from income generated by such escalation clauses.

B. Government:

None.

III. COMMENTS:

Both the Federal and Florida Constitutions prohibit the states from impairing the obligations of contracts, Art. I, s. 10, clause 1. Cases interpreting both the federal and state provisions have held that the contract clause is not absolute and must be balanced when in conflict with the police power of the state. The right of the government to protect the lives, health, morals, and general welfare of the people is paramount to any rights created by contract between individuals. Southern Utilities Co. v. Palatka 99 So 236, (Fla. 1923) affd. 268 US 232, 45 S. Ct. 488; Allied Structural Steel Co. v. Spannus, 578 L Ed. 2d 727, 734; 96 S. Ct. 2716 (1976 US). However, legislation which affects the obligations of existing private contracts must be found to be reasonable and necessary to a legitimate public purpose. Energy Reserves v Kansas Power and Light (1983, US) 74 L Ed. 2d 569, 103 S. Ct. 697. Use of police power which impairs the obligations of existing contracts must be confined to purposes reasonably connected with the public interest, as distinguished from purely private rights. Treigle v. Acme Homestead Assoc. 80 L Ed. 1010, 56 S Ct 587 (1936) It is questionable whether the Florida Supreme Court would find that the relative inequity to lessees resulting from condominium
recreational leases entered into before June 4, 1975 is sufficiently compelling to allow the state to retroactively apply the legislature's 1975 prohibition against the inclusion and enforcement of escalation clauses to such leases.

A similar bill, HB 45, has been filed in the House.

IV. AMENDMENTS:

None.
SENATE COMMITTEE AMENDMENT

SB 74
HB ___

No. (reported favorably)

The Committee on ......... ECCA ......... recommended the following amendment which was moved by Senator ............... and adopted:

Senate Amendment

On pages 4-7, strike everything after the enacting clause

If amendment is text from another bill insert:

Bill No. Draft No. With Changes? Yes

and insert:

Section 1. Paragraph (a) of subsection (6) and subsection (8) of section 718.401, Florida Statutes, are amended to read:

718.401 Leaseholds.--A condominium may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(6)(a) A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time when the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash, on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration.

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

* Amendment No. _, taken up by committee: Adopted ✓*
* Offered by ____________ Failed _*

(Amendment No. ___ Adopted ___ Failed ___ Date __/__/___)
This paragraph shall be applied to contracts entered into prior to January 1, 1977.

(b)(a) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a condominium lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(b) The provisions of paragraph (a) of this subsection do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof. However, the provisions of paragraph (a) apply to contracts entered into prior to June 4, 1975, if the lessor is not the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof. The application of paragraph (a) to contracts entered into prior to June 4, 1975, may not divest the parties of any benefits or obligations arising from the escalation of fees prior to October 1, 1988, but only prohibits further escalation of fees pursuant to the escalation clauses, on or after October 1, 1988.

Section 2. Paragraph (a) of subsection (6) and subsection (8) of section 719.401, Florida Statutes, are amended to read:

CODING: Words stricken are deletions; words underlined are additions.
719.401 Leaseholds.—A cooperative may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold, if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(6)(a) A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration. This paragraph shall be applied to contracts entered into prior to January 1, 1977.

(8)(a) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential cooperatives, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a cooperative lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.
(b) The provisions of paragraph (a) do not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or any agency of any political subdivision thereof. However, the provisions of paragraph (a) apply to contracts entered into prior to, on, and after June 4, 1975, if the lessor is not the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof. The application of paragraph (a) to contracts entered into prior to June 4, 1975, may not divest the parties of any benefits or obligations arising from the escalation of fees prior to October 1, 1988, but only prohibits further escalation of fees pursuant to the escalation clauses, on or after October 1, 1988.

Section 3. This act shall take effect October 1, 1988.
A bill to be entitled

An act relating to condominiums; amending s.
718.401, F.S.; providing a retroactive
prohibition against escalation clauses in
certain condominium leases; providing an
effective date.

WHEREAS, the Legislature of the State of Florida has
declared that the public policy of this state prohibits the
inclusion or enforcement of escalation clauses in land leases
for recreational facilities serving residential condominiums
and has declared such clauses void, and

WHEREAS, it is well recognized that the contract
clauses of the Federal and State Constitutions are not
absolute prohibitions against contract impairment but may be
required to yield to competing constitutional provisions,
including the state's police power (see, e.g., Pomponio v.
Claridge of Pompano Condominium, Inc., 378 So. 2d 774 (Fla.
1979), Yellow Cab Company of Dade County v. Dade County, 412
So.2d 335 (Fla. 3d DCA 1982), United States Fidelity and
Guaranty Company v. Department of Insurance, 453 So.2d 1355
(Fla. 1984)), NOW, THEREFORE,

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

Section 1. Subsection (8) of section 718.401, Florida
Statutes, is amended to read:

718.401 Leaseholds.--A condominium may be created on
lands held under lease or may include recreational facilities
or other common elements or commonly used facilities on a
leasehold if, on the date the first unit is conveyed by the

CODING: Words stricken are deletions; words underlined are additions.
developer to a bona fide purchaser, the lease has an unexpired
term of at least 50 years. If rent under the lease is payable
by the association or by the unit owners, the lease shall
include the following requirements:

(8)(a) It is declared that the public policy of this
state prohibits the inclusion or enforcement of escalation
clauses in land leases or other leases or agreements for
recreational facilities, land, or other commonly used
facilities serving residential condominiums, and such clauses
are hereby declared void for public policy. For the purposes
of this section, an escalation clause is any clause in a
condominium lease or agreement which provides that the rental
under the lease or agreement shall increase at the same
percentage rate as any nationally recognized and conveniently
available commodity or consumer price index.

(b) The provisions of paragraph (a) this subsection do
not apply if the lessor is the Government of the United States
or this state or any political subdivision thereof or any
agency of any political subdivision thereof, however the
provisions of paragraph (a) do apply to contracts entered into
prior to, on, and after June 4, 1975, provided that the lessor
is not the Government of the United States or
any political subdivision thereof or any agency of any
political subdivision thereof. Application of the provisions
of paragraph (a) to contracts entered into prior to June 4,
1975 shall not be deemed to divest the parties of any benefits
or obligations arising from the escalation of fees prior to
October 1, 1988, but rather only to prohibit any further
escalation of fees on or after October 1, 1988.

Section 2. This act shall take effect October 1, 1988.

CODING: Words strucken are deletions; words underlined are additions.
GENERAL ACTS
RESOLUTIONS AND MEMORIALS
ADOPTED BY THE
TENTH LEGISLATURE OF FLORIDA
UNDER THE CONSTITUTION
AS REVISED IN 1968
During the Regular Session
April 5, 1988 through June 7, 1988
and Special Sessions
September 21 - October 8, 1987; October 12 - 14, 1987;
December 8 - 10, 1987; February 2 - 4, 1988; and
June 8, 1988

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JOINT LEGISLATIVE MANAGEMENT
COMMITTEE
TALLAHASSEE
1988
An act relating to condominiums and cooperatives; amending s. 718.115, F.S.; providing for additional expense items to be treated as common expenses; amending s. 718.112, F.S., relating to the acceleration of condominium assessments; amending s. 718.301, F.S., relating to condominium developer voting after transfer of control to unit owners other than the developer; amending s. 718.117, F.S.; providing for notice of recordation of instruments evidencing the removal of property from condominium status; creating s. 718.1055, F.S.; prescribing limits on changes which may be made through amendment of cooperative documents; amending ss. 718.401 and 719.401, F.S.; providing for the application of certain options available to condominium and cooperative developer in the ordinary course of business, or

Common expenses also include reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house communications, and security services, which are relatively related to the general benefit of the unit owners, even if such expenses do not attach to the common elements or property of the condominium. However, such common expenses must either be services or items provided from the date the control of the board of administration of the association was transferred from the developer to the unit owners or must be services or items provided for in the condominium documents or bylaws.

Paragraph (g) of subsection (2) of section 718.112, Florida Statutes, is amended to read:

718.112 Bylaws.--

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

(g) Assessments.--The manner of collecting from the unit owners their shares of the common expenses shall be stated in the bylaws. Assessments shall be made against units not less frequently than quarterly, in an amount which is not less than that required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. Nothing in this paragraph shall preclude the right of an association to accelerate assessments of an owner delinquent in payment of common expenses. Accelerated assessments shall be due and payable on the date the claim of lien is filed. Such accelerated assessments shall include the amounts due for the remainder of the budget year in which the claim of lien was filed in actions taken pursuant to s. 718.116(4)(a).

Section 3. Subsection (1) of section 718.301, Florida Statutes, is amended to read:

718.301 Transfer of association control.--

(1) When unit owners other than the developer own 15 percent or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer shall be entitled to elect no less than one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect not less than a majority of the members of the board of administration of an association:

(a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(b) Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(c) When all the units that will be operated ultimately by the association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business;

(d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business,

whichever occurs first. The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units, of the units in a condominium operated by the association. Following the time the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the association or selecting the majority members of the board of administration.

Section 4. Subsection (1) of section 718.117, Florida Statutes, is amended to read:

718.117 Termination.--

(1) Unless otherwise provided in the declaration, the condominium property may be removed from the provisions of this chapter only by consent of all of the unit owners, evidenced by a recorded instrument...
CHAPTER 88-148
LAWS OF FLORIDA
CHAPTER 88-148

Section 5. Section 719.1055, Florida Statutes, is created to read:

719.1055 Amendment of cooperative documents.—Unless otherwise provided in the cooperative documents as originally recorded, no amendment thereto may change the configuration or size of any cooperative unit in any material fashion, materially alter or modify the amenities of the unit, or change the proportion or percentage by which the owner of the parcel shares the common expenses and owns the common surplus, unless the record owner of the unit and all record owners of liens on it join in the execution of the amendment and unless the record owners of all other units approve the amendment.

Section 6. Section 718.401, Florida Statutes, is amended to read:

718.401 Leaseholds.—
(1) A condominium may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:
(a) The leased land must be identified by a description that is sufficient to pass title, and the leased personal property must be identified by a general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility.
(b) The lease shall not contain a reservation of the right of possession or control of the property by the lessor or any person other than unit owners or the association, and shall not create rights to possession or use of the leased property in any parties other than the association or unit owners of the condominium to be served by the leased property, unless the reservations and rights created are conspicuously disclosed. Any provision for use of the leased property by anyone other than unit owners of the condominium to be served by the leased property shall require the other users to pay a fair and reasonable share of the maintenance and repair obligations and other exactions due from users of the leased property.
(c) The lease shall state the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property. The limitation of the number of units to be served shall not preclude enlargement of the facilities leased and an increase in their capacity, if approved by the association and by unit owners other than the developer have assumed control of the association. The provisions of this paragraph shall not apply if the lessor is the Government of the United States or any political subdivision thereof or any agency of any political subdivision thereof.
(d) In any action by the lessor to enforce a lien for rent payable or in any action by the association or a unit owner with respect to the obligations of the lessee or the lessor under the lease, the unit owner or the association may raise any issue or interpose any defense, legal or equitable, that he or it may have with respect to the lessor's obligations under the lease. If the unit owner or the association initiates any action or interposes any defense other than payment of rent under the lease, the unit owner or the association shall, upon service of process upon the lessor, pay into the registry of the court any allegedly accrued rent and the rent which accrues during the pendency of the proceeding, when due. If the unit owner or the association fails to pay the rent into the registry of the court, the failure constitutes an absolute waiver of the unit owner's or association's defenses other than payment, and the lessor is entitled to default. The unit owner or the association shall notify the lessor of any deposits. When the unit owner or the association has deposited funds with the court to satisfy the lessee's obligations under the lease, the court may apply to the court for disbursement of all or part of the funds shown to be necessary for the payment of taxes, mortgage payments, maintenance and operating expenses and other necessary expenses incident to maintaining and equipping the leased facilities or necessary for the payment of other expenses arising out of personal hardship resulting from the loss of rental income from the leased facilities. The court, after an evidentiary hearing, may award all or part of the funds on deposit to the lessor for such purpose. The court shall require the lessor to post bond or other security, as a condition to the release of funds from the registry, when the value of the leased land and improvements, apart from the lease itself, is inadequate to fully secure the sum of existing encumbrances on the leased property and the amounts released from the court registry.

2. When the association or unit owners have deposited funds into the registry of the court pursuant to this subsection and the unit owners or association have otherwise satisfied their obligations under the lease or agreement, other than paying rent into the registry of the court rather than to the lessor, the lessor cannot hold the association or unit owners in default on their rental payments due to the lessee for any period of time after the lessor files an action for foreclosure proceedings against unit owners. If the lessor, in violation of this subsection, attempts such liens or foreclosures, then the lessor may be liable for damages plus attorney's fees and costs that the association or unit owners incurred in satisfying those liens or foreclosures.

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3. (c) Nothing in this paragraph subsection affects litigation commenced prior to October 1, 1977.

(e) If the lease is of recreational facilities or other commonly used facilities that are not completed, rent shall not commence until some of the facilities are completed. Until all of the facilities leased are completed, rent shall be prorated and paid only for the completed facilities in the proportion that the value of the completed facilities bears to the estimated value, when completed, of all of the facilities that are leased. The facilities shall be complete when they have been constructed, finished, and equipped and are available for use.

(f) A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the date when the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash, on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration. This paragraph shall be applied to contracts entered into on or after August 1, 1977.

2. (b) If the lessee wishes to sell his interest and has received a bona fide offer to purchase it, the lessor shall send the association and each unit owner a copy of the executed offer. For 90 days following receipt of the offer by the association or unit owners, the association or unit owners have the option to purchase the interest on the terms and conditions in the offer. The option shall be exercisable not at all, by notice in writing given to the lessor within the 90-day period. If the association or unit owners do not exercise the option, the lessor shall have the right, for a period of 60 days after the 90-day period has expired, to complete the transaction described in the offer. If for any reason such transaction is not concluded within the 60 days, the offer shall be rescinded, and the provisions of this subsection shall be reinstalled.

3. (c) The option shall be exercised upon approval by owners of two-thirds of the units served by the leased property.

4. (d) The provisions of this paragraph subsection do not apply to a nonresidential condominium and do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof, or if rent under the lease is a fixed amount for the full duration of the lease, and the rent thereunder is payable by a person or persons other than the association or the unit owners, the lessee, or any person or entity which is not the developer or directly or indirectly owned or controlled by the developer and which does not obtain, directly or indirectly, ownership of the leased property from the developer.

(g) The lease or a subordination agreement executed by the lessor must provide either:

1. (a) That any lien which encumbers a unit for rent or other monies or exactions payable is subordinate to any mortgage held by an institutional lender, or

2. (b) That, upon the foreclosure of any mortgage held by an institutional lender or upon delivery of a deed in lieu of foreclosure, the lien for the unit owner's share of the rent or other exactions shall not be extinguished but shall be foreclosed and

unenforceable against the mortgagee with respect to that unit's share of the rent and other exactions which mature or become due and payable on or before the date of the final judgment of foreclosure, in the event of foreclosure, or on or before the date of delivery of the deed in lieu of foreclosure. The lien may, however, automatically and by operation of the lease or other instrument, reattach to the unit and secure the payment of the unit's proportionate share of the rent or other exactions coming due subsequent to the date of final decree of foreclosure or the date of delivery of the deed in lieu of foreclosure.

The provisions of this paragraph subsection do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof.

(f) It is declared that the public policy of this state prohibits the inclusion or enforcement of exaction clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums and such clauses are hereby declared void for public policy. For purposes of this section, an exaction clause is any clause in a condominium lease or agreement which provides that the rent under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(b) The provisions of this subsection do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof.

(2) Subsection (1) does not apply to residential cooperatives created after January 1, 1977, which are converted to condominium ownership by the cooperative unit owners or their association after control of the association has been transferred to the unit owners if, following the conversion, the unit owners will be the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion.

(3) If rent under the lease is a fixed amount for the full duration of the lease, and the rent thereunder is payable by a person or persons other than the association or the unit owners, the division director has the discretion to accept alternative assurances which are sufficient to secure the payment of rent, including, but not limited to, annuities with an insurance company authorized to do business in this state, the beneficiary of which shall be the association, which deposit shall be in an amount sufficient to generate interest sufficient to meet lease payments as they occur. If alternative assurances are accepted by the division director, the following provisions are applicable:

(a) Disclosures contemplated by paragraph (1)(b) subsection (2), if not contained within the lease, may be made by the developer.

(b) Disclosures as to the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased
property, if not contained in the lease, may be stated by the developer.

c) The provisions of paragraphs (1)(d) and (e) subsections (f) and (g) apply but are not required to be stated in the lease.

d) The provisions of paragraph (1)(g) subsection (f) do not apply.

Section 7. Section 718.4015, Florida Statutes, is created to read:

718.4015 Condominium leases; escalation clauses.--

(1) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a condominium lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(2) The provisions of subsection (1) do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof. The application of subsection (1) to contracts entered into prior to June 4, 1975, may not divest the parties of any benefits or obligations accruing prior to October 1, 1988, but only prohibits further escalation of fees pursuant to the escalation clauses, on or after October 1, 1988.

Section 8. Section 719.401, Florida Statutes, is amended to read:

719.401 Leaseholds.--

1. A cooperative may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold, if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(a) The leased land must be identified by a description that is sufficient to pass title, and the leased personal property must be identified by a general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility. In the alternative, the personal property may be identified by a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility. Unless the lease is of a unit, the identification of the land shall be supplemented by a survey showing the relation of the leased land to the common areas. This provision shall not prohibit adding additional land or personal property in accordance with the terms of the lease, provided there is no increase in rent or material increase in maintenance costs to the individual unit owner.
the registry of the court rather than to the lessor, the lessor cannot hold the association or unit owners in default on their rental payments nor may the lessor file liens or initiate foreclosure proceedings against unit owners. If the lessor, in violation of this subsection, attempts such liens or foreclosures, then the lessor may be liable for damages plus attorney's fees and costs which the association or unit owners incurred in satisfying those liens or foreclosures.

3. Nothing in this paragraph subsection shall affect litigation commenced prior to October 1, 1979.

If the lease is of recreational facilities or other commonly used facilities that are not completed, rent shall not commence until some of the facilities are completed. Until all of the facilities leased are completed, rent shall be prorated and paid only for the completed facilities in the proportion that the value of the completed facilities bears to the estimated value, when completed, of all of the facilities that are leased. The facilities shall be complete when they have been constructed, finished, and equipped and are available for use.

A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration. This paragraph subsection does not apply to contracts entered into on, before, or after January 1, 1977.

If the lessor wishes to sell his interest and has received a bona fide offer to purchase it, the lessor shall send the association and each unit owner a copy of the executed offer. For 90 days following receipt of the offer by the association or unit owners, the association or unit owners have the option to purchase the interest of the terms and conditions in the offer. The option shall be exercised, if at all, by notice in writing given to the lessor within the 90-day period. If the association or unit owners do not exercise the option, the lessor shall have the right, for a period of 60 days after the 90-day period has expired, to complete the transaction described in the offer to purchase. If for any reason such transaction is not concluded within the 60 days, the option shall be abandoned, and the provisions of this subsection shall be reimposed.

The option shall be exercised upon approval by owners of two-thirds of the units served by the leased property.

The provisions of this paragraph subsection shall not apply to a nonresidential cooperative and shall not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or, in the case of an underlying land lease, a person or entity which is not the developer or directly or indirectly owned or controlled by the developer and did not obtain, directly or indirectly, ownership of the leased property from the developer.
Disclosures as to the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease, and the maximum number of units that will be served by the leased property, if not contained in the lease, may be stated by the developer.

The provisions of paragraphs (1)(d) and (e) subsections do not apply, but need not be stated in the lease.

The provisions of paragraph (1)(g) subsection do not apply.

Section 9. Section 719.4015, Florida Statutes, is created to read:

719.4015 Cooperative leases; escalation clauses.--

(1) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential cooperatives, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a cooperative lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(2) The provisions of subsection (1) do not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or any agency of any political subdivision thereof. However, the provisions of subsection (1) apply to contracts entered into prior to June 4, 1975, if the lessor is not the Government of the United States or this state or any political subdivision thereof. The application of subsection (1) to contracts entered into prior to June 4, 1975, may not divest the parties of any benefits or obligations arising from the escalation of fees prior to October 1, 1988, but only prohibits further escalation of fees pursuant to the escalation clauses, on or after October 1, 1988.

Section 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 11. This act shall take effect July 1, 1988, or upon becoming a law, whichever occurs later.

Approved by the Governor July 1, 1988.

Filed in Office Secretary of State July 1, 1988.

An act relating to electrical and alarm system contracting, amending s. 489.503, F.S.; modifying exemptions; amending s. 489.505, F.S.; modifying definitions; amending s. 489.507, F.S.; deleting obsolete language; amending s. 489.509, F.S.; revising provisions relating to fees; amending s. 489.511, F.S.; revising provisions relating to certification; providing qualifications; providing for certification by endorsement; amending s. 489.513, F.S.; revising provisions relating to registration; eliminating temporary registration; amending s. 489.515, F.S.; providing for issuance of certificates and registrations; prohibiting transfer; creating s. 489.516, F.S.; providing qualifications to practice; providing restrictions; providing prerequisites; providing for cease and desist orders; providing for denial of local construction permits; amending s. 489.517, F.S.; providing for renewal; amending s. 489.519, F.S.; revising provisions relating to inactive status; amending s. 489.521, F.S.; revising requirements relating to qualifying agents for business organizations; providing qualifications; providing for examination; providing for financial responsibility; requiring registration or certification numbers on building permits and advertisements; creating s. 489.522, F.S.; specifying responsibilities of primary and secondary qualifying agents; providing for termination of status; amending s. 489.523, F.S.; modifying requirements for completion of a contract upon the death of a contractor; amending ss. 489.525, 489.527, and 489.535, F.S.; conforming language; amending s. 489.531, F.S.; modifying prohibitions, amending s. 489.533, F.S.; providing additional grounds for disciplinary actions; providing for application of penalties to a qualified agent's business organization; providing procedures for the imposition of penalties and reinstatement of certificates or registrations; amending s. 489.537, F.S.; providing certain authority of municipalities and counties; requiring reports of certain administrative or disciplinary actions; amending s. 553.19, F.S.; updating references; saving part II of chapter 489 and ss. 633.70, 633.71, and 633.72, F.S., from Sunset repeal; providing for future review and repeal; providing effective dates.

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

Section 1. Section 489.503, Florida Statutes, is amended to read:

489.503 Exemptions.--This part set does not apply to:

1. Subcontractor or specialty contractor not otherwise certified under the provisions of this act whose work is limited to a
I. SUMMARY:

A. Present Situation:

Section 718.115, F.S., designates what condominium expenses are to be common expenses assessable to unit owners. The section designates as common expenses operating, maintenance, repair, or replacement expenses of the common elements, the cost of carrying out the powers and duties of the association, and any other expense designated as a common expense by chapter 718, F.S., the declaration, the documents creating the condominium, or the bylaws.

B. Effect of Proposed Changes:

The bill expands what expenses are to be designated as common expenses to include transportation services, insurance for officers and directors, security services, road maintenance and operation expenses, and assessments to a master association reasonably related to the general benefit of the unit owners even if such expenses do not relate to the common elements or property of the condominium.

The bill also provides that the term "master association" means, for purposes of this subsection, any not-for-profit corporation composed of homeowners, condominium unit owners, or other housing owners created by a recorded declaration or covenant running with the land or by court order.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Condominium unit owners would be adversely affected by the bill to the extent assessments based on common expenses are increased and assessed against them as a result of the increase in the number of expenses to be construed as a common expense.

B. Government:

None.

III. COMMENTS:

Section 719.107, F.S., designates what cooperative expenses are to be common expenses assessable to unit owners. The section designates as common expenses the expenses of the operation, maintenance, repair, or replacement of the cooperative property, the cost of carrying out the powers and duties of the association, and any other expenses designated as common expenses by chapter 719, F.S., or the cooperative documents. The section relating to cooperative common expenses is similar to the section relating to condominium cooperative expenses. The provisions of chapter 718,
F.S., relating to condominiums and chapter 719, F.S., relating to cooperatives, are generally parallel.

IV. AMENDMENTS:

None.
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

ANALYST
1. Balzer
2. 
3. 
4. 

STAFF DIRECTOR
Buck

REFERENCE
1. ECCA
2. 
3. 
4. 

ACTION

SUBJECT: Condominiums

BILL NO. AND SPONSOR: CS/SB 54 by ECCA and Senator Weinstock

I. SUMMARY:

A. Present Situation:

Section 718.115, F.S., designates what condominium expenses are to be common expenses assessable to unit owners. The section designates as common expenses operating, maintenance, repair, or replacement expenses of the common elements, the cost of carrying out the powers and duties of the association, and any other expense designated as a common expense by chapter 718, F.S., the declaration, the documents creating the condominium, or the by-laws.

B. Effect of Proposed Changes:

The bill expands what expenses are to be designated as common expenses to include transportation services, insurance for officers and directors, security services, road maintenance and operation expenses, and inhouse communications.

Common expenses must have been services or items provided from the date the control of the association was transferred from developer to unit owners, or must be provided for in the condominium documents or by-laws.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Condominium unit owners would be adversely affected by the bill to the extent assessments based on common expenses are increased and assessed against them as a result of the increase in the number of expenses to be construed as a common expense.

B. Government:

None.

III. COMMENTS:

Section 719.107, F.S., designates what cooperative expenses are to be common expenses assessable to unit owners. The section designates as common expenses the expenses of the operation, maintenance, repair, or replacement of the cooperative property, the cost of carrying out the powers and duties of the association, and any other expenses designated as common expenses by chapter 719, F.S., or the cooperative documents. The section relating to cooperative common expenses is similar to the section relating to condominium cooperative expenses. The provisions of chapter 718, F.S., relating to condominiums and chapter 719, F.S., relating to cooperatives, are generally parallel.

IV. AMENDMENTS:

None
BILL VOTE SHEET

(VS-88: File with Secretary of Senate) BILL NO. CS/SB 54

COMMITTEE ON: Economic, Community and Consumer Affairs

DATE: April 5, 1988 ACTION: Favorably with amendments
TIME: 3:00 p.m. - 5:00 p.m. Favorably with Committee Substitute
PLACE: Room H, Senate Office Building Unfavorably

OTHER COMMITTEE REFERENCES: Submitted as a Committee Bill
(in order shown) Temporarily Passed
Reconsidered
Not Considered

THE VOTE WAS:

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Aye | Nay | Aye | Nay | Aye | Nay | Aye | Nay | Aye | Nay

* Present at the table without objection

Please Complete: The Key sponsor appeared ( X )
A Senator appeared ( )
Sponsor's aide appeared ( )
Other appearance ( X )
BILL VOTE SHEET

(US-87: File with Secretary of Senate)  BILL NO. SB 54

COMMITTEE ON Economic, Community & Consumer Affairs

DATE January 5, 1988

TIME 10:00 am - Noon

PLACE Committee Room H, SOB

OTHER COMMITTEE REFERENCES:
(In order shown)

--- Favorably with Committee Substitute

--- Unfavorably

OTHER: x Temporarily Passed

--- Reconsidered

--- Not Considered

THE VOTE WAS:

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**TOTAL**

*Present at the table without objection

(Attach additional page if necessary)

Please Complete: The key sponsor appeared ( )
A Senator appeared ( )
Sponsor's aide appeared ( )
Other appearance ( )
I. SUMMARY:

A. PRESENT SITUATION:

Section 1 of CS/SB 54 was proposed in response to the Fourth District Court of Appeal's decision in Rothenberg v. Plymouth #5 Condominium Association, 511 So.2d 651 (4th DCA 1987). The condominium association had contracted with a bus company to provide transportation for the unit owners within the condominium community and to areas outside the condominium property. The cost of the bus service was assessed against the unit owners as common expenses. The Rothenberg court held that assessments, except those otherwise specifically provided for in the Condominium Act, may be based only upon expenses which directly relate to the operation, maintenance, repair or replacement of the condominium property. The court held that the provision of a bus system for the convenience of unit owners did not fall within this construction of the act.

Other amendments to Chapter 718 included in this bill are in the nature of clarifying or cleanup amendments.

B. EFFECT OF PROPOSED CHANGES:

CS/SB 54 will allow condominium boards of administration to assess unit owners for such services as transportation, insurance of officers and directors, road maintenance and operation, in-house communications and security services which are reasonably related to the general benefit of the unit.
owners. The bill clarifies when common expense payments may be accelerated by the association and when the developer may be precluded from exercising his voting rights in a unit owner-controlled association. Notification to the Division of Florida Land Sales, Condominiums and Mobile Homes is required of associations which are terminating their status as condominiums. A section of the Cooperative Act is reenacted relating to amendments to the documents which would materially alter the units or appurtenances or the percentage by which any owner shares in the common expenses and owns the common surplus.

C. SECTION-BY-SECTION ANALYSIS:

Section 1 amends s. 718.115(1), F.S., to expand the kinds of expenses which are regarded as common expenses, specifically those for transportation services, insurance for officers and directors, security services, road maintenance and operation, in-house communications, including cable TV, and assessments to master associations if these services were provided prior to transfer of control to the unit owners or if specifically provided in the condominium documents and which are reasonably related to the general benefit of the unit owners, whether or not the expenses relate to the common elements or the condominium property. For these designated items, the "directly related" test of Rothenberg would be replaced by the broader "reasonably related to the general benefit" standard.

Section 2 amends s. 718.112(2)(g), F.S., to clarify how the acceleration of assessments for common expenses may be applied, i.e., payments may be accelerated on the date a claim of lien is filed on the unit; the amount accelerated is that amount of money due for the remainder of the budget year.

Section 3 amends s. 718.301, F.S. to clarify that after turnover of control of the condominium association from the developer to unit owners other than the developer, the developer is entitled to exercise his voting rights to the units he still owns, but is not permitted to vote to select majority members of the board of administration or to reacquire control of the association.

Section 4 amends s. 718.117(1), F.S., to require the association of a condominium that is terminating its status as a condominium to notify the Division of Florida Land Sales, Condominiums, and Mobile Homes of the date the termination document was recorded, and the book and page where recorded.

Section 5 creates s. 719.1055, F.S., which reenacts a section of the Florida Cooperative Act that was inadvertently repealed when that Act was revised. This section prohibits any amendment to the documents which would materially alter the size of configuration or any unit, or which would change the percentage by which owners share in the common expenses or own the common surplus unless otherwise provided in the cooperative documents as originally recorded or unless all unit owners approve the
amendment and the owners and lienholders of units specifically affected join in the execution of the amendment.

Sections 6 through 9 relate to escalation clauses in condominium and cooperative leases. These sections were preempted by later-adopted amendments to the same sections. See SB 1422.

Section 10 is a severability clause.

Section 11 provides that the act shall take effect July 1, 1988 or upon becoming law, whichever occurs later.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:
   None

2. Recurring or Annualized Continuation Effects:
   None

3. Long Run Effects Other Than Normal Growth:
   None

4. Appropriations Consequences:
   None

B. FISCALIMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:
   None

2. Recurring or Annualized Continuation Effects:
   None

3. Long Run Effects Other Than Normal Growth:
   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
   None

2. Direct Private Sector Benefits:
None

3. Effects on Competition, Private Enterprise, and Employment Markets:

None

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

IV. COMMENTS:

V. SIGNATURES:

JUDICIARY COMMITTEE:
Prepared by: Debby Kearney

Staff Director: Richard Hixson

FINANCE & TAXATION:
Prepared by:

Staff Director:

APPROPRIATIONS:
Prepared by:

Staff Director:
Final Bill Summary for CS/SB 54

CS/SB 54 provides for additional expense items to be treated as common expenses and provides for notice of recordation of instruments evidencing removal of property from condo status. The bill prescribes limits on changes which may be made through amendment of cooperative documents and provides for application of certain options available to condo and coop leases governing recreational facilities or other common elements.

The bill was signed by officers and presented to the Governor on June 16, 1988. See chapter 88-148, Laws of Florida.
BILL #: HB 122

RELATING TO: Condominiums

SPONSOR(S): Frankel

EFFECTIVE DATE: October 1, 1988

COMPANION BILLS: SB 54

OTHER COMMITTEES OF REFERENCE: (1) Appropriations

I. SUMMARY:

A. Present Situation:

HB 122 is proposed in response to a recent case from the Fourth District, Rothenberg v. Plymouth #5 Condominium Association, 12 FLW 1848, July 29, 1987, in which the condominium association placed liens on the units of owners who refused to pay the portion of their assessment which was attributable to a bus service. The association had contracted with a bus company to provide transportation for the unit owners to areas outside the condominium property. No fare was charged to use the bus; the expenditure was made in lump sum paid by the association. Those unit owners who contested the assessment alleged that it was not based upon a legitimate common expense.

Section 718.115(1), F.S., designates those expenses which are properly incurred by the association, i.e., "... expenses for the operation, maintenance, repair, or replacement of the common elements, costs of carrying out the powers and duties of the association, and any other expense designated as common expense by this chapter, the declaration, the documents creating the condominium, or the bylaws."

The Rothenberg court held that assessments, except those otherwise specifically provided for in the Condominium Act, may be based only upon expenses which directly relate to the operation, maintenance, repair or replacement of the condominium property. The court held that the provision of a bus system for the convenience of unit owners did not fall within this construction of the act.

B. Effect of Proposed Changes:

HB 122 amends s. 718.115(1), F.S., to expand the kinds of expenses which are regarded as common expenses, specifically those for...
transportation services, insurance for officers and directors, security services, road maintenance and operation, and assessments to master associations which are "reasonably related to the general benefit of the unit owners", whether or not the expenses relate to the common elements or the condominium property. For these designated items, the "directly related" test of Rothenberg would be replaced by the broader "reasonably related to the general benefit" standard.

II. ECONOMIC IMPACT:

A. Public:

Unit owners may be assessed additional costs for the provisions of services which may not currently be subject to assessment.

B. Government:

The change in allowable common expenses, particularly in light of the more relaxed standard to measure the relation of these common expenses to the general benefit will probably result in an increase in the number of administrative complaints and cases.

III. STATE COMPREHENSIVE PLAN IMPACT:

IV. COMMENTS:

The Department of Business Regulation has some concern with the language of this bill. The Division of Florida Land Sales, Condominiums and Mobile Homes within that department, is charged with enforcing the statutory requirements of the Condominium Act. The Division expects that the proposed change would substantially increase administrative complaints and lawsuits. Further, the Division would be in the position of having to determine if certain expenses were reasonably related to the general benefit of the unit owners.

In Department of Business Regulation v. Pinnacle Port Community Association, Inc., DOAH Case No. 85-4274, DBR Docket No. 85157MVC, the hearing officer's recommended order discloses the difficulty in attempting to determine whether an association's action benefitted the unit owners for purposes of a different condominium statute. "Although it is reasonable to expect that the planned stabilization of Phillips Inlet would provide recreational benefit to some unit owners and might help to make the units at the resort more marketable, factors affecting the relative costs and benefits of the project such as, whether necessary governmental permits are granted; the amount of further assessments which will be imposed against units to pay for construction and maintenance costs of the inlet; the possible imposition of restrictions or restrictive covenants on the use of the inlet or the adjoining lands; ...(etc., etc.)... are speculative at this time and make it impossible to quantify the value of the stabilization project or even to conclude that the project...
will clearly or substantially benefit unit owners". It appears that under the standard proposed by this bill, the same rationale would be applicable, and the difficulty of making such a determination would be present in each set of circumstances.

V. AMENDMENTS:

VI. PREPARED BY: Debby Kearney

VII. STAFF DIRECTOR: Richard Hixson
I. SUMMARY:

A. Present Situation:

Chapter 718, F.S., is the "Condominium Act," and Chapter 719, F.S., is the "Cooperative Act." Sections 718.401 and 719.401, F.S., relate to leaseholds in the condominium and cooperative forms of ownership, respectively. Subsections 718.401(6) and 719.401(6), F.S., provide that a lease of recreational or other commonly used facilities entered into by a condominium or cooperative association or unit owners, respectively, before association control is turned over to the unit owners shall grant the lessee an option to buy the leased property.

Subsections 718.401(8)(a) and 719.401(8)(a), F.S., prohibit the inclusion or enforcement of escalation clauses in land leases or other leases for recreational facilities, land, or facilities serving residential condominiums or cooperatives, respectively.

In Freeman v. Case, 342 So.2d 815 (Fla. 1976), the Florida Supreme Court held that s.711.231 (old s.718.401), F.S., prohibiting rental escalation clauses in leases for condominium recreational facilities, cannot be applied retroactively and, therefore, may not be applied to leases entered into before June 4, 1975. The court found that such application would violate the contract clauses of the Federal and Florida Constitutions, which prohibit the impairment of contract obligations.

In Cove Club Investors, Ltd. v. Sandalfoot South One, Inc., 438 So.2d 354 (Fla. 1983), the Florida Supreme Court, citing Freeman, again held that the statute could not be applied retroactively finding that the legislature did not intend retroactive application. The court continued that even if the legislature had intended retroactive application, the court would have been compelled to hold it invalid as impairing the obligation of contract absent any agreement to be bound by future amendments to the law.

In Association of Golden Glades, Condominium Club, Inc. v. Golden Glades Club Recreation Corp., App. 3 Dist., 441 So.2d 154 (1983) review denied 455 So.2d 1033, the court held that this section does not apply to prohibit enforcement of such clauses in contracts which antedate the section.

In 1984, the U.S. Supreme Court, in Hawaii Housing Authority v. Midkiff, 104 S. Ct. 2321 (1984), held that the state of Hawaii could, pursuant to its eminent domain power, take title from lessors of land being used for residential housing and confer it to lessees notwithstanding the preexisting leases. The court found that the prohibition against states from impairing the obligation of contracts is not absolute and must be balanced against a compelling state interest to satisfy strong
public policy considerations, such as diffusing the ownership of the land from the few to the many.

B. Effect of Proposed Changes:

The bill amends subsections 718.401(6)(a) and 719.401(6)(a), F.S., to provide that leases entered into on, before, or after January 1, 1977, with respect to recreational facilities or other commonly used condominium or cooperative facilities, would be deemed to have granted the lessees an option to buy the leased property for cash under described circumstances.

The bill amends subsections 718.401(8)(b) and 719.401(8)(b), F.S., to prohibit the enforcement, on or after October 1, 1988, of escalation clauses in land leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums and cooperatives, regardless of when the lease or agreement was executed.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Leasees who entered into leases relating to recreational facilities or other commonly used condominium or cooperative facilities on, before or after January 1, 1977 would benefit to the extent they find it to their advantage to buy the leased property. Lessors who entered into such leases would be adversely affected to the extent lessees elect to buy the leased property and would no longer be subject to such escalation clauses.

The provision prohibiting any further escalation in fees after October 1, 1988, would benefit condominium and cooperatives unit owners who entered into their leases before June 4, 1975 and are subject to escalation clauses in land or recreational leases to the extent that the bill freezes rental rate fees at that date and unit owners would no longer be subject to increased fees based on such clauses.

Lessors who entered into such leases would be adversely affected to the extent they would no longer benefit from income generated by such escalation clauses.

B. Government:

None.

III. COMMENTS:

Both the Federal and Florida Constitutions prohibit the states from impairing the obligations of contracts, Art. I, s. 10, clause 1. Cases interpreting both the federal and state provisions have held that the contract clause is not absolute and must be balanced when in conflict with the police power of the state. The right of the government to protect the lives, health, morals, and general welfare of the people is paramount to any rights created by contract between individuals. Southern Utilities Co. v. Palatka 99 So 236, (Fla. 1923) affd. 268 US 232, 45 S. Ct. 488; Allied Structural Steel Co. v. Spannus, 578 L Ed. 2d 727, 734; 96 S. Ct. 2716 (1978 US). However, legislation which affects the obligations of existing private contracts must be found to be reasonable and necessary to a legitimate public purpose. Energy Reserves v Kansas Power and Light (1983, US) 74 L Ed. 2d 569, 103 S. Ct. 697. Use of police power which impairs the obligations of existing contracts must be confined to purposes reasonably connected with the public interest, as distinguished from purely private rights. Treigle v. Acme Homestead Assoc. 80 L Ed. 1010, 56 S Ct 587 (1936) It is questionable whether the Florida Supreme Court would find that the
relative inequity to lessees resulting from condominium
recreational leases entered into before June 4, 1975 is
sufficiently compelling to allow the state to retroactively apply
the legislature's 1975 prohibition against the inclusion and
enforcement of escalation clauses to such leases.

HB 45, which was identical to CS/SB 74 as passed by the ECCA
Committee and the Senate, was vetoed by the Governor on May 25,
1988. The Governor stated that HB 45 did not reflect the intent of
the Legislature. The bill intended to require application of the
current Florida Statute to the period before that statute's
enactment. Instead, the bill accomplishes only retroactive
application of the statute. The Governor noted that if HB 45 were
to become law, the current Florida Statute would not be applicable
to the period after it became law, January 1, 1977. This bill is
intended to remedy the Governor's concerns.

IV. AMENDMENTS:

None.
May 25, 1988

Honorable Jon Mills
Speaker of the Florida House
of Representatives
420 The Capitol
Tallahassee, Florida 32399

Dear Mr. Speaker:

By the authority vested in me as Governor of Florida, under the provisions of Article III, Section 8, of the Constitution of the State of Florida, I do hereby withhold my approval and transmit to you with my objections, House Bill 45, enacted by the Tenth Legislature of Florida under the Florida Constitution, 1968 Revision, during the Regular Session of 1988, and entitled:

An act relating to condominiums and cooperatives; amending ss. 718.401 and 719.401, F.S.; providing for the application of certain options available to condominium and cooperative leases governing recreational facilities or other common elements; prohibiting the enforcement of escalation clauses in certain existing condominium and cooperative leases; providing an effective date.

House Bill 45 would amend the Florida Statutes affecting condominiums and cooperatives by retroactively applying existing protections in that law for unit holders in these associations. More specifically, the bill would allow persons who entered into leases for common facilities in an association before January 1, 1977, to have an option to purchase those common facilities. Additionally, the bill would prohibit escalation clauses in leases for
common facilities, even if the lease was entered into before the effective date of the Florida law prohibiting such clauses.

My concern stems from the fact that House Bill 45, as passed, does not reflect the intent of the legislature. The bill intended to require application of the current Florida Statute to the period before that statute's enactment. Instead, the bill accomplishes only retroactive application of the statute. If House Bill 45 were to become law, the current Florida Statute would not be applicable to the period after it became law, January 1, 1977.

For the above reasons, I am withholding my approval of House Bill 45, Regular Session of the Legislature, commencing on April 5, 1988, and do hereby veto the same.

Sincerely,

Governor

BM/gkm
I. SUMMARY:

A. PRESENT SITUATION:

It is common for contractual obligations involving the purchase of a condominium unit to provide that the purchase was subject to a long-term lease for the use of recreational facilities or other common facilities, or for the land underlying the condominium. Prior to 1975, these leases generally included escalation clauses which were tied to the consumer price index. Pursuant to the terms of the lease, at established intervals, the amount due under the lease would increase in accordance with the increase in the consumer price index. In response to a public outcry against this practice, the predecessor to Section 718.401(8), F.S., was enacted, effective June 4, 1975, which declared it to be the public policy of Florida to prohibit the enforcement of escalation clauses in condominium contracts and such clauses were declared void. The Florida Supreme Court has held that s. 718.401(8), F.S., cannot be applied retroactively because such application would violate the Contracts Clauses of the Florida and Federal Constitutions. Fleeman v. Case, 342 So.2d 815 (Fla. 1977).

Historically, Florida courts have very stringently applied Contracts Clause principles; however, more recently, the Florida Supreme Court has adopted a somewhat more relaxed standard. In Pomponio v. Claridge of Pompano Condominium, Inc., 378 So.2d 774 (Fla. 1979), the court adopted the view that the Contracts Clause is not an absolute prohibition on the impairment of the obligation of contract, but that it must be balanced with other provisions of the Constitution. With regard to the police power, the court will compare the degree to which contract rights are impaired with the importance and necessity of the law passed.

The bill refers to the U.S. Supreme Court decision in Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 104 S.Ct. 2321 (1984), which upheld a statutory program in Hawaii to promote ownership of land by the general public. The vast majority of land in Hawaii is owned by a few families. Most homeowners in Hawaii have long-term leases on the lots their homes are constructed upon. The Hawaiian statute established a governmental agency to take subdivided properties...
pursuant to its eminent domain powers when a certain percentage of lessees in the subdivision agreed to purchase the lot from the taking authority. The Supreme Court found that this scheme accomplished an important goal of allowing for the ownership of land by the public and when balanced with the competing provision of the Constitution, outweighed the Contracts Clause.

B. EFFECT OF PROPOSED CHANGES:

Sections 718.401(6)(a) and 719.401(6)(a), F.S., are amended to provide that the unit owners' or condominium or cooperative association's option to purchase the leasehold estate shall be applied to contracts entered into prior to January 1, 1977, when that provision was initially effective.

Sections 718.401(8)(a) and 719.401(8)(a), F.S., are amended to provide that the prohibition against escalation clauses in recreational leases shall be applied to leases entered into prior to June 4, 1975, but only to the extent of holding further escalations in the rental amount invalid.

C. SECTION-BY-SECTION ANALYSIS:

Section 1. 718.401(6)(a) is amended to provide that the option to purchase the lease from the developer on an annual basis after the 10th anniversary of the lease is intended to apply retroactively. Section 1 also amends s. 718.401(8)(a) to provide that the prohibition on enforcement of escalation clauses in condominium leases is intended to apply retroactively, but will not retroactively invalidate payments made or operate to decrease the amount of future payments.

Section 2. Makes the identical amendments to the parallel provisions of the Cooperative Act.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

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1. Non-recurring or First Year Start-Up Effects:
None

2. Recurring or Annualized Continuation Effects:
None

3. Long Run Effects Other Than Normal Growth:
None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:
Lessors of condominium land or commonly used facilities subject to leases with escalation clauses will have the amounts due under the leases frozen as of the effective date of the bill.

2. Direct Private Sector Benefits:
Lessees of condominium land or commonly used facilities subject to leases with escalation clauses will have the amounts due under the lease frozen as of the effective date of the bill.

3. Effects on Competition, Private Enterprise, and Employment Markets:
Condominium units subject to leases with escalation clauses are reported to be less marketable. This bill will place those unit owners on more equal footing in selling their units.

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

IV. COMMENTS:

In Wilderness County Club Partnership, Ltd. v. Groves, 458 So.2d 769 (Fla. 2d DCA 1984), the Second District Court of Appeals held an escalation clause unenforceable.

The court further held that since this "price" term went to the essence of the contract, the entire contract must be rescinded. It should be considered that if this law is upheld by the courts, it is possible that the courts, in refusing to enforce the escalation clause will find it inequitable to enforce the remainder of the contract, thus leaving condominium and cooperative owners without the right to use the contracted-for facilities absent the parties being able to agree on a new contract.

V. AMENDMENTS:

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VI. SIGNATURES:

JUDICIARY COMMITTEE:
Prepared by: Debby Kearney
Staff Director: Richard Hixson

FINANCE & TAXATION:
Prepared by: 

APPROPRIATIONS:
Prepared by: 

Staff Director:
I. SUMMARY:

A. Present Situation:

In 1986, the Florida Cooperative Act was revised to incorporate like amendments previously made to parallel sections of the Condominium Act. In the revision, the contents of s. 719.106(3), F.S. (1985), was inadvertently deleted and therefore there exists no statutory prohibition against a cooperative association amending the documents to alter the units, their appurtenances, or the proportion of ownership of the common surplus or proportion by which owners share in the common expenses.

Without this language, the documents could be amended in this regard just as any other document amendment could be accomplished. If not provided in the documents, the necessary vote is 2/3 of all unit owners. This makes a substantial difference, particularly in situations in which the developer still controls more than 2/3 of the units or where a less than popular unit owner is affected.

B. Effect of Proposed Changes:

The bill creates s. 719.1055, F.S., which reinserts the prohibition against changes to the units, their appurtenances to units, or the proportion of a unit owner's share of the common expenses and common surplus without the approval of all of the unit owners, and of any lienholders on the affected units.

II. ECONOMIC IMPACT:

A. Public:

None
Page 2
Bill #: PCB 11
Date: February 23, 1998

B. Government:

None

III. STATE COMPREHENSIVE PLAN IMPACT:

None

IV. COMMENTS:

V. AMENDMENTS:

VI. PREPARED BY: Debby Kearney

VII. STAFF DIRECTOR: Richard Hixson

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I. SUMMARY:

A. Present Situation:

HB 122 is proposed in response to a recent case from the Fourth District, Rothenberg v. Plymouth #5 Condominium Association, 511 So.2d 651 (Fla. 4th DCA 1987), in which the condominium association placed liens on the units of owners who refused to pay the portion of their assessment which was attributable to a bus service. The association had contracted with a bus company to provide transportation for the unit owners within the condominium community and to areas outside the condominium property. No fare was charged to use the bus; the expenditure was made pursuant to the contract, in a lump sum, paid by the association. Those unit owners who contested the assessment alleged that it was not based upon a legitimate common expense.

Section 718.115(1), F.S., designates those expenses which are properly incurred by the association, i.e., "... expenses for the operation, maintenance, repair, or replacement of the common elements, costs of carrying out the powers and duties of the association, and any other expense designated as common expense by this chapter, the declaration, the documents creating the condominium, or the bylaws."

The Rothenberg court held that assessments, except those otherwise specifically provided for in the Condominium Act, may be based only upon expenses which directly relate to the operation, maintenance, repair or replacement of the condominium property. The court held that the provision of a bus system for the convenience of unit owners did not fall within this construction of the act.

B. Effect of Proposed Changes:
HB 122 amends s. 718.115(1), F.S., to emphasize that the provision which allows for the assessment of any common expense that is provided for in the condominium documents or in the Condominium Act was not intended to be modified by the limitation earlier in the statute that the expense be related to the operation, maintenance, repair, or replacement of the common elements.

The board, without any further action by the unit owners has the authority to incur expenses directly related to the common elements. The unit owners, by the vote required to amend their documents can provide for other types of expenditures, such as transportation services, cable television, and security services.

II. ECONOMIC IMPACT:

A. Public:

To the extent this bill restates what most condominium experts believed to be the law before the Rothenberg case, there would be no economic impact.

B. Government:

None

III. STATE COMPREHENSIVE PLAN IMPACT:

None

IV. COMMENTS:

The bill as initially filed was designed to provide that the condominium community in the Rothenberg case, (Century Village in Palm Beach County), could assess the unit owners the costs of the bus transportation system for which they had contracted. The committee substitute would allow this type of expense as a basis for assessment if the associations amend their condominium documents to provide that a transportation system is an allowable common expense.

V. AMENDMENTS:

VI. PREPARED BY: Debby Kearney

VII. STAFF DIRECTOR: Richard Hixson
Journal
of the
Florida
House of Representatives

Ninetieth
Regular Session
since Statehood in 1845

April 5 through June 7, 1988

[Including a record of transmittal of Acts subsequent to sine die adjournment]
AMENDMENT 1—On page 1, line 16, after "elected" insert or appointed

Rep Renke moved the adoption of the amendment, which was adopted without objection.

The Committee on Criminal Justice offered the following amendment:

Amendment 2—On page 1, line 18, strike "duties," and insert duties if the motive for the capital felony was related, in whole or in part, to the victim's official capacity.

Rep Renke moved the adoption of the amendment, which was adopted without objection.

Representative Canady offered the following amendment:

Amendment 3—On page 1, lines 19-20, strike all of said lines and insert: Section 2 This act shall take effect October 1, 1988.

Rep Canady moved the adoption of the amendment, which was adopted without objection.

Representative Logan offered the following amendment:

Amendment 4—On page 1, line 18, after the period insert: Section 2 Subsections (2) and (3) of section 921.141, Florida Statutes are amended to read:

921.141 Sentence of death or life imprisonment for capital felonies —

(2) ADVISORY SENTENCE BY THE JURY —After hearing all the evidence, the jury shall deliberate and render a an advisory sentence to the court, based upon the following matters:

(a) Whether sufficient aggravating circumstances exist as enumerated in subsection (5);

(b) Whether sufficient mitigating circumstances exist which outweigh the aggravating circumstances found to exist, and

(c) Based on these considerations, whether the defendant should be sentenced to life imprisonment or death.

The court shall impose the sentence rendered by the jury.

Section 1 Subsection (b) of section 718.115, Florida Statutes, is amended to read:

718.115 Common expenses and common surplus —

(1) Common expenses include the expenses of the operation, maintenance, repair, or replacement of the common elements, costs of carrying out the powers and duties of the association, and any other expense designated as common expense by this chapter, the declaration, the documents creating the condominium, or the bylaws. Common expenses also include reasonable transportation services, insurance for directors and officers, road maintenance and operation expenses, in-house communications, and security services, which are reasonably related to the general benefit of the unit owners, even if such expenses do not attach to the common elements or property of the condominium. However, such common expenses must either have been services or items provided from the date the control of the board of administration of the association was transferred from the developer to the unit owners or must be services or items provided for in the condominium documents or bylaws.

Section 2 This act shall take effect July 1, 1988, or upon becoming a law, whichever occurs later.

Rep Simon moved the adoption of the amendment, which was adopted.

On motion by Rep. Simon, the rules were waived and CS/SB 54, a similar or companion measure, was substituted for CS/HB 122. Under the rule, the House bill was laid on the table and—

CS for SB 54—A bill to be entitled An act relating to condominiums, amending s. 718.115, F.S., providing for additional expense items to be treated as common expenses, providing an effective date —

Representative Simon offered the following amendment:

Amendment 1—On page 1, between lines 28 and 29, insert: Section 2 Paragraph (g) of subsection (2) of section 718.12, Florida Statutes, is amended to read:

718.12 Bylaws —

(2) REQUIRED PROVISIONS—The bylaws shall provide for the following:

(g) Assessments —The manner of collecting from the unit owners their shares of the common expenses shall be stated in the bylaws. Assessments shall be made against units not less frequently than quarterly, in an amount which is not less than that required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. Nothing in this paragraph shall preclude the right of an association to accelerate assessments of an owner delinquent in payment of common expenses. Accelerated assessments shall be due and payable on the date the claim of lien is filed. Such accelerated assessments shall include the amounts due for the remainder of the budget year in which the claim of lien was filed in addition taken pursuant to s. 718.316(4)(a) (renumber subsequent sections)

Rep Simon moved the adoption of the amendment, which was adopted.

Representative Simon offered the following title amendment:

Amendment 2—On page 1, line 4, after the semicolon insert: and the acceleration of condominium assessments.

Rep Simon moved the adoption of the amendment, which was adopted without objection.

Representative Simon offered the following amendment:

Amendment 3—On page 1, between lines 29 and 30, insert: Section 2 Subsection (1) of section 718.301, Florida Statutes, is amended to read:

REPRESENTATIVE HODGES IN THE CHAIR

CS/HB 122—A bill to be entitled An act relating to condominiums, amending s. 718.115, F.S., providing for additional expense items to be treated as common expenses, providing an effective date —

The Speaker in the Chair

Rep Renke raised a point of order under Rule 118 that the amendment was not germane. Rep Glickman stated that the amendment spoke to the same Chapter and Section of the Statute as the bill, and that the Amendment was germane.

Without objection, Rep Renke withdrew the point of order.

The question recurred on the adoption of Amendment 4, which failed of adoption.

Under Rule 8 19, the bill was referred to the Engrossing Clerk.
718 301 Transfer of association control —
(1) When unit owners other than the developer own 15 percent or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer shall be entitled to elect no less than one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect not less than a majority of the members of the board of administration of an association:
(a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers,
(b) Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers,
(c) When all the units that will be operated ultimately by the association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business; or
(d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business, whichever occurs first.

The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units, of the units in a condominium operated by the association. Following the time the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the association or selecting the majority members of the board of administration (renumber subsequent section).

Rep. Simon moved the adoption of the amendment, which was adopted without objection.

Representative Simon offered the following title amendment.

Amendment 5—On page 1, line 4, after the semicolon insert
amending s 718 301, F.S., relating to condominium developer voting after transfer of control to unit owners other than the developer,

Rep. Simon moved the adoption of the amendment, which was adopted without objection.

Representative Dunbar offered the following amendment

Amendment 6—On page 1, between lines 28 and 29, insert Section 2 Subsection (1) of section 718 117. Florida Statutes, as amended to read:

718 117 Termination —
(1) Unless otherwise provided in the declaration, the condominium property may be removed from the provisions of this chapter only by consent of all of the unit owners, evidenced by a recorded instrument to that effect, and upon the written consent by all of the holders of recorded liens affecting any of the condominium parcels. Upon termination of the instrument evidencing consent of all of the unit owners to terminate the condominium, the association shall notify the division within 30 working days of the termination and the date the document was recorded, the county where the document was recorded, and the book and page number of the public records where the document was recorded (renumber subsequent section).

Rep. Dunbar moved the adoption of the amendment, which was adopted.

Representative Dunbar offered the following title amendment.

Amendment 7—On page 1, line 4, after the semicolon insert
amending s 718 117, F.S., relating to termination of condominiums,

Rep. Dunbar moved the adoption of the amendment, which was adopted without objection.

Representative Simon offered the following amendment.

Amendment 8—On page 1, between lines 28 and 29, insert Section 2 Section 719 1055. Florida Statutes, as created to read:

719 1055 Amendment of cooperative documents—Unless otherwise provided in the cooperative documents as originally recorded, no amendment thereto may change the configuration or size of any cooperative unit in any material fashion, materially alter or modify the appurtenances of the unit, or change the proportion or percentage by which the owner of the parcel shares the common expenses and owns the common surplus, unless the record owner of the unit and all record owners of liens on it join in the execution of the amendment and unless the record owners of all other units approve the amendment (renumber subsequent section).

Rep. Simon moved the adoption of the amendment.

Rep. Deutsch raised a point of order under Rule 11 8, that the amendment unduly expanded the purpose of the bill. During consideration thereof, without objection, further consideration of CS/SB 54 was temporarily deferred.

CS/HB 803 was taken up. On motion by Rep. Logan, CS/SB 472, a similar or companion measure, was substituted for CS/HB 803. Under the rule, the House bill was laid on the table and—

CS for SB 472—A bill to be entitled An act relating to building construction standards, amending s 553 06, F.S., revising and updating provisions with respect to the State Plumbing Code, prohibiting the use of solder or flux containing a certain percentage of lead and lead pipes or pipe fixtures containing a certain percentage of lead, providing for the application of the prohibition, providing an exception; repealing ss 553 12, 553 13, F.S., removing exemptions for certain counties, providing an effective date

—was read the second time by title and, under Rule 8 19, referred to the Engrossing Clerk.

HB 1683—A bill to be entitled An act relating to motor vehicle dealers; amending s 320 131, F.S., providing for the issuance of more than two "temporary tags" by the Department of Highway Safety and Motor Vehicles under certain circumstances, disallowing the purchase of such tags under certain circumstances, amending s 320 27, F.S., providing definitions with respect to motor vehicle dealers, providing an exemption from licensure as a wholesale motor vehicle dealer, defining "salvage motor vehicle dealer", providing that specified persons must file a set of fingerprints with the department, revising language with respect to license certificates, providing additional penalties, revising language with respect to denial, suspension or revocation of license, providing for deposit of specified fees, amending s 320 60, F.S., revising the definition of "agreement" or "franchise agreement", defining "line-make vehicles", creating s 320 605, F.S., providing legislative intent with respect to renumbering the references in the Subchapter, amending s 320 611, F.S., requiring certain motor vehicle manufacturers, importers, and distributors to be licensed, providing for jurisdiction with respect to such licensees, amending s 320 632, F.S., conforming language; amending s 320 63, F.S., revising language with respect to application for license and contents thereof, amending s 320 64, F.S., revising language with respect to denial, suspension or revocation of license, creating s 320 6403, F.S.; providing for distribution agreements and for obligations of manufacturers and importers, amending s 320 6405, F.S., revising language with respect to franchise agreements and obligations of the manufacturer and its agent, amending s 320 641, F.S., providing criteria for determination of whether or not a discontinuation, cancellation or nonrenewal of a franchise agreement is unfair; providing criteria with respect to abandoned franchise agreements, prohibiting replacement dealers for a certain time period, amending s 320 642, F.S., providing procedure with respect to dealer licenses in areas previously served, amending s 320 643, F.S., expanding provisions with respect to procedure for transfer of a franchise agreement, amending s 320 644, F.S., providing clarifying language with respect to a change in executive management or a transfer of the franchise, amending s 320 645, F.S., deleting language making it unnecessary for a proposed motor vehicle dealer to provide exclusive facilities and personnel under certain circumstances, amending s 320 696, F.S., providing clarifying language with respect to reasonable compensation for work for a motor vehicle dealer for warranty repairs or service on behalf of a licensee, creating s 320 699, F.S., providing a procedure for administrative hearings and adjudications, creating s 320 6991, F.S., providing for the dismissal of certain proceedings, providing for application of the act, saving ss 320 27-320 31, F.S., and ss 320 60-320 71, F.S., from Sunset repeal, providing for future review and repeal, providing an effective date.

—was read the second time by title.

The Committee on Appropriations offered the following amendment
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CS for SB 547—A bill to be entitled An act relating to condominiums, amending s 718.115, F.S., providing for additional expense items to be treated as common expenses, amending s 718.112, F.S., relating to the acceleration of condominium assessments; amending s 718.117, F.S., relating to termination of condominiums; amending s 718.301, F.S., relating to condominium developer voting after transfer of control to unit owners other than the developer, providing an effective date

was taken up, having been read the second time and amended on May 25, now pending on motion by Rep. Simon to adopt Amendment 7 and a pending point of order by Representative Deutsch on the germane of the amendment

Without objection, Rep. Deutsch withdrew the pending point of order and the House returned to consideration of the following amendment by Rep. Simon.

Amendment 7—On page 1, between lines 28 and 29, insert: Section 2 Section 719.1055, Florida Statutes, is created to read

719.1055 Amendment of cooperative documents—Unless otherwise provided in the cooperative documents as originally recorded, no amendment thereto may change the configuration or size of any cooperative unit in any material fashion, materially alter or modify the appurtenances of the unit, or change the proportion or percentage by which the owner of the parcel shares the common expenses and owns the common surplus, unless the record owner of the unit and all record owners of liens on the property, in execution of the amendment and unless the record owners of all other units approve the amendment (renumber subsequent section)

The question recurred on the adoption of the amendment, which was adopted

Representative Simon offered the following title amendment:

Amendment 8—On page 1, line 4, after the semicolon insert amending s 719.1055, F.S., relating to the amendment of cooperative documents,

Rep. Simon moved the adoption of the amendment, which was adopted without objection

Representatives Deutsch, Shelley, and Young offered the following amendment

Amendment 9—On page 1, between lines 28 and 29, insert: Section 2 Paragraph (1) of subsection (2) of section 718.112, Florida Statutes, is amended to read

718.112 Bylaws

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

1) Transfer fees—No charge shall be made by the association or any body thereof in connection with the sale, mortgage, lease, sublease, or other transfer of a unit unless the association is required to approve such transfer and a fee for such approval is provided for in the declaration, articles, or bylaws. Any such fee may be preset, but in no event may such fee exceed $100.00 per applicant other than husband/wife or parent/dependent child, which are considered one applicant. However, if the lease or sublease is a renewal of a lease or sublease with the same lessee or sublessee, no charge shall be made. Nothing in this paragraph shall be construed to prohibit an association from requiring as a condition to permitting the leasing or renting of a unit, when the association has such authority in the documents, the depositing into an escrow account maintained by the association a security deposit in an amount not to exceed the equivalent of 1 month's rent. The security deposit shall protect against damages to the common elements or association property. Within 15 days after a tenant vacates the premises, the association shall refund the full security deposit or give written notice to the tenant of any claim made against the security Disputes under this paragraph shall be handled in the same fashion as disputes concerning security deposits under s 83.49 (renumber subsequent section)

Rep. Deutsch moved the adoption of the amendment. Pending consideration thereof, without objection, further consideration of the amendment was temporarily deferred

Subsequently, the question recurred on the adoption of Amendment 9, which failed of adoption

Representative Simon offered the following amendment

Amendment 10—On page 1, lines 29-30, strike all of said lines and insert Section 2 Effective October 1, 1988, paragraphs (d) and (g) of subsection (1) of section 718.501, Florida Statutes, are amended to read

718.501 Powers and duties of Division of Florida Land Sales, Condominiums, and Mobile Homes

(1) The Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business Regulation, referred to as the "division" in this part, in addition to other powers and duties prescribed by chapter 498, has the power to enforce and ensure compliance with the provisions of this chapter and rules promulgated pursuant hereto relating to the development, construction, sale, lease, operation, and management of residential condominium units. In performing its duties, the division has the following powers and duties

(d) Notwithstanding any remedies available to unit owners and associations, if the division has reasonable cause to believe that a violation of any provision of this chapter or rule promulgated pursuant hereto has occurred, the division may institute enforcement proceedings in its own name against any developer, or association, or master association, or their assignees or agents, as follows

1. The division may permit a person whose conduct or actions may be under investigation to waive formal proceedings and enter into a consent proceeding whereby orders, rules, or letters of censure or warning, whether formal or informal, may be entered against the person

2. The division may issue an order requiring the developer, or association, or master association, or their assignees or agents, to cease and desist from the unlawful practice and take such affirmative action as in the judgment of the division will carry out the purposes of this chapter

3. The division may bring an action in circuit court on behalf of a class of unit owners, lessees, or purchasers for declaratory relief, injunctive relief, or restitution

4. The division may impose a civil penalty against a developer, or association or master association, or their assignees or agents, for any violation of this chapter or a rule promulgated pursuant hereto. A penalty may be imposed on the basis of each day of continuing violation, but in no event shall the penalty for any offense exceed $5,000. All amounts collected shall be deposited with the Treasurer to the credit of the Division of Florida Land Sales, Condominiums, and Mobile Homes Trust Fund. If a developer fails to pay the civil penalty, the division shall thereupon issue an order directing that such developer cease and desist from further operation until such time as the civil penalty is paid or may pursue enforcement of the penalty in a court of competent jurisdiction. If an association or master association fails to pay the civil penalty, the division shall thereupon pursue enforcement in a court of competent jurisdiction, and the order imposing the civil penalty or the cease and desist order will not become effective until 20 days after the date of such order. Any action commenced by the division shall be brought in the county in which the division has its executive offices or in the county where the violation occurred

(g) The division shall establish procedures for providing notice to an association or master association when the division is considering the issuance of a declaratory statement with respect to the declaration of condominium or any related document governing in such condominium community

Section 3 Effective October 1, 1988, Part VII of chapter 718, Florida Statutes, consisting of sections 718.701, 718.703, 718.705, 718.706,
718.001 Definitions. — For purposes of this part

1. "Master association" means a homeowners' association in which membership, either by unit owners or by association in which unit owners are members, is a condition of ownership of a unit and which serves one or more condominiums and in which at least 90 percent of the units which are ultimately to be served by the association are residential condominium units.

2. "Unit" means a condominium unit or a lot, townhouse, villa, single family home, or other real estate parcel which is part of a primarily residential development.

718.073 The master association.

1. CORPORATE ENTITY.

a. Any master association created after October 1, 1988, shall be incorporated as a Florida corporation. The officers and directors of the master association have a fiduciary relationship to the owners of units served by the master association.

b. A director of a master association who is present at a meeting of its board at which action on any corporate matter is taken shall be presumed to have assented to the action taken unless he votes against such action or abstains from voting in respect thereto because of an asserted conflict of interest.

2. POWERS AND DUTIES. — The powers and duties of the master association include those set forth in this part and those set forth in the articles of incorporation, bylaws and chapters 607 and 617, as applicable, if not inconsistent with this chapter. The expression of any power or duty in this chapter shall not be construed to deny to the master association any other powers or duties existing or available under chapters 607 or 617, as applicable, unless such limitation is inconsistent with this part. Unless otherwise provided in the documents creating the master association or the condominium association, in the event of a conflict between the powers and duties of the master association and those of the condominium association, the powers and duties of the condominium association shall prevail.

3. INSURANCE. — The master association shall use its best efforts to obtain and maintain adequate insurance to protect the master association and the master association property. An association or group of associations may self-insure against claims against the master association, the master association property, and property serving unit owners of the master association, upon compliance with ss 624.460-624.468. A copy of each policy of insurance in effect shall be made available for inspection by unit owners at reasonable times.

4. OFFICIAL RECORDS.

a. From the inception of the master association, the master association shall maintain each of the following items, when applicable, which shall constitute the official records of the master association:
   1. A copy of the plans, permits, warranties, and other such items provided by the developer;
   2. A photocopy of the bylaws of the master association and amendments thereto;
   3. A certified copy of the articles of incorporation of the master association or other documents creating the master association and amendments thereto;
   4. A copy of the current rules of the master association;
   5. A book or books which contain the minutes of all meetings of the association, of the board of directors, and of members, which minutes shall be retained for a period of not less than 7 years;
   6. A current roster of all unit owners served by the master association, their mailing addresses, and unit identifications.

b. The master association shall maintain each of the following items, when applicable:
   1. The proposed annual budget of expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications.
   2. The annual budget shall be submitted to the unit owners not less than 30 days prior to the meeting at which the budget will be considered.
   3. The proposed annual budget of expenses shall be detailed and shall show the amounts budgeted by accounts and expense classifications. In addition to annual operating expenses, the budget shall include reserve accounts for capital expenditures and for any item for which the deferred maintenance expense or replacement cost is greater than $10,000. The amount to be reserved shall be computed by means of a formula which is based upon estimated life and estimated replacement cost or deferred maintenance expense of each reserve item.

7 All current insurance policies of the master association.
8 A current copy of any management agreement, lease or other contract to which the master association is a party or under which the unit owners have a limitation or responsibility.
9 Bills of sale or transfer for all property owned by the master association.
10 Accounting records for the master association, according to good accounting practices. All accounting records shall be maintained for at least 7 years. The accounting records shall include, but are not limited to:
   a. Accurate, itemized, and detailed records of all receipts and expenditures.
   b. A current account for each unit or association if the members of the master association are associations, the due date and amount of each assessment, the amount paid upon the account, and the balance due.
   c. All audits, reviews, accounting statements, and financial reports of the master association.
   d. All contracts and bids for work to be performed received by the master association.
11 Voting proxies, which shall be maintained for a period of 1 year from the date of the meeting for which the proxy was given.
(b) After transfer of the master association to unit owners other than the developer, the official records of the master association shall be maintained in the county in which the master association is located or within 50 miles of the property if maintained in another county.
(c) The official records of the master association shall be open to inspection by any unit owner or the authorized representative of such unit owner at all reasonable times. Failure to permit inspection of the official records or the master association records as provided herein entitles any person prevailing in an enforcement action to recover reasonable attorney's fees from the person in control of the records who, directly or indirectly, knowingly denies access to the records for inspection. The right to inspect the records includes the right to make or obtain copies, at the reasonable expense, if any, of the unit owner requesting the copies.

5. FINANCIAL REPORTS. — Within 60 days following the end of the fiscal or calendar year or annually on such date as is otherwise provided in the bylaws of the master association, the board of directors of the master association shall mail or furnish by personal delivery to each unit owner a complete financial report of actual receipts and expenditures for the previous 12 months. The report shall show the amount of receipts by accounts and receipt classifications and shall show the amounts of expenses by accounts and expense classifications.

718.075 Master association meetings, budgets, fidelity bonding.
(4) The manner of collecting from the unit owners or associations their shares of the expenses shall be stated in the articles of incorpora-
tion, bylaws or restrictive covenants. The collection of funds for the 
payment of expenses shall be made against shareholders or members in 
an amount no less than required to provide funds in advance for 
payment of all of the anticipated current operating expenses and for all 
of the unpaid operating expenses previously incurred. Nothing in this 
subsection shall preclude the right of a master association to accelerate 
assessments of an owner delinquent in payment of his share of the 
master association expenses. Accelerated assessments shall be due and 
payable on the date the claim of lien is filed. Such accelerated 
assessments shall include the amounts due for the remainder of the 
budget year in which the claim of lien was filed

(5) The master association shall provide for the fidelity bonding of all 
officers or directors of any master association which controls or 
disburse funds of the master association, in the principal sum of not 
less than $10,000 for each such officer or director. The master 
association shall bear the cost of bonding

(6) The bylaws, articles of incorporation, or restrictive covenants shall 
provide for voluntary binding arbitration of internal disputes arising 
from the operation of the master association among developers, unit 
owners, associations, the master association, and their agents and 
attorneys.

718.706 Lien and priority, interest, collection —

(1)(a) The master association has a lien on each unit for any unpaid 
assessments with interest and for reasonable attorney's fees incurred by 
the master association which are incident to the collection of the 
assessment or enforcement of the lien. The lien is effective from and after 
the recording of a claim of lien in the public records in the county in 
which the unit is located which states the description of the unit, the 
name of the record owner, the amount due, and the due date. The claim 
of lien shall secure all unpaid assessments, interests, costs, and 
attorney's fees which are due and which may accrue subsequent to the 
recording of the claim of lien and prior to entry of a final judgment of 
foreclosure. A claim of lien must be signed and acknowledged by an 
officer or agent of the master association. Upon payment, the person 
making the payment is entitled to a satisfaction of the lien. By recording 
a notice in substantially the following form, a unit owner or his agent or 
attorney may require the master association to enforce a recorded claim 
of lien against his unit.

NOTICE OF CONTEST OF LIEN

TO (Name and address of master association)

You are notified that the undersigned contests the claim of lien filed by 
you on , , and recorded in Official Records Book at 
Page , of the public records of County, Florida, and that the 
time within which you may file suit to enforce your lien is limited to 90 
days from the date of service of this notice.

Executed this day of , 19

Signed (Owner or Attorney)

(b) The clerk of the circuit court shall mail a copy of the recorded 
notice of contest to the lien claimant at the address shown in the claim of 
lien or most recent amendment to it, the clerk shall also certify to the 
service on the face of the notice, and record the notice. Service is 
complete upon mailing After service, the master association has 90 
days in which to file an action to enforce the lien, and, if the action is 
not filed within the 90-day period, the lien is void.

(2)(a) The master association may bring an action in its name to 
foreclose a lien for assessments in the manner a mortgage of real 
property is foreclosed and may also bring an action to recover a money 
judgment for the unpaid assessments without waiving any claim of lien 

(b) No foreclosure judgment may be entered until at least 30 days 
after the master association gives written notice to the unit owner of its 
tention to foreclose its lien to collect the unpaid assessments. If this 
notice is not given at least 30 days before the foreclosure action is filed, 
and if the unpaid assessments, including those coming due after the 
claim of lien is recorded, are paid before the entry of a final judgment 
of foreclosure, the master association shall not recover attorney's fees or 
costs. The notice shall be given by delivery of a copy of it to the unit 
owner or by certified or registered mail, return receipt requested, 
addressed to the unit owner at his last known address, and, upon such 
mailing, the notice shall be deemed to have been given, and the court 
shall proceed with the foreclosure action and may award attorney's fees 
and costs as permitted by law. If, after diligent search and inquiry, the 
master association cannot find the unit owner or a mailing address at 
which the unit owner will receive the notice, the court may proceed with 
the foreclosure action and may award attorney's fees and costs as 
permitted by law. The notice requirements of this subsection are 
satisfied if the unit owner records a Notice of Contest of Lien as 
provided in subsection (1). The notice requirements of this subsection do 
not apply if an action to foreclose a mortgage on the unit is pending 
between any court, if the rights of the master association would be affected 
by such foreclosure, and, if actual, constructive, or substitute service of 
process has been made on the unit owner.

(c) If the unit owner remains in possession of the unit and the claim of 
lien is foreclosed, the court, in its discretion, may require the unit owner 
to pay a reasonable rental for the unit, and the master association is 
entitled to the appointment of a receiver to collect the rent.

(d) The master association, unless prohibited by the documents 
creating the association, or its bylaws, has the power to purchase the 
unit at the foreclosure sale and to hold, lease, mortgage, or convey it

(3)(a) No unit owner may be excused from the payment of his share of 
the expenses of a master association unless all unit owners are likewise 
proportionately excused from payment, except as follows.

1 If the documents creating the master association so provide, a 
developer or other person who owns units offered for sale may be 
excused from the payment of the share of the expenses and assessments 
related to those units for a stated period of time subsequent to the 
recording of the documents creating the master association. The period 
must terminate no later than the first day of the fourth calendar month 
following the month in which the closing of the purchase and sale of the 
first unit occurs. However, the developer shall pay the portion of 
expenses incurred during that period which exceed the amount assessed 
against other unit owners.

2 A developer or other person who owns units or who has an 
obligation to pay master association expenses may be excused from the 
payment of his share of the expense which would have been assessed 
against those units during the period of time that he has guaranteed to 
each purchaser in the purchase contract, documents creating the master 
association, or prospectus, or by agreement between the developer and a 
majority of the unit owners other than the developer, that the assessment 
for common expenses of the master association imposed upon the unit 
owners would not increase over a stated dollar amount and has 
obligated himself to pay any amount of expenses incurred during that 
period and not produced by the assessments at the guaranteed level 
receivable from other unit owners.

(b) If the purchase contract, documents creating the master associa-
tion, prospectus, or agreement between the developer and a majority 
of unit owners other than the developer provides for the developer or 
another person to be excused from the payment of assessments pursuant 
to paragraph (a), no funds which are receivable from unit purchasers or 
owners and payable to the master association or collected by the 
developer on behalf of the master association, other than regular 
periodic assessments for expenses as provided in the documents creating 
the master association shall be used for payment of expenses prior to the 
expiration of the period during which the developer or other person is 
so excused. This restriction applies to funds including, but not limited to, 
capital contributions or startup funds collected from unit purchasers at 
closing.

718.707 Failure to fill vacancies on board of directors sufficient to 
constitute a quorum, appointment of receiver upon petition of unit 
owner — If a master association fails to fill vacancies on the board of 
directors sufficient to constitute a quorum in accordance with the 
bylaws, any unit owner may apply to the circuit court within whose
jurisdiction the community served by the master association lies for the appointment of a receiver to manage the affairs of the master association. At least 30 days prior to applying to the circuit court, the unit owner shall mail to the master association and post in a conspicuous place in the community served by the master association property a notice describing the intended action, giving the master association the opportunity to fill the vacancies. If during such time the master association fails to fill the vacancies, the unit owner may proceed with the petition. If a receiver is appointed, the master association shall be responsible for the salary of the receiver, court costs, any costs of bonding or insurance for the receiver, and attorney’s fees. The receiver shall have all powers and duties of a duly constituted board of directors and shall serve until the master association fills vacancies on the board sufficient to constitute a quorum.

718 709 Right of owners to peaceably assemble—

(1) All common areas and recreational facilities serving any master association shall be available to unit owners in the master association served thereby and their invited guests for the use intended for such common areas and recreational facilities. The entity or entities responsible for the operation of the common areas and recreational facilities may adopt reasonable rules and regulations pertaining to the use of such common areas and recreational facilities. This subsection shall not apply to any unit owner who is delinquent in the payment of his share of the master association expenses and who has not given notice of the amount in dispute and placed that amount in escrow.

(2) No entity or entities shall unreasonably restrict any unit owner’s right to peaceably assemble or right to invite public officers or candidates for public office to appear and speak in common areas and recreational facilities.

(3) Any owner prevented from exercising rights guaranteed by subsection (1) or (2) may bring an action in the appropriate court of the county in which the alleged infringement occurred, and, upon favorable adjudication, the court shall enjoin the enforcement of any provision contained in any master association document or rule which operates to deprive the owner of such rights.

718 711 Attorney’s fees—if a contract or lease between a unit owner or master association and a developer contains a provision allowing attorney’s fees to the developer, should any litigation arise under the provisions of the contract or lease, the court shall also allow reasonable attorney’s fees to the unit owner or master association as to all other improvements and materials.

718 712 Warrants—

(1) The developer shall be deemed to have granted to the master association an implied warranty of fitness and merchantability for the purposes or uses intended as follows:

(a) As to all improvements for the use of unit owners, a 3-year warranty commencing with the date of completion of the improvements.

(b) As to all personal property for the use of unit owners, a warranty which shall be the same as that provided by the manufacturer of the personal property.

(c) As to the roof and structural components of a building or other improvements and as to mechanical, electrical, and plumbing elements serving improvements or a building. Except mechanical elements serving only one unit, a warranty for a period beginning with the completion of construction of each building or improvement and continuing for 3 years thereafter or 1 year after owners other than the developer obtain control of the association, whichever occurs last, but in no event more than 5 years.

(2) The contractor and all subcontractors and suppliers shall be deemed to have granted to the developer and to the master association implied warranties of fitness as to the work performed or materials supplied by them as follows:

(a) For a period of 3 years from the date of completion of construction of a building or improvement, a warranty as to the roof and structural components of the building or improvement and mechanical and plumbing elements serving a building or an improvement, except mechanical elements serving only one unit.

(b) For a period of 1 year after completion of all construction, a warranty as to all other improvements and materials.

(3) “Completion of a building or improvement” means issuance of a certificate of occupancy for the entire building or improvement, or the equivalent authorization issued by the governmental body having jurisdiction, and in jurisdictions where no certificate of occupancy or equivalent authorization is issued, it means substantial completion of construction, finishing, and equipping of the building or improvement according to the plans and specifications.

(4) These warranties are conditioned upon routine maintenance being performed, unless the maintenance is an obligation of the developer or a developer-controlled association.

(5) Nothing in this section affects a community served by a master association as to which rights are established by contracts for sale of 10 percent or more of the units in the condominium by the developer to prospective unit owners prior to October 1, 1988, or as to buildings on which construction has been commenced prior to October 1, 1988.

(6) Residential master associations may be covered by an insured warranty program underwritten by a licensed insurance company registered in this state, provided that such warranty program meets the minimum requirements of this chapter, to the degree that such warranty program does not meet the minimum requirements of this chapter, such requirements shall apply.

718 715 Transfer of master association control—

(1) When unit owners other than the developer own 15 percent or more of the parcels that will be served ultimately by a master association, the unit owners other than the developer shall be entitled to elect at least one of the members of the board of directors of the master association. When unit owners other than the developer own 50 percent or more of the parcels which may be represented ultimately by the master association, the unit owners other than the developer shall be entitled to elect one director less than a majority of the board of directors. Unit owners other than the developer are entitled to elect not less than a majority of the members of the board of directors of a master association when unit owners other than the developer own 75 percent or more of the parcels that will be represented ultimately by the master association. The developer is entitled to elect at least one member of the board of directors of a master association as long as the developer holds for sale in the ordinary course of business at least 5 percent, in developments with fewer than 500 parcels, and 2 percent, in developments with 500 or more parcels, of the parcels in a development represented by the master association. Following the time the developer relinquishes control of the master association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the master association or selecting a majority of the board of administration.

(2) Within 60 days after the unit owners other than the developer are entitled to elect a member or members of the board of directors of a master association, the master association shall call, and give not less than 30 days’ or more than 40 days’ notice of, a meeting of the members of the master association to elect the members of the board of directors. The meeting may be called and the notice given by a member of the master association if the master association fails to do so. Upon election of the first unit owner other than the developer to the board of directors, the developer shall forward to the division the name and mailing address of the board member so elected.

(3) If a developer holds units for sale in the ordinary course of business, none of the following actions may be taken without approval in writing by the developer:

[a] Assessment of the developer as a unit owner for capital improvements.
(b) Any action by the master association that would be detrimental to the sales of units by the developer. However, an increase in assessments for expenses without discrimination against the developer shall not be deemed to be detrimental to the sales of units.

(4) Prior to, or not more than 60 days after, the time that members of the master association other than the developer elect a majority of the members of the board of directors of a master association, the developer shall relinquish control of the master association, and the members of the master association shall accept control. Simultaneously, the developer shall deliver to the master association all property of the members and of the master association held or controlled by the developer, including, but not limited to, the following items, if applicable:

(a) The official records of the master association

(b) Resignations of officers and members of the board of directors who are required to resign because the developer is required to relinquish control of the master association

(c) The financial records, including financial statements of the master association, and source documents since the incorporation of the master association through the date of turnover. The records shall be reviewed by an independent certified public accountant. The minimum report required shall be a review in accordance with generally accepted accounting standards as defined by rule by the Board of Accountancy. The accountant performing the review shall examine to the extent necessary supporting documents and records, including the cash disbursements and related paid invoices to determine if expenditures were for master association purposes and the billings, cash receipts, and related records to determine that the developer was charged and paid the proper amounts of funds for the payment of expenses of the master association

(d) Master association funds or control thereof

(e) All tangible personal property that is property of the master association, represented by the developer to be part of the common areas or ostensibly part of the common areas and an inventory of that property.

(f) A copy of the plans and specifications utilized in the construction or remodeling of improvements and the supplying of equipment to the master association property and in the construction and installation of all mechanical components serving the improvements and the site, with a certificate in affidavit form of the developer, his agent, or an architect or engineer authorized to practice in this state that such plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized in the construction and improvement of the master association property and for the construction and installation of the mechanical components serving the improvements. If the master association has been created more than 3 years after the completion of construction or remodeling of the improvements, the requirements of this paragraph shall not apply

(g) Copies of any certificates of occupancy which may have been issued for the master association property

(h) Any other permits issued by governmental bodies applicable to the property served by the master association in force or issued within 1 year prior to the date the other members take control of the master association

(i) All written warranties of the contractor, subcontractors, suppliers, and manufacturers, if any, that are still effective

(j) Employment contracts or service contracts in which the master association is one of the contracting parties or service contracts in which the master association or the members have an obligation or responsibility, directly or indirectly, to pay some or all of the fee or charge of the person or persons performing the service

(k) All other contracts to which the master association is a party

(1) Any grant or reservation made by restrictive covenants, a lease, or other document, and any contract made by a master association prior to assumption of control of the master association by unit owners other than the developer, that provides for operation, maintenance, or management of a master association or property serving the unit owners of a master association shall be fair and reasonable, and such grant, reservation, or contract may be canceled by unit owners other than the developer.

(a) If the unit owners other than the developer have not assumed control of the master association, and if unit owners other than the developer own at least 75 percent of the voting interests in the master association, any grant, reservation, or contract for maintenance, management, or operation of improvements used by unit owners of the master association may be canceled by concurrence of the owners of at least 75 percent of the voting interests in the master association other than the voting interests owned by the developer.

(b) If the unit owners other than the developer have assumed control of the master association, the cancellation shall be by concurrence of the owners of not less than 75 percent of the total number of voting interests in all units operated by the master association other than the voting interests owned by the developer.

(c) If the owners of units in a condominium association have the right to use property in common with owners of units in other associations and those associations are operated by more than one association, no grant, reservation, or contract for maintenance, management, or operation of the property serving more than one condominium may be canceled until unit owners other than the developer have assumed control of all of the associations operating the units that are to be served by the recreational area or other property, after which cancellation may be effected by concurrence of the owners of not less than 75 percent of the total number of voting interests in those associations other than voting interests owned by the developer.

(2) Any grant or reservation made by restrictive covenants, a lease, or other document, or any contract made by the developer or master association prior to the time when unit owners other than the developer elect a majority of the board of directors, which grant, reservation, or contract requires the master association to purchase property subject to the master association or to lease property subject to the master association to another party, shall be deemed ratified unless rejected by a majority of the voting interests of unit owners other than the developer within 18 months after unit owners other than the developer elect a majority of the board of directors. This subsection does not apply to any grant or reservation made by a restrictive covenant whereby persons other than the developer or his heirs, assigns, affiliates, directors, officers, or employees are granted the right to use the property subject to the association, so long as such persons are obligated to pay, at a minimum, a proportionate share of the cost associated with such property

(3) Any grant or reservation made by restrictive covenants, a lease, or other document, and any contract made by a master association, whether before or after assumption of control of the association by unit owners other than the developer, that provides for operation, maintenance, or management of a master association or property serving the unit owners of a master association shall not be in conflict with the powers and duties of the master association, condominium association, or other homeowners' association which is a part of the master association, or the rights of the unit owners as provided in this chapter. This subsection is intended only as a clarification of existing law.

(4) Any grant or reservation made by restrictive covenants, a lease, or other document, and any contract made by an association prior to assumption of control of the association by unit owners other than the developer, shall be fair and reasonable

(5) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in management contracts for master associations, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a master association contract for management, maintenance or operation of the master association which provides that the fee under the contract shall increase at the same percentage rate as any nationally recognized and commonly available commodity or consumer price index.
(6) Any action to compel compliance with the provisions of this section may be brought pursuant to the summary procedure provided for in s. 51.011.

718.718 Agreements for operation, maintenance, or management of master associations, specific requirements — (1) No written contract between a party contracting to provide maintenance or management services and a master association which contract provides for operation, maintenance, or management of a master association or property serving the unit owners of a master association shall be valid or enforceable unless the contract (a) Specifies the services, obligations, and responsibilities of the party contracting to provide maintenance or management services to the unit owners (b) Specifies those costs incurred in the performance of those services, obligations, or responsibilities which are to be reimbursed by the master association to the party contracting to provide maintenance or management services (c) Provides an indication of how often each service, obligation, or responsibility is to be performed, whether stated for each service, obligation, or responsibility or in categories thereof (d) Specifies a minimum number of personnel to be employed by the party contracting to provide maintenance or management services (e) Discloses any financial or ownership interest which the developer, if the developer is in control of the master association, holds with regard to the party contracting to provide maintenance or management services (2) Any services or obligations not stated on the face of the contract shall be unenforceable.

(3) Notwithstanding the fact that certain vendors contract with master associations to maintain equipment or property which is made available to serve unit owners, it is the intent of the Legislature that this section applies to contracts for maintenance or management services for which the master association pays compensation. This section does not apply to contracts for services or property made available for the convenience of unit owners by lessors or licensees of the association, such as coin-operated laundry, food, soft drink, or telephone vendors, cable television operators, retail store operators, businesses, restaurants; or similar vendors.

718.720 Obligations of owners — (1) Each unit owner and the master association shall be governed by, and shall comply with the provisions of, this chapter, the documents creating the association, and the association bylaws. Actions for damages or for injunctive relief, or both, for failure to comply with these provisions may be brought by the master association or by a unit owner against (a) The master association (b) A unit owner (c) Directors designated by the developer, for actions taken by them prior to the time control of the master association is assumed by unit owners other than the developer (d) Any director who willfully and knowingly fails to comply with these provisions, or (e) A condominium or other homeowners' association whose members are also members of the master association. The prevailing party in any such action is entitled to recover reasonable attorney's fees. This relief does not exclude other remedies provided by law.

(2) A provision of this chapter may not be waived if the waiver would adversely affect the rights of a unit owner or the purpose of the provision, except that unit owners or members of a board of directors may waive notice of specific meetings in writing if provided by the bylaws. Any instrument given in writing by the unit owner to an escrow agent may be relied upon by an escrow agent, whether or not such instruction and the payment of funds thereunder might constitute a waiver of any provision of this chapter.

(3) If the documents creating the master association or bylaws so provide, the association may levy reasonable fines against a unit for the failure of the owner of the unit, or its occupant, licensee, or invitee, to comply with any provision of the documents creating the master association, the master association bylaws, or reasonable rules of the master association. No fine shall become a lien against a unit. No fine may exceed $50 nor may any fine be levied except after giving reasonable notice and opportunity for a hearing to the unit owner and, if applicable, the unit occupant, licensee, or invitee. The provisions of this subsection do not apply to unoccupied units.

Section 4. It is the intent of the Legislature that, except with regard to the percentage of ownership of parcels by unit owners other than the developer which triggers transfer of control of the master association to unit owners other than the developer, as provided in s. 718.715, to the extent possible without causing the impairment of the obligation of contract, this act shall apply to existing master associations.

Section 5. Except as otherwise provided, this act shall take effect July 1, 1988, or upon becoming a law, whichever occurs later.

Rep. Simon moved the adoption of the amendment. On motion by Rep. Deutsch, the amendment was laid on the table.

Representatives Simon and Sample offered the following amendment:

Amendment 11—On page 1, between lines 28 and 29, insert Section 2 Section 718.401, Florida Statutes, is amended to read:

718.401 Leaseholds —

(1) A condominium may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold if, on the date the first unit is conveyed to a bona fide purchaser, the lease has an unexpired term of at least 50 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(a) The leased land must be identified by a description that is sufficient to pass title, and the leased personal property must be identified by a general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility. In the alternative, the personal property may be identified by a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility. Unless the lease is of a unit, the identification of the land shall be supplemented by a survey showing the relation of the leased land to the land included in the common elements. This provision shall not prohibit adding additional land or personal property in accordance with the terms of the lease, provided there is no increase in rent or material increase in maintenance costs to the individual unit owner.

(b) The lease shall not contain a reservation of the right of possession or control of the leased property by the lessee or any person other than unit owners or the association, and shall not create rights to possession or use of the leased property in any parties other than the association or unit owners of the condominium to be served by the leased property, unless the reservations and rights created are conspicuously disclosed. Any provision for use of the leased property by anyone other than unit owners of the condominium to be served by the leased property shall require the other users to pay a fair and reasonable share of the maintenance and repair obligations and other exactions due from users of the leased property.

(c) The lease shall state the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property. The limitation of the number of units to be served shall not preclude enlargement of the facilities leased and an increase in their capacity, if approved by the association operating the leased property.
after unit owners other than the developer have assumed control of the association. The provisions of this paragraph subsection do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof.

(d) (4)(a) In any action by the lessor to enforce a lien for rent payable or in any action by the association or a unit owner with respect to the obligations of the lessee or the lessor under the lease, the unit owner or the association may raise any issue or interpose any defense, legal or equitable, that he or it may have with respect to the lessor's obligations under the lease. If the unit owner or the association initiates any action or interposes any defense other than payment of rent under the lease, the unit owner or the association shall, upon service of process upon the lessor, pay into the registry of the court any allegedly accrued rent and the rent which accrues during the pendancy of the proceeding, when due. If the unit owner or the association fails to pay the rent into the registry of the court, the failure constitutes an absolute waiver of the unit owner's or association's defenses other than payment, and the lessor is entitled to default. The unit owner or the association shall notify the lessor of any deposits. When the unit owner or the association has deposited the required funds into the registry of the court, the lessor may apply to the court for disbursement of all or part of the funds shown to be necessary for the payment of taxes, mortgage payments, maintenance and operating expenses, and other necessary expenses incident to maintaining and equipping the leased facilities or necessary for the payment of other expenses arising out of personal hardship resulting from the loss of rental income from the leased facilities. The court, after an evidentiary hearing, may award all or part of the funds on deposit to the lessor for such purpose. The court shall require the lessor to post bond or other security, as a condition to the release of funds from the registry, when the value of the leased land and improvements, apart from the lease itself, is inadequate to fully secure the sum of existing encumbrances on the leased property and the amounts released from the court registry.

2 (b) When the association or unit owners have deposited funds into the registry of the court pursuant to this subsection and the unit owners and association have otherwise complied with their obligations under the lease or agreement, other than paying rent into the registry of the court rather than to the lessor, the lessor cannot hold the association or unit owners in default on their rental payments, nor may the lessor file liens or initiate foreclosure proceedings against unit owners. If the lessor, in violation of this subsection, attempts such liens or foreclosures, then the lessor may be liable for damages plus attorney's fees and costs that the association or unit owners incurred in satisfying such liens or foreclosures.

3 (e) Nothing in this paragraph subsection affects litigation commenced prior to October 1, 1979.

(e) (6)(a) If the lease is of recreational facilities or other commonly used facilities that are not completed, rent shall not commence until some of the facilities are completed. Until all of the facilities leased are completed, rent shall be prorated and paid only for the completed facilities in the proportion that the value of the completed facilities bears to the estimated value, when completed, of all of the facilities that are leased. The facilities shall be complete when they have been constructed, finished, and equipped and are available for use.

(f) (6)(b) A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time when the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash, on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined by the lessor based upon the market value of the property. If there is no agreement as to the price, then the price shall be determined by arbitration. This paragraph shall be applied to contracts entered into prior to January 1, 1977.

2 (b) If the lessor wishes to sell his interest and has received a bona fide offer to purchase it, the lessor shall send the association and each unit owner a copy of the executed offer. For 90 days following receipt of the offer by the association or unit owners, the association or unit owners have the option to purchase the interest on the terms and conditions in the offer. The option shall be exercised, if at all, by notice in writing given to the lessor within the 90-day period. If the association or unit owners do not exercise the option, the lessor shall have the right, for a period of 60 days after the 90-day period has expired, to complete the transaction described in the offer to purchase. If for any reason such transaction is not concluded within the 60 days, the offer shall have been abandoned, and the provisions of this subsection shall be reimposed.

3 (e) The option shall be exercised upon approval by owners of two-thirds of the units served by the leased property.

4. (d) The provisions of this paragraph subsection do not apply to a nonresidential condominium and do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or, in the case of an underlying land lease, a person or entity which is not the developer or directly or indirectly owned or controlled by the developer and did not obtain, directly or indirectly, ownership of the leased property from the developer.

(g) (2) The lease or a subordination agreement executed by the lessor must provide either

1. That any lien which encumbers a unit for rent or other moneys or exactions payable is subordinate to any mortgage held by an institutional lender, or

2. That, upon the foreclosure of any mortgage held by an institutional lender or upon delivery of a deed in lieu of foreclosure, the lien for the unit owner's share of the rent or other exactions shall not be extinguished but shall be foreclosed and unenforceable against the mortgagee with respect to that unit owner's share of the rent and other exactions which mature or become due and payable on or before the date of the final judgment of foreclosure, in the event of foreclosure, or on or before the date of delivery of the deed in lieu of foreclosure. The lien may, however, automatically and by operation of the lease or other instrument, reattach to the unit and secure the payment of the unit's proportionate share of the rent or other exactions coming due subsequent to the date of final decree of foreclosure or the date of delivery of the deed in lieu of foreclosure.

The provisions of this paragraph subsection do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof.

(h) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for residential facilities, land, or other commonly used facilities serving residential condominiums, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a condominium lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate or any nationally recognized and commonly available commodity or consumer price index.

(i) The purpose of the subsection do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof.

(2) Subsection (1) does not apply to residential cooperatives created prior to January 1, 1977, which are converted to condominium ownership by the cooperative unit owners or their association; after control of the association has been transferred to the unit owners if, following the conversion, the unit owners will be the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion.

(3) If rent under the lease is a fixed amount for the full duration of the lease, and the rent thereunder is payable by a person or persons other than the association or the unit owners, the division director has the discretion to accept alternative assurances which are sufficiently to secure the payment of rent, including, but not limited to, annuities with an insurance company authorized to do business in this state, the
beneficiary of which shall be the association, or cash deposit in trust, the beneficiary of which shall be the association, which deposit shall be in an amount sufficient to generate interest sufficient to meet lease payments as they occur. If alternative assurances are accepted by the division director, the following provisions are applicable:

(a) Disclosures contemplated by paragraph (1)(b) subsection (2), if not contained within the lease, may be made by the developer.

(b) Disclosures as to the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property, if not contained in the lease, may be stated by the developer.

(c) The provisions of paragraphs (1)(d) and (e) subsections (4) and (6) apply but are not required to be stated in the lease.

(d) The provisions of paragraph (1)(g) subsections (7) and (9) do not apply.

Section 3 Section 718 4015, Florida Statutes, is created to read:

718 4015 Condominium leases, escalation clauses—

(1) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a condominium lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(2) The provisions of subsection (1) do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency or any political subdivision thereof. The application of subsection (1) to contracts entered into prior to June 4, 1975, may not divest the parties of any benefits or obligations arising from the escalation of fees prior to October 1, 1988, but only prohibits further escalation of fees pursuant to the escalation clauses, on or after October 1, 1988.

Section 4 Section 719 401, Florida Statutes, is amended to read:

719 401 Leaseholds—

(1) A cooperative may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold, if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(a) The leased land must be identified by a description that is sufficient to pass title, and the leased personal property must be identified by a general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility. In the alternative, the personal property may be identified by a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility. Unless the lease is of a unit, the identification of the land shall be supplemented by a survey showing the relation of the leased land to the land included in the common areas. This provision shall not prohibit adding additional land or personal property in accordance with the terms of the lease, provided there is no increase in rent or material increase in maintenance costs to the individual unit owner.

(b) The lease shall not contain a reservation of the right of possession or control of the leased property by the lessor or any person other than unit owners or the association, and shall not create rights to possession or use of the leased property in any parties other than the association or unit owners of the cooperative to be served by the leased property, unless the reservations and rights created are conspicuously disclosed. Any provision for use of the leased property by any one other than unit owners of the cooperatives to be served by the leased property shall require the other users to pay a fair and reasonable share of the maintenance and repair obligations and other excations due from users of the leased property.

(2) The lease shall state the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property. The limitation of the number of units to be served shall not preclude enlargement of the facilities leased and an increase in their capacity, if approved by the association operating the leased property after unit owners other than the developer have assumed control of the association. This paragraph subsection does not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or any agency or any political subdivision thereof.

(3) In any action by the lessor to enforce a lien for rent payable or in any action by the association or a unit owner with respect to the obligations of the lessor or the lessor under the lease, the unit owner or the association may raise any issue or interpose any defenses, legal or equitable, that he or it may have with respect to the lessor's obligations under the lease. If the unit owner or the association initiates any action or interposes any defense other than payment of rent under the lease, the unit owner or the association shall, upon service of process upon the lessor, pay into the registry of the court any allegedly accrued rent and the rent which accrues during the pendency of the proceeding, when due. If the unit owner or the association fails to pay the rent into the registry of the court, it shall constitute an absolute waiver of the unit owner's or association's defenses other than payment of rent, and the lessor shall be entitled to default. The unit owner or the association shall notify the lessor of any deposits. When the unit owner or the association has deposited the required funds into the registry of the court, the lessor may apply to the court for disbursement of all or part of the funds shown to be necessary for the payment of taxes, mortgage payments, maintenance and operating expenses, and other necessary expenses incident to maintaining and equipping the facilities for their use. The lessor may apply to the court for disbursements of funds for any expenses arising out of personal hardship resulting from the loss of rental income from the leased facilities. The court, after an evidentiary hearing, may award all or part of the funds on deposit to the lessor for such purpose. The court shall require the lessor to post bond or other security, as a condition to the release of funds from the registry, when the value of the leased land and improvements, apart from the lease itself, is inadequate to fully secure the sum of existing encumbrances on the leased property and the amounts released from the court registry.

2 The association or unit owners have deposited funds into the registry of the court pursuant to the subsection, and the unit owners or association have otherwise complied with their obligations under the lease or agreement, other than paying rent into the registry of the court rather than to the lessor, the lessor cannot hold the association or unit owners in default on their rental payments nor may the lessor file liens or initiate foreclosure proceedings against unit owners. If the lessor, in violation of this subsection, attempts such liens or foreclosures, then the lessor may be liable for damages plus attorney's fees and costs which the association or unit owners incurred in satisfying those liens or foreclosures.

3 Nothing in this paragraph subsection shall affect litigation commenced prior to October 1, 1979.

4 If the lease is of recreational or other commonly used facilities that are not completed, rent shall not commence until some of the facilities are completed. Until all of the facilities leased are completed, rent shall be prorated and paid only for the completed facilities in the proportion that the value of the completed facilities bears to the estimated value, when completed, of all of the facilities that are leased. The facilities shall be complete when they have been constructed, finished, and equipped and are available for use.

5 A lease of recreational or other commonly used facilities entered into by the association or unit owners prior to the time the control of the association is turned over to unit owners other than the developer shall grant to the lessee an option to purchase the leased property, payable in cash on any anniversary date of the beginning of the lease term after the 10th anniversary, at a price then determined.
by agreement. If there is no agreement as to the price, then the price shall be determined by arbitration. This paragraph shall be applied to contracts entered into prior to January 1, 1977.

2 (a) If the lessor wishes to sell his interest and has received a bona fide offer to purchase it, the lessor shall send the association and each unit owner a copy of the executed offer. For 90 days following receipt of the offer by the association or unit owners, the association or unit owners have the option to purchase the interest on the terms and conditions in the offer. The option shall be exercised, if at all, by notice in writing given to the lessor within the 90-day period. If the association or unit owners do not exercise the option, the lessor shall have the right, for a period of 60 days after the 90-day period has expired, to complete the transaction described in the offer to purchase. If for any reason such transaction is not concluded within the 60 days, the offer shall have been abandoned, and the provisions of this subsection shall be reimposed.

3 (a) The option shall be exercised upon approval by owners of two-thirds of the units served by the leased property.

4 (d) The provisions of this paragraph subsection shall not apply to a nonclerical rental or lease, if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or, in the case of an underlying land lease, a person or entity which is not the developer or directly or indirectly owned or controlled by the developer and did not obtain, directly or indirectly, ownership of the leased property from the developer.

(g) (2) The lease or a subordination agreement executed by the lessor must provide either:

1 (e) That any lien which encumbers a unit for rent or other moneys or exactions payable is subordinate to any mortgage held by an institutional lender, or

2 (b) That, upon the foreclosure of any mortgage held by an institutional lender or upon delivery of a deed in lieu of foreclosure, the lien for the unit owner's share of the rent or other exactions shall not be extinguished, but shall be foreclosed and unenforceable against the mortgagee with respect to that unit's share of the rent and other exactions which mature or become due and payable on or before the date of the final judgment of foreclosure, in the event of foreclosure, or on or before the date of delivery of the deed in lieu of foreclosure. The lien may, however, automatically and by operation of the law or other instrument, reattach to the unit and secure the payment of the unit's proportionate share of the rent or other exactions coming due subsequent to the date of final decree of foreclosure or the date of delivery of the deed in lieu of foreclosure.

This paragraph subsection does not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or any agency or political subdivision thereof.

8 (a) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential cooperatives, and such clauses are hereby declared void for public policy. For the purpose of this subsection, an escalation clause is any clause in a cooperative lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(b) This subsection does not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or any agency or political subdivision thereof.

1 (c) If rent under the lease is a fixed amount for the full duration of the lease and the rent thereunder is payable by the association or the unit owners, the division director shall have the discretion to accept alternative assurances sufficient to secure the payment of rent, including, but not limited to, annuities with an insurance company authorized to do business in this state, the beneficiary of which shall be the association, or, cash deposits in trust, the beneficiary of which shall be the association, which deposit shall be at an amount sufficient to generate interest sufficient to meet lease payments as they occur. If alternative assurances are accepted by the division director, the following apply:

1 (a) If the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or, in the case of an underlying land lease, a person or entity which is not the developer or directly or indirectly owned or controlled by the developer, the lessor shall send the association and each unit owner a copy of the executed offer. For 90 days following receipt of the offer by the association or unit owners, the association or unit owners have the option to purchase the interest on the terms and conditions in the offer. The option shall be exercised, if at all, by notice in writing given to the lessor within the 90-day period. If the association or unit owners do not exercise the option, the lessor shall have the right, for a period of 60 days after the 90-day period has expired, to complete the transaction described in the offer to purchase. If for any reason such transaction is not concluded within the 60 days, the offer shall have been abandoned, and the provisions of this subsection shall be reimposed.

3 (e) The provisions of paragraphs (1)(d) and (e) subsections (4) and (6) apply, but need not be stated in the lease.

4 (d) The provisions of paragraph (1)(g) subsection (4) do not apply.

Section 5. Section 719.4015, Florida Statutes, is created to read:

719.4015 Cooperative leases, escalation clauses—

(1) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential cooperatives, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a cooperative lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(2) The provisions of subsection (1) do not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or any agency of any political subdivision thereof. However, the provisions of subsection (1) apply to contracts entered into prior to, on, and after June 4, 1975, if the lessor is not the Government of the United States or this state or any political subdivision thereof. The application of subsection (1) to contracts entered into prior to June 4, 1975, may not divest the parties of any benefits or obligations arising from the escalation of fees prior to October 1, 1988, but only prohibits further escalation of fees pursuant to the escalation clauses, on or after October 1, 1988.

Section 6. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Rep. Simon moved the adoption of the amendment, which was adopted.

Subsequently, on motion by Rep. Dunbar, the House agreed to reconsider the vote by which Amendment 11 was adopted. The question recurred on the adoption of the amendment.

Representative Dunbar offered the following amendment to the amendment:

Amendment 1 to Amendment 11—On page 5, lines 12 and 13, and on page 13, lines 12 and 13, strike "contracts entered into prior to January 1, 1977" and insert all such leases, including those entered into prior to January 1, 1977.

Rep. Dunbar moved the adoption of the amendment to the amendment, which was adopted.

The question recurred on the adoption of Amendment 11, as amended, which was adopted.

Representatives Simon and Sample offered the following title amendment:

Amendment 12—On page 1, line 4, after the semicolon, insert amending ss. 718.401 and 719.401, F.S., providing for the application of certain options available to condominium and cooperative leases governing recreational facilities or other common elements and making technical changes, creating ss. 718.4015 and 719.4015, F.S.,
prohibiting the enforcement of escalation clauses in certain existing condominium and cooperative leases and making technical changes,

Rep. Simon moved the adoption of the amendment, which was adopted without objection.

On motion by Rep. Young, the rules were waived by two-thirds vote and CS/SB 54, as amended, was read a third time by title. On passage, the vote was

Yeas—114

The Chair—Figg, King, Renke
Abrams—Frankel, Langton, Ruchin
Arnold—Freedman, Lawson, Budd
Ascherl—Garcia, Lewis, Rush
Bainter—Gardner, Liberti, Sample
Bannarn—Glickman, Lippman, Sanders
Bankhead—Gonzalez, Locke, Sansom
Bass—Quevedo, Logan, Saunders
Bell—Goode, Lombard, Shelley
Bloom—Gordon, Long, Silver
Bronson—Grindle, Mackenzie, Simon
Brown—Guber, Mackay, Simone
Burke—Gustafson, Martin, Smith
Burnsed—Gutman, Martinez, Soto
Canady—Hanson, McEwan, Starks
Carlton—Harden, Meffert, Stone
Carpenter—Harris, Messermith, Thomas
Casas—Hawkins, Metcalf, Titone
Clark—Healey, Mitchell, Tobin
Clements—Hill, Morse, Tobin
Cosgrove—Holland, Morhard, Trammell
Crady—Holzendorf, Nergerd, Truxler
Crotty—Ireland, Ostrau, Upchurch
Dantzler—Jennings, Patchett, Wallace
Davis—Johnson, B L, Peeples, Webster
Deutsch—Johnson, R C, Press, Wetherell
Diaz-Balart—Jones, C F, Reaves, Wise
Drage—Jones, D L, Reddick, Young
Dunbar—Kelly, Rehm

Nays—1

Irvine

So the bill passed, as amended, and was immediately certified to the Senate for engrossment.

CS for SB 872—A bill to be entitled, An act relating to workers' compensation; amending s 440 11, F S., extending employer's immunity from liability for injury or death to certain persons; providing an effective date—was taken up out of regular order and read the second time by title.

Representative Silver offered the following amendment:

Amendment 1—On page 1, line 10, strike everything after the enacting clause and insert: Section 1 Subsection (1) of section 440 11, Florida Statutes, is amended to read

440 11 Exclusiveness of liability—

(1) The liability of an employer prescribed in s 440 10 shall be exclusive and in place of all other liability of such employer to any third-party tortfeasor and to the employee, the legal representative thereof, husband or wife, parents, dependents, next of kin, and anyone otherwise entitled to recover damages from such employer at law or in admiralty on account of such injury or death, except that if an employer fails to secure payment of compensation as required by this chapter, an injured employee, or the legal representative thereof in case death results from the injury, may elect to claim compensation under this chapter or to maintain an action at law or in admiralty for damages on account of such injury or death. In such action the defendant may not plead as a defense that the injury was caused by negligence of a fellow servant, that the employee assumed the risk of the employment, or that the injury was due to the comparative negligence of the employee. The same immunities from liability enjoyed by an employer shall extend as well to each employee of the employer when such employee is acting in furtherance of the employer's business and the injured employee is entitled to receive benefits under this chapter. Such fellow-employee immunities shall not be applicable to an employee who acts, with respect to a fellow employee, with willful and wanton disregard or unprovoked physical aggression or with gross negligence when such acts result in injury or death or such acts proximately cause such injury or death, nor shall such immunities be applicable to employees of the same employer when each is operating in the furtherance of the employer's business but they are assigned primarily to unrelated works within private or public employment. The same immunity provisions enjoyed by an employer shall also apply to any sole proprietor, partner, corporate officer or director, supervisor or other person who in the course and scope of his duties acts in a managerial or policy-making capacity and the conduct which caused the alleged injury arose within the course and scope of said managerial or policy-making duties and the conduct was not a violation of a law, whether or not a violation was charged, for which the maximum penalty which may be imposed exceeds 60 days imprisonment as set forth in s 775 082, F S.

Section 2 This act shall take effect October 1, 1988

Rep. Silver moved the adoption of the amendment, which was adopted without objection.

Representative Silver offered the following title amendment:

Amendment 2—On page 1, lines 1-6, strike everything before the enacting clause and insert: A bill to be entitled, An act relating to workers' compensation; amending s 440 11, F S., extending employer's immunity from liability for injury or death to apply to certain persons under certain circumstances, providing an effective date.

Rep. Silver moved the adoption of the amendment, which was adopted without objection.

On motion by Rep. Silver, the rules were waived by two-thirds vote and CS/SB 872, as amended, was read a third time by title. On passage, the vote was

Yeas—105

The Chair—Gardner, Kelly, Renke
Arnold—Glickman, Langton, Ruchin
Ascherl—Gonzalez, Langton, Rush
Bainter—Quevedo, Lawson, Sample
Bannarn—Goode, Lewis, Sanders
Bankhead—Gordon, Liberti, Sansom
Bass—Grindle, Lippman, Saunders
Bloom—Guber, Lombard, Shelley
Bronson—Grindle, Mackenzie, Simon
Brown—Guber, Mackay, Simone
Burke—Gustafson, Martin, Smith
Burnsed—Gutman, Martinez, Soto
Canady—Hanson, McEwan, Starks
Carlton—Harden, Meffert, Stone
Carpenter—Harris, Messermith, Thomas
Casas—Hawkins, Metcalf, Titone
Clark—Healey, Mitchell, Tobin
Clements—Hill, Morse, Tobin
Cosgrove—Holland, Morhard, Trammell
Crady—Holzendorf, Nergerd, Truxler
Crotty—Ireland, Ostrau, Upchurch
Dantzler—Jennings, Patchett, Wallace
Davis—Johnson, B L, Peeples, Webster
Deutsch—Johnson, R C, Press, Wetherell
Diaz-Balart—Jones, C F, Reaves, Wise
Drage—Jones, D L, Reddick, Young
Dunbar—Kelly, Rehm

Nays—1

Frankel
the beginning of each license period. However, the aggregate liability of the surety in any one year shall in no event exceed the sum of the bond or, in the case of a letter of credit, the aggregate liability of the issuing bank shall not exceed the sum of the credit

(c) Surety bonds shall be executed by a surety company authorized to do business in the state as surety, and irrevocable letters of credit shall be issued by a bank authorized to do business in the state as a bank

(d) Irrevocable letters of credit shall be engaged by a bank as an agreement to honor demands for payment as specified in this section. Such security shall remain on deposit for a period of 1 year after he ceases to be a broker. A person may not be licensed as a broker unless he has been a salesman for at least 2 consecutive years, and may not be licensed as a broker after October 1, 1996, unless he has been licensed as a salesman for at least 2 consecutive years

(9) An applicant for a salesman’s license or its renewal must deposit with the department a bond or equivalent securities in the sum of $10,000 subject to the conditions in subsection (8)

(10) Any person injured by the fraud, deceit, or willful negligence of any broker or salesman or by the failure of any broker or salesman to comply with this act or other law may file an action for damages upon the respective bonds against the principals and the surety

(11) If a surety notifies the department that it is no longer the surety for a licensee, the department shall notify the licensee of such withdrawal, by certified mail, return receipt requested, addressed to the licensee’s principal office. Upon the termination of such surety the licensee’s license is automatically suspended until he files a new bond with the department

(12) Each broker must maintain a principal place of business in this state and

Rep. Mackenzie moved the adoption of the amendment, which was adopted

On motion by Rep. Mackenzie, the House concurred in the Senate Amendment, as amended. The question recurred on the passage of CS/HB 1125. The vote was

Yea—112

Nay—None

Votes after roll call

Yea—Bloom, Reaves

So the bill passed, as further amended. The action, together with the bill and amendments thereto, was immediately certified to the Senate

The Honorable Jon Mills, Speaker

I am directed to inform the House of Representatives that the Senate has concurred in House Amendments 1, 2, 3, 4, 5, 7, 12 and has amended House Amendments 6, 8, and 11, concurred in same as amended and passed CS/SB 54, as amended

Joe Brown, Secretary

(House Amendment 11 attached to original bill and shown on pages 738-741, House Journal, May 26)

CS for SB 54—A bill to be entitled An act relating to condominiums, amending § 718.115, F.S., providing for additional expense items to be treated as common expenses, providing an effective date

House Amendment 2—On page 1, line 4, after the semicolon insert, amending § 718.112, F.S., relating to the acceleration of condominium assessments,

House Amendment 4—On page 1, line 4, after the semicolon insert, amending § 718.301, F.S., relating to condominium developer voting after transfer of control to unit owners other than the developer.

House Amendment 6—On page 1, line 4, after the semicolon insert, amending § 718.117, F.S., relating to the termination of condominiums,

House Amendment 8—On page 1, line 4, after the semicolon insert, amending § 719.1055, F.S., relating to the amendment of cooperative documents,

House Amendment 12—On page 1, line 4, after the semicolon, insert, amending §§ 718.401 and 719.401, F.S., providing for the application of certain options available to condominium and cooperative leases governing recreational facilities or other common elements and making technical changes, creating §§ 718.4015 and 719.4015, F.S., prohibiting the enforcement of escalation clauses in certain existing condominium and cooperative leases and making technical changes;

Senate Amendment 1 to House Amendment 6—In title amendment, on page 1, lines 12 and 13, strike the words “F.S., relating to termination of condominiums” and insert F.S., providing for notice of recordation of instruments evidencing the removal of property from condominium status,

Senate Amendment 1 to House Amendment 8—In title amendment, on page 1, lines 12 and 13, strike the words “amending §§ 719.1055, F.S., relating to the amendment of cooperative documents,” and insert creating § 719.1055, F.S., prescribing limits on changes which may be made through amendment of cooperative documents,

Senate Amendment 1 to House Amendment 11—On page 5, lines 12 and 13, strike all of said lines and insert This paragraph shall be applied to contracts entered into on, before, or after January 1, 1977

Senate Amendment 2 to House Amendment 11—On page 13, lines 12 and 13, strike all of said lines and insert shall be applied to contracts entered into on, before, or after January 1, 1977

On motion by Rep. Frankel, the House concurred in the Senate Amendments to House Amendments 6, 8 and 11

Representative Frankel offered the following title amendment

Amendment 13—On page 1, line 2, before the semicolon insert, and cooperatives

Rep. Frankel moved the adoption of the amendment, which was adopted

The question recurred on the passage of CS/SB 54. The vote was
June 1, 1988

JOURNAL OF THE HOUSE OF REPRESENTATIVES

Yeas—112

The Chair
Garen
Abras
Arnold
Ascherl
Ban
Bainter
Bankhead
Bass
Bell
Bloom
Branson
Burnsed
Canady
Carlton
Casas
Clark
Clay
Clements
Coogrove
Crady
Croft
Deutsch
Diaz-Balart
Drage
Dunbar
Fagg
Frankel
Friedman
Frishe
Nays—1
Hill

Votes after roll call

Yeas—Carpenter

So the bill passed, as further amended The action, together with the bill and amendments thereto, was immediately certified to the Senate.

The Honorable Jon Mills, Speaker

I am directed to inform the House of Representatives that the Senate has concurred in House Amendments 1, 2, 3, 4, has amended House Amendments 5 and 9, concurred in same as amended The Senate has refused to concur in House Amendments 5 and 6 and requests the House to recede, and has passed CSS/CS/ SB 368 as amended

Joe Broun, Secretary

CS for CS for SB 368—A bill to be entitled An act relating to insurance, amending s 624 34, F.S., providing for the authority of the Department of Law Enforcement to accept fingerprints of any entity which is examined or investigated under the Florida Insurance Code, amending s 624 404, F.S., relating to the general eligibility of insurers for a certificate of authority, providing criteria, amending s 624 501, F.S., providing fees for registration certificates with respect to certain military installations, amending s 626 221, F.S., increasing the time period for an exemption from examination for certain applicants, amending s 626 231, F.S., providing for eligibility to take an examination for license, amending s 626 251, F.S., deleting a time period with respect to notice of examination, amending s 626 281, F.S., providing for reexaminations, amending s 626 511, F.S., eliminating an exemption to a requirement that described persons file a statement with the Department of Insurance describing the reason for the termination of an agent's appointment and license, amending s 626 521, F.S., providing for required character and credit reports, creating s 626 552, F.S., providing for reporting by insurers and supervising or managing general agents, amending ss 626 611, 626 621, 634 181, 634 191, 634 230, 634 321, 634 422, 634 423, 642 041, and 642 043, F.S., providing uniform language with respect to discipline or license refusal, suspension, or revocation for persons having been found guilty of, or having pleaded guilty or nolo contendere to, a felony or a crime punishable by imprisonment of 1 year or more, amending s 626 731, F.S., revising criteria for qualifications for a general lines agent's license, amending s 626 732, F.S., revising language with respect to required knowledge, experience, or instruction for license as a general lines agent, amending s 626 735, F.S., revising language with respect to qualifications for a solicitor's license, amending s 626 739, F.S., revising language with respect to a temporary license, amending s 626 740, F.S., revising language with respect to temporary limited licenses for industrial fire agents, amending s 626 785, F.S., relating to license qualifications, amending s 626 790, F.S., revising language with respect to temporary licenses, amending s 626 792, F.S., prohibiting the Department of Insurance from issuing a life insurance agent's license to certain nonresidents, amending s 626 801, F.S., revising language with respect to license qualifications, amending s 626 835, F.S., prohibiting the department from issuing a health insurance agent's license to certain nonresidents, amending s 626 854, F.S., redefining the term "public adjuster", amending s 626 869, F.S., revising criteria for the issuance of a limited license as an independent or public adjuster, amending s 626 88, F.S., revising the definition of the terms "administrator" and "insurer", amending s 626 8805, F.S., providing criteria for certification of authority, creating s 626 8809, F.S., providing for a fidelity bond, amending s 626 891, F.S., relating to grounds for suspension or revocation of certificate of authority, amending s 626 943, F.S., relating to powers and duties of the department, amending s 626 944, F.S., relating to qualifications for health care risk managers, creating s 627 4085, F.S., requiring the name of the insurer on certain applications, amending s 627 679, F.S., providing for required disclosure with respect to credit life insurance, repealing s 627 9175(2), F.S., relating to the publication of health insurance loss ratios, amending s 628 071, F.S., relating to the grant or denial of a permit, to include certain criteria, amending s 631 031, F.S., providing for discretionary commencement of delinquency proceedings, allowing the department to also commence a delinquency proceeding by application to the court by petition for a consent order, amending s 631 041, F.S., providing for an automatic stay, prohibiting certain actions upon commencement of a delinquency proceeding, allowing relief from the stay under certain circumstances, providing authority to issue injunctions or orders without notice, amending s 631 271, F.S., revising priority with respect to distribution of claims from the insurer's estate, amending s 631 281, F.S., providing that a claim of offset must be fully mature as of the filing of liquidation orders, creating s 631 392, F.S., providing for immunity for the department and its agents and employees, including the Insurance Commissioner, in carrying out responsibilities and duties under ch 631, F.S., amending s 632 629, F.S., relating to annual licenses for certain societies authorized to transact business, amending s 632 632, F.S., relating to the applicability of the Insurance Code, amending s 637 415, F.S., relating to the regulation of employees or representatives of dental service plan corporations, creating s 648 315, F.S., providing for the number of applications required for licensure as bail bondsmen, amending s 648 34, F.S., revising criteria for qualifications of bail bondsmen, amending s 648 37, F.S., revising criteria for qualifications of runners, amending s 648 39, F.S., revising language with respect to examination as a bail bondsman, amending s 648 39, F.S., relating to notice of appointment of agents, repealing s 626 881, F.S., relating to the deposit of securities and surety bonds, repealing s 626 8811, F.S., relating to a prohibition upon a levy upon deposit of certain assets or securities, providing for review and repeal, providing an effective date

(House Amendments 1 and 3 attached to original bill and shown on page 669, House Journal, May 24)

House Amendment 2—On page 4, line 18, after "Code" insert amending as s 634 308, 834 312, and 634 312, F.S., relating to the number of permissible annual renewals of certain warranty contracts.

House Amendment 4—On page 3, line 12, after the semicolon insert amending s 626 918 F.S., changing eligibility requirements for surplus lines insurers.

House Amendment 5—On page 46 line 23, insert Section 56 (1) Paragraph c of subsection (2) of section 826 944 Florida Statutes, is amended to read

626 944 Qualifications for health care risk managers —
On motion by Senator Weinstock, the rules were waived and the Senate reverted to—

MESSAGES FROM THE HOUSE OF REPRESENTATIVES

The Honorable John W Vogt, President

I am directed to inform the Senate that the House of Representatives has passed with amendments CS for SB 54 and requests the concurrence of the Senate.

John B Phelps, Clerk

CS for SB 54—A bill to be entitled An act relating to condominiums; amending s. 718.112, F.S., providing for additional expense items to be treated as common expenses, providing an effective date

Amendment 1—On page 1, between lines 28 and 29, insert:

Section 2. Paragraph (g) of subsection (2) of section 718.112, Florida Statutes, is amended to read:

718 112 Bylaws—

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

(g) Assessments—The manner of collecting from the unit owners their shares of the common expenses shall be stated in the bylaws. Assessments shall be made against units not less frequently than quarterly, in an amount which is not less than that required to provide funds in advance for payment of all of the anticipated current operating expenses and for all of the unpaid operating expenses previously incurred. Nothing in this paragraph shall preclude the right of an association to accelerate assessments of an owner delinquent in payment of common expenses. Accelerated assessments shall be due and payable on the date the claim of lien is filed. Such accelerated assessments shall include the amounts due for the remainder of the budget year in which the claim of lien was filed in sections taken pursuant to s. 718.116(4)(e).

(Renumber subsequent section)

Amendment 2—On page 1, in the title, line 4, after the semicolon, insert:

amending s. 718.112, F.S., relating to the acceleration of condominium assessments;

Amendment 3—On page 1, between lines 28 and 29, insert:

Section 2. Subsection (1) of section 718.301, Florida Statutes, is amended to read:

718.301 Transfer of association control.—

(1) When unit owners other than the developer own 15 percent or more of the units in a condominium that will be operated ultimately by an association, the unit owners other than the developer shall be entitled to elect not less than one-third of the members of the board of administration of the association. Unit owners other than the developer are entitled to elect not less than a majority of the members of the board of administration of an association:

(a) Three years after 50 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(b) Three months after 90 percent of the units that will be operated ultimately by the association have been conveyed to purchasers;

(c) When all the units that will be operated ultimately by the association have been completed, some of them have been conveyed to purchasers, and none of the others are being offered for sale by the developer in the ordinary course of business, or

(d) When some of the units have been conveyed to purchasers and none of the others are being constructed or offered for sale by the developer in the ordinary course of business, whichever occurs first. The developer is entitled to elect at least one member of the board of administration of an association as long as the developer holds for sale in the ordinary course of business at least 5 percent, in condominiums with fewer than 500 units, and 2 percent, in condominiums with more than 500 units, of the units in a condominium operated by the association. Following the time the developer relinquishes control of the association, the developer may exercise the right to vote any developer-owned units in the same manner as any other unit owner except for purposes of reacquiring control of the association or selecting the majority members of the board of administration

(Renumber subsequent section)

Amendment 4—On page 1, in the title, line 4, after the semicolon, insert:

amending s. 718.301, F.S., relating to condominium developer voting after transfer of control to unit owners other than the developer,

Amendment 5—On page 1, between lines 28 and 29, insert:

Section 2. Subsection (1) of section 718.117, Florida Statutes, is amended to read:

718 117 Termination—

(1) Unless otherwise provided in the declaration, the condominium property may be removed from the provisions of this chapter only by consent of all of the unit owners, evidenced by a recorded instrument to that effect, and upon the written consent by all of the holders of recorded liens affecting any of the condominium parcels. Upon recordation of the instrument evidencing consent of all of the unit owners to terminate the condominium, the association shall notify the division within 30 working days of the termination and the date the document was recorded, the county where the document was recorded, and the book and page number of the public records where the document was recorded.

(Renumber subsequent section)

Amendment 6—On page 1, in the title, line 4, after the semicolon, insert:

amending s. 718.117, F.S., relating to termination of condominiums,

Amendment 7—On page 1, between lines 28 and 29, insert:

Section 2. Section 719.1055, Florida Statutes, is created to read 719.1055 Amendment of cooperative documents—Unless otherwise provided in the cooperative documents as originally recorded, no amendment thereto may change the configuration or size of any cooperative unit in any material fashion, materially alter or modify the appurtenances of the unit, or change the proportion or percentage by which the owner of the parcel shares the common expenses and owns the common surplus, unless the record owner of the unit and all record owners of units on it join in the execution of the amendment, and unless the record owners of all other units approve the amendment.

(Renumber subsequent section)

Amendment 8—On page 1, in the title, line 4, after the semicolon, insert:

amending s. 719.1055, F.S., relating to the amendment of cooperative documents,

Amendment 11—On page 1, between lines 28 and 29, insert:

Section 2. Section 718.401, Florida Statutes, is amended to read:

718 401 Leaseholds.—

(1) A condominium may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(a) The leased land must be identified by a description that is sufficient to pass title, and the leased personal property must be identified by a general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility. In the alternative, the personal property may be identified by a representation as to the minimum amount of expenditure that will be made to purchase the personal property for the facility. Unless the lease is of a unit, the identification of the land shall be supplemented by a survey showing the relation of the leased land to the land included in the common elements. This provision shall not prohibit adding additional land or personal property in accordance with the terms of the lease, provided there is no increase in rent or material increase in maintenance costs to the individual unit owner

(b) The lease shall not contain a reservation of the right of possession or control of the leased property by the lessor or any person other than unit owners or the association, and shall not create rights to possession or use of the leased property in any party other than the association or unit owners of the condominium to be served by the leased prop-
2 (b) If the lessor wishes to sell his interest and has received a bona fide offer to purchase it, the lessor shall send the association and each unit owner a copy of the 90-day notice of offer of sale, and in the event of receipt of the offer by the association or unit owners, the association or unit owners have the option to purchase the interest on the terms and conditions in the offer. The option shall be exercised, if at all, by notice in writing given to the lessor within the 90-day period. If the association or unit owners do not exercise the option, the lessor shall have the right, for a period of 60 days after the 90-day period has expired, to complete the transaction described in the offer to purchase. If for any reason such transaction is not concluded within the 60 days, the offer shall have been abandoned, and the provisions of this subsection shall be remade.

3 (c) The option shall be exercised upon approval by owners of two-thirds of the units served by the leased property.

4 (d) The provisions of this paragraph subsection do not apply to a nonresidential condominium and do not apply if the lessor is the Government of the United States or such state or any political subdivision thereof or, in the case of an underlying land lease, a person or entity which is not the developer or directly or indirectly owned or controlled by the developer and did not obtain, directly or indirectly, ownership of the leased property from the developer.

(g) The lease or a subordination agreement executed by the lessor must provide either:

1. (c) That any lien which encumbers a unit for rent or other moneys or exactions payable is subordinate to any mortgage held by an institutional lender, or

2. (a) That, upon the foreclosure of any mortgage held by an institutional lender or upon delivery of a deed in lieu of foreclosure, the lien for the unit owner's share of the rent or other exactions shall not be extinguished but shall be foreclosed and enforecable against the mortgagee with interest thereon from the date of the foreclosure or the date of delivery of the deed in lieu of foreclosure. The lien may, however, automatically and by operation of the lease or other instrument, reattach to the unit and secure the payment of the unit's proportionate share of the rent or other exactions coming due subsequent to the date of final decree of foreclosure or the date of delivery of the deed in lieu of foreclosure.

The provisions of this paragraph subsection do not apply if the lessor is the Government of the United States or such state or any political subdivision thereof or any agency of any political subdivision thereof.

(h) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a condominium lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and customarily available commodity or consumer price index.

(b) The provisions of this subsection do not apply if the lessor is the Government of the United States or such state or any political subdivision thereof or any agency of any political subdivision thereof.

(2)(g) Subsection (1) does not apply to residential cooperatives created prior to January 1, 1977, which are converted to condominium ownership by the cooperative unit owners or their association after control of the association has been transferred to the unit owners if, following the conversion, the unit owners will be the same persons who were unit owners of the cooperative and no units are offered for sale or lease to the public as part of the plan of conversion.

(3)(d) If rent under the lease is a fixed amount for the full duration of the lease, and the rent thereunder is payable by a person or persons other than the association or the unit owners, the division director has the discretion to accept alternative assurances which are sufficient to secure the payment of rent, including, but not limited to, annuities with an insurance company authorized to do business in this state, the beneficiary of which shall be the association, the beneficary of which shall be the association, which deposit shall be in an amount sufficient to generate interest sufficient to meet lease payments as they occur. If alternative assurances are accepted by the division director, the following provisions are applicable.
(a) Disclosures contemplated by paragraph (1)(b) subsection 4(b), if not contained within the lease, may be made by the developer.

(b) Disclosures as to the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property, if not contained in the lease, may be stated by the developer.

(c) The provisions of paragraphs (1)(d) and (e) subsections (4) and (4) apply but are not required to be stated in the lease.

(d) The provisions of paragraph (1)(f) subsection 42 do not apply.

Section 3. Section 718.4015, Florida Statutes, is created to read.

718 4015 Condominium leases, escalation clauses —

(1) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a condominium lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(2) The provisions of subsection (1) do not apply if the lessor is the Government of the United States or the state of any political subdivision thereof.

(a) Disclosures contemplated by paragraph (1)(b) subsection 4(b), if not contained within the lease, may be made by the developer.

Section 4. Section 719.401, Florida Statutes, is amended to read.

719 401 Leaseholds —

(1) A cooperative may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on the leasehold, if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements.

(a) The leased land must be identified by a description that is sufficient to pass title, and the leased personal property must be identified by a general description of the items of personal property and the approximate number of each item of personal property that the developer is committing to furnish for each room or other facility. In the alternative, the personal property may be identified by a representation as to the maximum amount of expenditure that will be made to purchase the personal property for the facility. Unless the lease is of a unit, the identification of the land shall be supplemented by a survey showing the relation of the leased land to the land included in the common areas. This provision shall not prohibit adding additional land or personal property in accordance with the terms of the lease, provided there is no increase in rent or material increase in maintenance costs to the individual unit owner.

(b) The lease shall not contain a reservation of the right of possession or control of the leased property by the lessor or any person other than unit owners or the association, and shall not create rights to possession or use of the leased property in any parties other than the association or unit owners of the cooperative to be served by the leased property, unless the reservations and rights created are conspicuously disclosed. Any provision for use of the leased property by anyone other than unit owners of the cooperative to be served by the leased property shall require the other users to pay a fair and reasonable share of the maintenance and repair obligations and other expenses due from users of the leased property.

(c) The lease shall state the minimum number of unit owners that will be required, directly or indirectly, to pay the rent under the lease and the maximum number of units that will be served by the leased property. The number of units to be served shall not preclude the enlargement of the facilities leased and an increase in their capacity, if approved by the association operating the leased property after unit owners other than the developer have assumed control of the association.

This paragraph subsection does not apply if the lessor is the Government of the United States or the state of Florida or any political subdivision thereof or any agency or any political subdivision thereof.

(d) In any action by the lessor to enforce a lien for rent payable or in any action by the association or a unit owner with respect to the obligations of the lessor or the lessor under the lease, the unit owner or the association may raise any issue or interpose any defenses, legal or equitable, that he or it may have with respect to the lessor’s obligations under the lease. If the unit owner or the association initiates any action or interposes any defense other than payment of rent under the lease, the unit owner or the association shall, upon service of process upon the lessor, pay into the registry of the court any alleged rent and the rent which accrues during the pendency of the proceeding, when due. If the unit owner or the association fails to pay the rent into the registry of the court, it shall constitute an absolute waiver of the unit owner’s or association’s defenses other than payment, and the lessor shall be entitled to default. The unit owner or the association shall notify the lessor of any deposit. When the unit owner or the association has deposited the required funds into the registry of the court, the lessor may apply to the court for disbursement of all or part of the funds shown to be necessary for the payment of taxes, mortgage payments, maintenance and operating expenses, and other necessary expenses incident to maintaining and equipping the leased facilities or necessary for the payment of other expenses arising out of personal hardship resulting from the loss of rental income from the leased facilities. The court, after an evidentiary hearing, may award all or part of the funds on deposit to the lessor for such purpose.

(e) The court shall require the lessor to post bond or other security, as application of section (7) do not apply

(f) Disclosures contemplated by paragraph (1)(b) subsection 4(b), if not contained within the lease, may be made by the developer.
3(e) The option shall be exercised upon approval by owners of two-thirds of the units served by the leased property.

4(d) The provisions of this paragraph subsection shall not apply to a nonresidential cooperative and shall not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or, in the case of an underlying land lease, a person or entity which is not a developer or directly or indirectly owned or controlled by the developer and did not obtain, directly or indirectly, ownership of the leased property from the developer.

(g) The lease or a subordination agreement executed by the lessor must provide either:

1(a) That any lien which encumbers a unit for rent or other moneys or exactions payable is subordinate to any mortgage held by an institutional lender, or

2(b) That, upon the foreclosure of any mortgage held by an institutional lender or upon delivery of a deed in lieu of foreclosure, the lien for the unit owner's share of the rent or other exactions shall not be extinguished, but shall be foreclosed and unenforceable against the mortgagee with respect to that unit's share of the rent and other exactions which mature or become due and payable on or before the date of the final judgment of foreclosure, in the event of foreclosure, or on or before the date of delivery of the deed in lieu of foreclosure. The lien may, however, automatically and by operation of the lease or other instrument, reattach to the unit and secure the payment of the unit's proportionate share of the rent or other exactions coming due subsequent to the date of final decree of foreclosure or the date of delivery of the deed in lieu of foreclosure.

This paragraph subsection does not apply if the lessor is the Government of the United States or the State of Florida or any political subdivision thereof or any agency or political subdivision thereof.

(2)(b) If the lessor is the United States or any political subdivision thereof which was adopted:

Amendment 1—On page 1, in the title, on lines 12 and 13, strike "section 718.4015 and 719.4015, F.S., providing for the enforcement of escalation clauses in cooperative leases and making technical changes, creating ss. 718.4015 and 719.4015, F.S., prohibiting the enforcement of escalation clauses in certain existing condominium and cooperative leases and making technical changes, Senator Weinstock moved the following amendment to House Amendment 6 which was adopted:

Amendment 1—In title, on page 1, lines 12 and 13, strike "section 718.4015 and 719.4015, F.S., creating ss. 718.4015 and 719.4015, F.S., providing for the enforcement of escalation clauses in certain existing condominium and cooperative leases and making technical changes, Senator Weinstock moved the following amendment to House Amendment 8 which was adopted:

Amendment 1—On page 5, strike all of lines 12 and 13, and insert: "This paragraph shall be applied to contracts entered into on, before, or after January 1, 1977."

Amendment 1—On page 13, strike all of lines 12 and 13, and insert: "This paragraph shall be applied to contracts entered into on, before, or after January 1, 1977."

On motions by Senator Weinstock, the Senate concurred in House Amendments 1, 2, 3, 4, 5, 7 and 12, concurred in House Amendments 6, 8 and 11 as amended and the House was requested to concur in the Senate amendments to the House amendments.

CS for SB 54 passed as amended and the action of the Senate was certified to the House. The vote on passage was...
SPECIAL ORDER, continued

On motion by Senator Margolis, by two-thirds vote HB 780 was withdrawn from the Committee on Economic, Community, and Consumer Affairs.

On motions by Senator Margolis, by two-thirds vote—

HB 780—A bill to be entitled An act relating to landscape architecture, amending ss 481.301, F.S.; modifying purpose, amending ss. 481.303, F.S.; modifying a definition, amending ss. 481.305, F.S., relating to the Board of Landscape Architecture, deleting obsolete language; deleting annual report requirements; amending ss. 481.306, F.S., revising rulemaking authority; amending ss. 481.307, F.S., expanding rulemaking authority relating to fees, providing a schedule of fees, amending ss. 481.309 and 481.311, F.S., revising and clarifying certain examination and licensing requirements, creating ss. 481.310, F.S., requiring certain practical experience prior to licensure, amending ss. 481.315, F.S., revising requirements for license reactivation, amending ss. 481.317, F.S., revising requirements for temporary certification; amending ss. 481.319, F.S.; deleting certain requirements relating to the practice of landscape architecture by a corporation or partnership; amending ss. 481.321, F.S.; providing for use of a seal by registered landscape architects, requiring use of certificate numbers in advertising, amending ss. 481.323, F.S., providing a prohibition on the use of certain terms; amending ss. 481.325, F.S.; modifying and providing additional grounds for disciplinary actions, amending ss. 481.329, F.S., revising an exemption for employees of state or local governments who perform landscape architectural services, requiring licensure under certain circumstances, repealing ss. 481.331, F.S., relating to construction of statutes, creating a committee to delineate the conditions or circumstances under which landscape architects may submit permits for the design of stormwater management systems, saving part II of chapter 481, F.S., from Sunset repeal, providing for future review and repeal, providing effective dates.

—a companion measure, was substituted for CS for SB 40 and by two-thirds vote read the second time by title. On motion by Senator Margolis, by two-thirds vote HB 780 was read the third time by title, passed and certified to the House. The vote on passage was:

Yeas—34

Mr President Gordon Kiser Roe-Lehtinen
Beard Grant Langley Scott
Brown Hair Lehtinen Stuart
Childers, D. Hill Margolis Thomas
Childers, W. D. Hollingsworth McPherson Thurman
Crenshaw Jenne Meek Weinsteint
Dudley Jennings Myers Weinstock
Frank Johnson Peterson
Girardeau Kirkpatrick Plummer

Nays—None

Veto after roll call:

Yea—Woodson

Consideration of CS for CS for SB 904, SB 113, House Bills 173, 174, 177, 178, 179, 180, 181 was deferred.

SB 778—A bill to be entitled An act relating to education; amending s. 230.2316, F.S., relating to dropout prevention, revising criteria for participation in educational alternatives programs, providing an effective date.

was read the second time by title.

Senators Gordon and Thurman offered the following amendment which was moved by Senator Gordon and adopted:

Amendment 1—On page 2, between lines 14 and 15, insert:

Section 2. Florida’s Ounce of Prevention Fund Corporation Act —

(1) SHORT TITLE—This section may be cited as “Florida’s Ounce of Prevention Fund Corporation Act.”

(2) LEGISLATIVE INTENT—The Legislature finds and declares that personal and public costs resulting from unintended and untimely adolescent parenthood are of great concern. Adolescent pregnancy interrupts and forsets an adolescent’s transition to adulthood and may result in discontinued formal education, reduced employment opportunity, an unstable marriage, and low income for the adolescent and health and developmental risks to children born of adolescent mothers. Sustained poverty, frustration, and hopelessness are often the long-term results of teenage pregnancy. It is the intent of the Legislature that a nonprofit corporation, to be known as “Florida’s Ounce of Prevention Fund Corporation,” be organized for the purpose of supporting the development of programs for the prevention of family problems that can result in child abuse and neglect, infant mortality, delayed development in children, and repeated cycles of teenage pregnancy.

(3) CORPORATION AUTHORIZATION; DUTIES, POWERS —

(a) There is authorized the Florida’s Ounce of Prevention Fund Corporation. The corporation shall be operated as a not-for-profit corporation.

(b) The corporation shall:

1. Provide for the development of community-based programs for preteens, young parents, and their families to foster positive values that will result in families raising strong and healthy children.

2. Provide for the development, monitoring, and evaluation of projects designed to address problems associated with repeated cycles of teenage pregnancy and parenthood.

3. Conduct research to aid in identifying causes of and potential solutions to teenage pregnancy.

4. Coordinate with and assist other agencies in developing innovative prevention programs that shall include, but not be limited to, developmental screening, child-parent enrichment programs, early childhood education, parent education, group and individual counseling, family support, activities designed to provide youth with alternatives to sexual involvement, educational and vocational skill building, job placement, home visiting, prenatal and well child care, mental health and developmental disabilities services, developmental day care, and community education.

All materials used in Ounce of Prevention Programs relating to acquired immune deficiency syndrome, sexually transmitted diseases, or information on human sexuality shall include that abstinence from sexual activity until marriage and a mutually faithful monogamous relationship in the context of marriage is a certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated health problems. Abstinence from sexual activity outside of marriage should be expected standard of behavior for all minor children participating in any Ounce of Prevention programs.

5. Provide training and technical assistance to enable community organizations such as churches, social service agencies, health clinics, schools, and other organizations to carry out prevention programs.

6. Provide an interim report to the Legislature by March 1, 1989, on the results of the program to date.

7. Secure staff necessary to properly administer the corporation. Staff costs may be funded from grant funds and state and private donations.

The board of directors is authorized to determine the number of staff necessary to administer the corporation, but the staff shall include, at a minimum, an executive director, an assistant director, and a staff assistant.

8. Work in cooperation with and coordinate with those projects and activities associated with the Dropout Prevention Act, the Florida Employment Opportunity Act, and other services and programs of the Department of Health and Rehabilitative Services and the Department of Education.

(c) The corporation, which shall be operated as a nonprofit private corporation organized pursuant to chapter 617, Florida Statutes, shall have all powers necessary or convenient to carry out and effectuate the purposes and provisions of this section, including, but not limited to, the power to receive and accept grants, loans, and advances of funds from any public or private agency, for, or in aid of, the purposes of this section, and to receive and accept contributions, from any source, of money, property, labor, or any other thing of value, to be held, used, and applied for said purposes.
Final Bill Summary for CS/SB 54

CS/SB 54 provides for additional expense items to be treated as common expenses and provides for notice of recordation of instruments evidencing removal of property from condo status. The bill prescribes limits on changes which may be made through amendment of cooperative documents and provides for application of certain options available to condo and coop leases governing recreational facilities or other common elements.

The bill was signed by officers and presented to the Governor on June 16, 1988. See chapter 88-148, Laws of Florida.
I. SUMMARY:

A. Present Situation:

Section 718.115, F.S., designates what condominium expenses are to be common expenses assessable to unit owners. The section designates as common expenses operating, maintenance, repair, or replacement expenses of the common elements, the cost of carrying out the powers and duties of the association, and any other expense designated as a common expense by chapter 718, F.S., the declaration, the documents creating the condominium, or the bylaws.

B. Effect of Proposed Changes:

The bill expands what expenses are to be designated as common expenses to include transportation services, insurance for officers and directors, security services, road maintenance and operation expenses, and assessments to a master association reasonably related to the general benefit of the unit owners even if such expenses do not relate to the common elements or property of the condominium.

The bill also provides that the term "master association" means, for purposes of this subsection, any not-for-profit corporation composed of homeowners, condominium unit owners, or other housing owners created by a recorded declaration or covenant running with the land or by court order.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Condominium unit owners would be adversely affected by the bill to the extent assessments based on common expenses are increased and assessed against them as a result of the increase in the number of expenses to be construed as a common expense.

B. Government:

None.

III. COMMENTS:

Section 719.107, F.S., designates what cooperative expenses are to be common expenses assessable to unit owners. The section designates as common expenses the expenses of the operation, maintenance, repair, or replacement of the cooperative property, the cost of carrying out the powers and duties of the association, and any other expenses designated as common expenses by chapter 719, F.S., or the cooperative documents. The section relating to cooperative common expenses is similar to the section relating to condominium cooperative expenses. The provisions of chapter 718,
F.S., relating to condominiums and chapter 719, F.S., relating to cooperatives, are generally parallel.

IV. **AMENDMENTS:**

None.
I. SUMMARY:

A. Present Situation:

Section 718.115, F.S., designates what condominium expenses are to be common expenses assessable to unit owners. The section designates as common expenses operating, maintenance, repair, or replacement expenses of the common elements, the cost of carrying out the powers and duties of the association, and any other expense designated as a common expense by chapter 718, F.S., the declaration, the documents creating the condominium, or the bylaws.

B. Effect of Proposed Changes:

The bill expands what expenses are to be designated as common expenses to include transportation services, insurance for officers and directors, security services, road maintenance and operation expenses, and inhouse communications.

Common expenses must have been services or items provided from the date the control of the association was transferred from developer to unit owners, or must be provided for in the condominium documents or by-laws.

II. ECONOMIC IMPACT AND FISCAL NOTE:

A. Public:

Condominium unit owners would be adversely affected by the bill to the extent assessments based on common expenses are increased and assessed against them as a result of the increase in the number of expenses to be construed as a common expense.

B. Government:

None.

III. COMMENTS:

Section 719.107, F.S., designates what cooperative expenses are to be common expenses assessable to unit owners. The section designates as common expenses the expenses of the operation, maintenance, repair, or replacement of the cooperative property, the cost of carrying out the powers and duties of the association, and any other expenses designated as common expenses by chapter 719, F.S., or the cooperative documents. The section relating to cooperative common expenses is similar to the section relating to condominium cooperative expenses. The provisions of chapter 718, F.S., relating to condominiums and chapter 719, F.S., relating to cooperatives, are generally parallel.

IV. AMENDMENTS:

None
STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 54

-- Clarifies common expenses for condominiums to include intrahouse communications. States that common expenses must be provided in documents or by-laws, or be part of transfer from developer.

Committee on Economic, Community and Consumer Affairs

(Files three copies with the Secretary of the Senate)
BILL relating to
condominiums;

For Committee Bills Only
By the Committee on
Judiciary - Civil
Chairman's signature

Referred to Committees on
- Judiciary - Civil
- Fav Unfavorable with Amend Com Sub
- Fav Unfavorable with Amend Com Sub
- Fav Unfavorable with Amend Com Sub
- Fav Unfavorable with Amend Com Sub

Read 1st Time
Read 2nd Time
Read 3rd Time

Senator
of the
District

(one signature only)

House Action
- Immediately Certified to Senate
- Laid on Table under Rule
- Motion to Reconsider pending

Clerk, House of Representatives

House Amendments, Action — See reverse side
Conference Committee Action — See reverse side

Senate Action
- Immediately Certified to House
- Laid on Table
- Motion to Reconsider by Senator

Secretary of Senate
A bill to be entitled

An act relating to condominiums; amending s.
718.401, F.S.; prohibiting the enforcement of
escalation clauses in certain existing
condominium leases; providing an effective
date.

WHEREAS, the Legislature of the State of Florida has
declared that the public policy of this state prohibits the
inclusion or enforcement of escalation clauses in land leases
for recreational facilities serving residential condominiums
and has declared such clauses void, and

WHEREAS, it is well recognized that the contract
clauses of the Federal and State Constitutions are not
absolute prohibitions against contract impairment but may be
required to yield to competing constitutional provisions,
including the state's police power (see, e.g., Pomponio v.
Claridge of Pompano Condominium, Inc., 378 So.2d 774 (Fla.
1979), Yellow Cab Company of Dade County v. Dade County, 412
So.2d 395 (Fla. 3d DCA 1982), United States Fidelity and
Guaranty Company v. Department of Insurance, 453 So.2d 1355
(Fla. 1984)), NOW THEREFORE,

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

Section 1. Subsection (8) of section 718.401, Florida
Statutes, is amended to read:

718.401 Leaseholds.—A condominium may be created on
lands held under lease or may include recreational facilities
or other common elements or commonly used facilities on a
leasehold if, on the date the first unit is conveyed by the

CODING: Words stricken are deletions; words underlined are additions.
developer to a bona fide purchaser, the lease has an unexpired
term of at least 50 years. If rent under the lease is payable
by the association or by the unit owners, the lease shall
include the following requirements:

(8)(a) It is declared that the public policy of this
state prohibits the inclusion or enforcement of escalation
clauses in land leases or other leases or agreements for
recreational facilities, land, or other commonly used
facilities serving residential condominiums, and such clauses
are hereby declared void for public policy. For the purposes
of this section, an escalation clause is any clause in a
condominium lease or agreement which provides that the rental
under the lease or agreement shall increase at the same
percentage rate as any nationally recognized and conveniently
available commodity or consumer price index.

(b) The provisions of paragraph (a) of this subsection do
not apply if the lessor is the Government of the United States
or this state or any political subdivision thereof or any
agency of any political subdivision thereof. However, the
provisions of paragraph (a) apply to contracts entered into
prior to, on, and after June 4, 1975, if the lessor is not the
Government of the United States or this state or any political
subdivision thereof or any agency of any political subdivision
thereof. The application of paragraph (a) to contracts
entered into prior to June 4, 1975, may not divest the parties
of any benefits or obligations arising from the escalation of
fees prior to October 1, 1988, but only prohibits further
escalation of fees pursuant to the escalation clauses, on or
after October 1, 1988.

Section 2. This act shall take effect October 1, 1988.

CODING: Words stricken are deletions; words underlined are additions.
SENATE SUMMARY

Prohibits on or after October 1, 1988, the enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums, regardless of when the lease or agreement was entered.

CODING: Words struck are deletions; words underlined are additions.
A bill to be entitled
An act relating to condominiums, amending s 718.401, F.S.; prohibiting the enforcement of escalation clauses in certain existing condominium leases; providing an effective date.

WHEREAS, the Legislature of the State of Florida has declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases for recreational facilities serving residential condominiums and has declared such clauses void, and

WHEREAS, it is well recognized that the contract clauses of the Federal and State Constitutions are not absolute prohibitions against contract impairment but may be required to yield to competing constitutional provisions, including the state's police power (see, e.g., Pomponio v. Claridge of Pompano Condominium, Inc., 378 So.2d 774 (Fla. 1979), Yellow Cab Company of Dade County v. Dade County, 412 So.2d 395 (Fla. 3d DCA 1982), United States Fidelity and Guaranty Company v. Department of Insurance, 453 So.2d 1355 (Fla. 1984)), NOW THEREFORE,

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

Section 1. Subsection (8) of section 718.401, Florida Statutes, is amended to read:

718.401 Leaseholds.--A condominium may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold if, on the date the first unit is conveyed by the
developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. If rent under the lease is payable by the association or by the unit owners, the lease shall include the following requirements:

(8) (a) It is declared that the public policy of this state prohibits the inclusion or enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums, and such clauses are hereby declared void for public policy. For the purposes of this section, an escalation clause is any clause in a condominium lease or agreement which provides that the rental under the lease or agreement shall increase at the same percentage rate as any nationally recognized and conveniently available commodity or consumer price index.

(b) The provisions of paragraph (a) of this subsection do not apply if the lessor is the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof. However, the provisions of paragraph (a) apply to contracts entered into prior to, on, and after June 4, 1975, if the lessor is not the Government of the United States or this state or any political subdivision thereof or any agency of any political subdivision thereof. The application of paragraph (a) to contracts entered into prior to June 4, 1975, may not divest the parties of any benefits or obligations arising from the escalation of fees prior to October 1, 1988, but only prohibits further escalation of fees pursuant to the escalation clauses, on or after October 1, 1988.

Section 2. This act shall take effect October 1, 1988.

SENATE SUMMARY

Prohibits on or after October 1, 1988, the enforcement of escalation clauses in land leases or other leases or agreements for recreational facilities, land, or other commonly used facilities serving residential condominiums, regardless of when the lease or agreement was entered.
A bill to be entitled
An act relating to condominiums and
cooperatives; amending ss. 718.401 and 719.401,
F.S., providing for the application of certain
options available to condominium and
cooperative leases governing recreational
facilities or other common elements;
prohibiting escalation clauses in certain
condominium and cooperative leases; providing
an effective date.

WHEREAS, ss. 718.401(8) and 719.401(8), Florida
Statutes, declare that the public policy of this state
"prohibits the inclusion or enforcement of escalation clauses
in land leases or other leases or agreements for recreational
facilities, land, or other commonly used facilities serving
condominiums and cooperatives, and such escalation clauses are
declared void, and

WHEREAS, the Florida Supreme Court has held that s.
718.401(8), Florida Statutes, is not retroactive and may not
apply to leases entered into prior to June 4 because such
application would violate the contract clause of the Florida
and Federal Constitutions, and

WHEREAS, the United States Supreme Court has since
decided the case of Hawaii Housing Authority v. Midkiff, 467
U.S. 229, 104 S.Ct. 2321 (1984), wherein it upheld a Hawaiian
statutory scheme which authorizes the State of Hawaii to
purchase land being used for residential rental housing
pursuant to its powers of eminent domain, and in turn to sell
the land to private citizens in order to attain the public
good of land ownership being had by a broad spectrum of the
The court held that the public use requirement of an eminent domain taking is "coterminous with the scope of a sovereign's police power," and

WHEREAS, it is well recognized that the contract clauses of the Federal and State Constitutions are not absolute and may be required to yield to competing constitutional provisions, including the state's police power (see, e.g., Tampa Northern R., Co. v. City of Tampa, et al., 107 So. 364 (Fla. 1926)), and

WHEREAS, an estimated 58,894 condominium units are subject to escalation clauses in land or recreational leases. These leases are spread throughout 27 counties of this state, and

WHEREAS, the State of Florida has an exceptionally large population of elderly and retired citizens, a large number of whom reside in condominiums and cooperatives and an overwhelming number of whom are living on a fixed income, and

WHEREAS, in the early years of the development of the condominium and cooperative industry, the national inflation rate was less than 3 percent per year, but in the early seventies the inflation rate, and thus the consumer price indices, rose dramatically, providing windfall profits to owners of such condominium and cooperative leaseholds, and

WHEREAS, escalation clauses cause a rise in the cost of operations of recreational and common land and facilities which has no relation to the increase in costs of bringing those lands and facilities to the unit owners, and

WHEREAS, in recent years, inflation has drastically increased the cost of living in the state; the spiraling cost of living affects all people through erosion of the purchasing power of whatever monetary resources they command. For a growing proportion of Florida's population, quite possibly a majority, the high cost of living is denying them such basic necessities as sufficient nutritional intake, safe and healthy housing accommodations, clothing, and adequate preventive and curative health services. Stabilizing the artificial inflation of condominium and cooperative housing would help curb the rising cost of living in Florida and, ultimately, contribute to the welfare of all people of the state by improving their standard of living, and

WHEREAS, escalation clauses in leases for recreational facilities or other commonly used facilities or land serving condominiums are inflationary in nature, and

WHEREAS, inflation lessens the quality of life of all members of this state and is particularly invidious in its impact on the elderly and others on fixed incomes. The state has limited abilities to curb inflation and, perhaps, the only useful means available is the state's power to control housing costs. There is a pressing public necessity for the state to do whatever it can to curb inflation and to keep the cost of living at a level where it is possible and manageable to provide citizens a decent and healthful standard of life. The public use and purpose of providing all citizens a decent and healthful standard of life will be directly and substantially furthered by the retroactive application of ss. 718.401(8) and 719.401(8), Florida Statutes, and

WHEREAS, leases involving the use of recreational or other common facilities or land by purchasers of condominiums and cooperatives and which contain escalation clauses tied to a nationally recognized consumer price index, entered into by parties wholly representative of the interests of a condominium or cooperative developer at a time when the...
condominium or cooperative unit owners not only did not control the administration of their condominium or cooperative, but also had little or no voice in such administration, have resulted in onerous obligations and circumstances, and

WHEREAS, the State of Florida has made substantial efforts to eliminate unscrupulous real estate and securities operations which, in the past, resulted in Florida's gaining a poor reputation for protecting consumers. Comprehensive laws have been adopted and scrupulously enforced in the areas of land sales, condominiums, cooperatives, timeshare, and securities. It is in the public's interest and welfare that the state maintain its image of protecting Florida purchasers and dealing harshly with those who would take advantage of them, and

WHEREAS, the Legislature of the State of Florida finds that the legislation herein proposed is necessary to meet a broad and pressing social and economic need as described herein, NOW, THEREFORE,

Be it enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (6) and paragraph (a) of subsection (8) of section 718.101, Florida Statutes, are amended to read:

718.401 Leaseholds.—A condominium may be created on lands held under lease or may include recreational facilities or other common elements or commonly used facilities on a leasehold if, on the date the first unit is conveyed by the developer to a bona fide purchaser, the lease has an unexpired term of at least 50 years. If rent under the lease is payable

CODING: Words struck are deletions; words underlined are additions.
719.401 Leaseholds.--A cooperative may be created on
lands held under lease or may include recreational facilities
or other common elements or commonly used facilities on a
leasehold, if, on the date the first unit is conveyed by the
developer to a bona fide purchaser, the lease has an unexpired
term of at least 50 years. If rent under the lease is payable
by the association or by the unit owners, the lease shall
include the following requirements:
(6)(a) A lease of recreational or other commonly used
facilities entered into by the association or unit owners
prior to the time the control of the association is turned
over to unit owners other than the developer shall grant to
the lessee an option to purchase the leased property, payable
in cash on any anniversary date of the beginning of the lease
term after the 10th anniversary, at a price then determined by
agreement. If there is no agreement as to the price, then the
price shall be determined by arbitration. This paragraph
shall be applied to contracts entered into prior to January 1,
1977.

(8)(a) It is declared that the public policy of this
state prohibits the inclusion or enforcement of escalation
clauses in land leases or other leases or agreements for
recreational facilities, land, or other commonly used
facilities serving residential cooperatives, and such clauses
are hereby declared void for public policy. For the purposes
of this section, an escalation clause is any clause in a
cooperative lease or agreement which provides that the rental
under the lease or agreement shall increase at the same
percentage rate as any nationally recognized and conveniently
available commodity or consumer price index. This subsection
shall be applied to contracts entered into prior to June 4,
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LEGISLATIVE SUMMARY
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