

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

This bill allows the unit owners in a residential condominium or cooperative that meet the definition of "housing for older persons"¹ to forego retrofitting the handrails and guardrails in common elements or units if approved by a two-thirds vote of all voting interests. However, the bill prohibits the foregoing of retrofitting in common areas with handrails and guardrails in a high-rise building defined as a building that is greater than 75 feet in height from the lowest level of fire department access to the floor of highest occupancy. The bill prohibits the use of proxies, either general or limited, for a vote to forego the retrofitting of handrails and guardrails. Votes to forego retrofitting must be personally cast at a duly called membership meeting or by execution of a written consent by the member. Such vote is effective upon the recording of a certificate attesting to the vote in the public records of the county.

¹ Section 760.29(4), F.S., provides:

(b) As used in this subsection, the term "housing for older persons" means housing:

1. Provided under any state or federal program that the commission determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program;
2. Intended for, and solely occupied by, persons 62 years of age or older; or
3. Intended and operated for occupancy by persons 55 years of age or older that meets the following requirements:
 - a. At least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.
 - b. The housing facility or community publishes and adheres to policies and procedures that demonstrate the intent required under this subparagraph. If the housing facility or community meets the requirements of sub-subparagraphs a. and c. and the recorded governing documents provide for an adult, senior, or retirement housing facility or community and the governing documents lack an amendatory procedure, prohibit amendments, or restrict amendments until a specified future date, then that housing facility or community shall be deemed housing for older persons intended and operated for occupancy by persons 55 years of age or older. If those documents further provide a prohibition against residents 16 years of age or younger, that provision shall be construed, for purposes of the Fair Housing Act, to only apply to residents 18 years of age or younger, in order to conform with federal law requirements. Governing documents which can be amended at a future date must be amended and properly recorded within 1 year after that date to reflect the requirements for consideration as housing for older persons, if that housing facility or community intends to continue as housing for older persons.
 - c. The housing facility or community complies with rules made by the Secretary of the United States Department of Housing and Urban Development pursuant to 24 C.F.R. part 100 for verification of occupancy, which rules provide for verification by reliable surveys and affidavits and include examples of the types of policies and procedures relevant to a determination of compliance with the requirements of sub-subparagraph b. Such surveys and affidavits are admissible in administrative and judicial proceedings for the purposes of such verification.

(c) Housing shall not fail to be considered housing for older persons if:

1. A person who resides in such housing on or after October 1, 1989, does not meet the age requirements of this subsection, provided that any new occupant meets such age requirements; or
2. One or more units are unoccupied, provided that any unoccupied units are reserved for occupancy by persons who meet the age requirements of this subsection.

The association is required to provide written notice, in at least 16-point bold type by certified mail, to each unit owner within 20 days after the vote. The bill also requires that a unit owner provide notice of the vote to forego retrofitting to a new owner prior to closing or to a renter prior to signing the lease.

The bill prohibits a local authority from requiring the retrofitting of common areas with handrails and guardrails before the end of 2014. In addition, the bill requires the association to report the membership vote and recording of the certificate, as well as the per-unit cost of any retrofitting that is undertaken to the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation. The division is required to report the number of associations voting to forego the retrofitting of handrails and guardrails annually to the State Fire Marshall's Office of the Department of Financial Services.

Condominiums

A condominium is a form of ownership of real property "which is comprised entirely of units that may be owned by one or more persons, and in which there is, appurtenant to each unit, an undivided share in common elements."² A condominium association may be a corporation for profit or a corporation not for profit.³ The board of administration of a condominium is the board of directors or other representative body which is responsible for the administration of the association.⁴

Condominium unit owner meetings must take place at least once a year.⁵ At condominium unit owner meetings, unit owners have the right to vote on matters specified in the association's bylaws, to purchase any land or recreational lease, to elect members of the board of administration, to adopt a budget, to recall board members, and to approve the transfer of a condominium unit.⁶ Written notice of a condominium unit owner meeting, including an agenda, must be provided to a unit owner by mail, hand-delivery, or electronic transmission at least 14 days prior to the meeting.⁷ The notice must also be posted conspicuously on the condominium property, if possible. The person who provides notice of a condominium unit owner meeting must execute an affidavit or provide a certificate of mailing to be included in the association records.⁸

Limited proxies may be used to waive or reduce reserve accounts for capital expenditures and deferred maintenance; to amend the declaration creating the condominium; to amend the bylaws or articles of incorporation; and to decide almost any other matter, including votes to reduce a condominium's financial reporting requirements.⁹ Proxies may not be used to elect board members or fill vacancies.¹⁰

Cooperatives

A cooperative is a "form of ownership of real property wherein legal title is vested in a corporation or other entity and the beneficial use is evidenced by an ownership interest in the association and a lease or other muniment of title or possession granted by the association as the owner of all the cooperative property."¹¹ The cooperative's association may be a corporation for profit or a corporation not for profit that owns the record interest or a leasehold of the cooperative property and is responsible for its

² Section 718.103(11), F.S.

³ Sections 718.104(4)(i) and 718.111(1)(a), F.S.

⁴ Section 718.103(4), F.S.

⁵ Section 718.112(2)(d)1., F.S.

⁶ Sections 718.112(2)(d)4, 718.111(8), and 718.112(2)(d)1., (f), (i), and (j), F.S.

⁷ Section 718.112(2)(d)2., F.S.

⁸ *Id.*

⁹ Sections 718.112(2)(b)2. and 718.111(13)(d), F.S.

¹⁰ Section 718.112(2)(d)3., F.S.

¹¹ Section 719.103(12), F.S. A "muniment" is "documentary evidence by which a person can defend a title to property or a claim to rights." *The American Heritage Dictionary*, Second College Edition (Houghton Mifflin).

operation.¹² The board of administration (board) is the board of directors or other representative body which is responsible for the administration of a cooperative association.¹³

Shareholder meetings must take place at least once a year.¹⁴ At shareholder meetings, shareholders of a cooperative have the authority to vote on matters specified in the cooperative documents such as the cooperative's articles of incorporation or bylaws; to impose fees for the use of cooperative property; to purchase land or acquire a recreational lease; to modify a cooperative unit; to amend the cooperative documents; and to vote on other matters.¹⁵ The cooperative association must provide notice of shareholder meetings that includes an agenda by mail to each unit owner at least 14 days before the meeting.¹⁶ Notice of shareholder meetings must also be posted conspicuously on cooperative property at least 14 days before a shareholder meeting. Unless the unit owner waives in writing the right to receive notice, the notice of the annual meeting must be mailed, hand delivered, or electronically transmitted to each unit owner.¹⁷ An officer of the association must provide an affidavit or certificate of mailing to be included in the official record of the association.¹⁸

Unless otherwise provided by the bylaws of a cooperative, the presence of a majority of the voting interests at a membership meeting constitutes a quorum and decisions must be made by the owners of a majority of the voting interests represented at a meeting at which a quorum is present.¹⁹ Although limited proxies and general proxies may be used to establish the presence of a quorum, owners that are not present may only vote by limited proxy on certain issues if they use a form that substantially conforms to a form adopted by the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation (division).²⁰ Limited proxies are allowed for votes taken to waive or reduce reserves, to waive the financial reporting requirements, or for votes taken to amend the articles of incorporation or bylaws.²¹ Proxy voting, either limited or general, may not be used in the election of board members.²² General proxies may be used where limited proxies are not required and for nonsubstantive changes to items for which a limited proxy is given or required.²³ These provisions regarding voting procedures for cooperatives do not apply to timeshare cooperatives.²⁴

Firesafety Requirements

The State Fire Marshall's Office is required under s. 633.0215(1), F.S., to adopt the Florida Fire Prevention Code and ss. 125.01(1)(d) and 125.56(1), F.S., grant county government the authority to enforce the code. The Florida Fire Prevention Code incorporates by reference the National Fire Protection Association (NFPA) 1, the Fire Prevention Code, 2000 edition, and the NFPA 101, the Life Safety Code, 2000 edition, as amended.²⁵

Section 633.025(5), F.S., effective July 1, 2001, requires that new and existing building structures must comply with the current firesafety code. Recognizing the practical limits to retrofitting existing structures, subsection (6) authorizes the local fire safety official to apply the applicable firesafety code

¹² Section 719.103(2), F.S.

¹³ Section 719.103(3), F.S.

¹⁴ Section 719.106(1)(d), F.S.

¹⁵ Sections 719.104(5) and (6), 719.1055(1), and 719.304(1), F.S.

¹⁶ Section 719.106(1)(d), F.S.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Section 719.106(1)(b)1., F.S.

²⁰ Section 719.106(1)(b)2., F.S.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ Section 719.106(1)(b)2., F.S.

²⁵ Rules 69A-60.003 and 69A-60.004, Fla. Admin. Code.

to the extent practical to assure a reasonable degree of safety to life and property, or to fashion a reasonable alternative that affords an equivalent degree of safety.

Section 1.4.1 of the NFPA 101 (2000 Edition) states the code “shall apply to both new construction and existing buildings and existing structures. Section 1.5.2 provides that “alternative systems, methods, or devices approved as equivalent by the authority having jurisdiction shall be recognized as being in compliance with this Code.”

Section 7.2.2.4 of the above code addresses the specifications for design and construction of guards and handrails. Paragraph (3) of section 7.2.2.4.6 (Guard Details) of the code requires that:

“Open guards, other than approved, existing open guards, shall have intermediate rails or an ornamental pattern such that a sphere 4 in. (10.1 cm) in diameter shall not pass through any opening up to a height of 34 in. (86 cm).”

Proposed Changes

Section 1: Creates section 718.1085, F.S., to allow condominium unit owners, a condominium association, or condominium that meets the definition of “housing for older persons” to forego the retrofitting or replacing of handrails and guardrails in the common elements²⁶ or units of a residential condominium if approved by a two-thirds vote of all voting interests in the affected condominium. Section 1 also prohibits the foregoing of retrofitting in common areas with handrails and guardrails in a high-rise building defined as a building that is greater than 75 feet in height from the lowest level of fire department access to the floor of highest occupancy. This section also prohibits local authorities from requiring the retrofitting of condominiums with handrails and guardrails before the end of 2014.

Section 1 prohibits the use of proxies, either general or limited for a vote to forego the retrofitting of handrails and guardrails. Votes to forego retrofitting must be personally cast at a duly called membership meeting or by execution of a written consent by the member. Such vote is effective upon the recording of a certificate attesting to the vote in the public records of the county. The association is required to provide written notice, in at least 16-point bold type by certified mail, to each unit owner within 20 days after the vote. The bill also requires that a unit owner provide notice of the vote to forego retrofitting to a new owner prior to closing or to a renter prior to signing the lease.

In addition, this section requires the association to report the membership vote and recording of the certificate, as well as the per-unit cost of any retrofitting that is undertaken to the Division of Florida Land Sales, Condominiums, and Mobile Homes of the Department of Business and Professional Regulation. The division is required to report the number of associations voting to forego the retrofitting of handrails and guardrails annually to the State Fire Marshall’s Office of the Department of Financial Services.

Section 2: Amends s. 719.1055, F.S., by creating subsection (6), to allow the unit owners or a cooperative to forego the retrofitting or replacing of handrails and guardrails in the common elements or units of a residential cooperative if approved by a two-thirds vote of all voting interests. The same prohibition on voting to forego retrofitting in the common areas of a high-rise building, definitions, the prohibition on requiring the retrofitting of common areas before the end of 2014, and notice and reporting requirements that are contained in section 1 of this bill for condominiums are made applicable to cooperative in this section.

²⁶ Section 718.108, F.S., defines common elements as property not included within the units.

C. SECTION DIRECTORY:

Section 1: Creates section 718.1085, F.S., relating to foregoing the retrofitting or replacing of handrails and guardrails in condominiums.

Section 2: Amends s. 719.1055, F.S., relating to amendment of cooperative documents and alteration and acquisition of property.

Section 3: Provides that the bill takes effect on July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Division of Florida Land Sales, Condominiums, and Mobile Homes estimates that there are more than 20,000 condominiums and 800 cooperatives in Florida. The division does not maintain records on the number of condominiums and cooperatives that meet the definition of "housing for older persons" or how many of those buildings are less than 75 feet in height. In order to implement the provisions of this bill, the Division of State Fire Marshal of the Department of Financial Services will have to promulgate rules and provide a form to collect the information on votes to forego retrofitting and the per-unit cost for any retrofitting that is undertaken. However, the cost associated with any rulemaking required in response to this bill could be minimized by the fact that the department could adopt a form and rules similar to those adopted last year for associations voting to forego retrofitting with fire sprinkler systems. After the rulemaking process is complete, the responsibility to collect and report information regarding retrofitting can be accomplished within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Condominium associations, cooperatives, and unit owners may forego the requirement to retrofit or replace the handrails and guardrails in any common element or unit and avoid the associated costs, provided two-thirds of all the voting interests of an affected building consent to forego retrofitting. The cost of retrofitting varies depending on whether the handrails and guardrails must be replaced or an attachment is added to the existing guardrails in order to comply with the current code. Condominium associations and cooperatives that have voted to forego retrofitting of the required handrails or guardrails are required to inform each unit owner by certified mail, hence, incurring the costs of certified mail.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to require counties or cities to: spend funds or take action requiring the expenditure of funds; reduce the authority of counties or cities to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or cities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

In order to implement the provisions of this bill, the Division of State Fire Marshal of the Department of Financial Services will have to promulgate rules and provide a form to collect the information on votes to forego retrofitting and the per-unit cost for any retrofitting that is undertaken. Sufficient rulemaking authority exists under current law for such rules.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Financial Services is concerned about potentially reducing the level of safety in certain buildings occupied by the elderly.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

None.