

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:

Section 633.0215, F.S., requires the State Fire Marshal to adopt, by rule, the most current edition of the National Fire Protection Association (NFPA) Standards 1, the Fire Prevention Code, and NFPA 101, the Life Safety Code, as the Florida Fire Prevention Code (code).¹ Section 633.025(1), F.S., states that this code “shall be deemed adopted by each municipality, county, and special district with firesafety responsibilities.” 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 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.

As of last year, condominium and cooperative associations have the option to forego retrofitting for fire sprinkler systems. This bill allows the unit owners in a residential condominium or cooperative that meet the definition of “housing for older persons”² in s. 760.29(4)(b)3., F.S., to forego retrofitting or replacing 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.

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

¹ Chapter 4A-60, Florida Administration Code.

² Subparagraph 760.29(4)(b)3, F.S., defines “housing for older persons” as the intention for occupancy by persons 55 years of age or older.

voting to forego the retrofitting of handrails and guardrails annually to the State Fire Marshall's Office of the Department of Financial Services.

C. SECTION DIRECTORY:

Section 1 creates section 718.1085, F.S., to allow unit owners, an 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 elements³ 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 common areas 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.

Section 3 provides that this act shall take effect July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:
None.

³ Section 718.108, F.S., defines common elements as property not included within the units. Provides further clarification.

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.

On the other hand, 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:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

N/A

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