The Florida Senate

PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Judiciary Committee

BILL:	CS/CS/SB 396
INTRODUCER:	Judiciary Committee, Regulated Industries Committee, and Senators Margolis and Fasano
SUBJECT:	Community Associations
DATE:	March 9, 2007 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Sumner	Imhof	RI	**Fav/CS**
2.	Daniell	Maclure	JU	**Fav/CS**
3.				
4.				
5.				
6.				

I. Summary:

This bill increases the options of condominium, cooperative, and homeowners' associations, with regard to insuring association property and participating in self insurance programs. Specifically, this bill amends laws relating to insurance and other issues for community associations to:

- Provide that the language relating to windstorm and self insurance (s. 718.111(11)(a), F.S.) that was added to the Condominium Act in HB 1-A during the 2007 special session on insurance applies to all residential condominiums in the state, regardless of the date of its declaration of condominium;
- Provide implementing provisions for condominium associations, cooperative associations, and homeowners' associations to participate in self-insurance funds authorized by the 2007 special session;
- Provide authorizing legislation for the homeowners' associations and cooperative associations to participate in the "pooled" insurance option for obtaining windstorm insurance coverage;
- Establish new budget disclosure requirements for condominium and cooperative prospectuses relating to budget changes due to increases in insurance premiums;
- Establish "good faith" estimates to be the basis for the budget;
- Preserve the developer assessment guarantees in the prospectuses and provide that unforeseen increases are not material changes to the offering circular; and
- Require new budgets to be given to purchasers at closing.

This bill also amends or creates provisions in Part VI of the Condominium Act relating to condominium conversions to:

- Expand the disclosure requirements for the improvements located on the property;
- Provide developers with additional requirements for warranties and reserve accounts;
- Conform the law by adding the terms "converter" and "as provided in this section" to modify reserve accounts in order to better differentiate between converter reserve accounts and regular reserve accounts;
- Require updated inspection reports when components are renovated or repaired; and
- Provide that the condominium owner and the association are third-party beneficiaries to the engineer and/or architect's report.

This bill substantially amends the following sections of the Florida Statutes: 718.103, 718.111, 718.115, 718.116, 718.503, 718.504, 718.616, 718.618, 719.104, 719.107, 719.108, 719.503, 719.504, 720.303, and 720.308.

II. Present Situation:

Background

A condominium is a "form of ownership of real property created pursuant to this chapter, 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."[1] Condominiums are regulated by the Division of Florida Land Sales, Condominiums, and Mobile Homes ("Division") of the Department of Business and Professional Regulation ("DBPR"), in accordance with Chapter 718, Florida Statutes.[2]

A cooperative (co-op) 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."[3] Cooperative associations are regulated under Chapter 719, Florida Statutes.

A homeowners' association is a "Florida corporation responsible for the operation of a community or a mobile home subdivision in which the voting membership is made up of parcel owners or their agents, or a combination thereof, and in which membership is a mandatory condition of parcel ownership, and which is authorized to impose assessments that, if unpaid, may become a lien on the parcel."[4] Homeowners' associations are regulated under Chapter 720, Florida Statutes.

Condominiums and cooperatives are very similar entities that are regulated in a very similar fashion. Many of the provisions found in Chapters 718 and 719, Florida Statutes, are the same,

[1] Section 718.103(11), F.S.
[2] Peter M. Dunbar, *The Condominium Concept, A Practical Guide for Officers, Owners and Directors of Florida Condominiums*, 8th ed., s. 2.6, 32 (Aras Publishing 2003).
[3] Section 719.103(12), F.S.
[4] Section 720.301(9), F.S.

and the provisions regulating the insuring of condominium and cooperative association property are no exception. The insurance provisions found in Chapter 718 for condominiums are almost identical to the provisions found in Chapter 719 for cooperatives. Several of the provisions in this bill make identical changes to both Chapters 718 and 719 in order to have continued uniformity between these two areas of the law.

Meaning of the Word "Land" in the Condominium Act

The definition section of the Condominium Act currently provides that the word "land" means:

> [T]he surface of a legally described parcel of *real property* and includes, unless otherwise specified in the declaration and whether separate from or including such surface, airspace lying above and subterranean space lying below such surface. However, if so defined in the declaration, the term "land" may mean all or any portion of the airspace or subterranean space between two legally identifiable elevations and may exclude the surface of a parcel of real property and may mean any combination of the foregoing, whether or not contiguous.[5]

Currently, s. 718.103, F.S., defines a condominium, in part, as "that form of ownership of *real property* . . ."[6] In essence, a condominium is land;[7] however, the current law does not include condominium in the definition of land within the statute.

Windstorm Insurance Coverage

In January 2007, Governor Crist convened a Special Session to address the insurance crisis in Florida. House Bill 1-A, enacted as ch. 2007-1, was the result of this weeklong special session. The legislation, in part, amended s. 718.111(11), F.S., providing for windstorm insurance for condominium associations.

Specifically, HB 1-A amended s. 718.111(11), F.S., to attempt to make insurance more available and affordable for condominiums by:

- Limiting the insurance requirements in s. 718.111(11), F.S., to apply to residential condominiums only;
- Allowing the condominium board of directors to consider available funds or predetermined assessment authority when determining whether they have the statutorily required "adequate insurance";
- Creating a new subparagraph in the statute that allows for three or more communities operating as residential condominiums (ch. 718, F.S.), cooperatives (ch. 719, F.S.), homeowners' associations (ch. 720, F.S.), or timeshare entities (ch. 721, F.S.) to obtain and maintain windstorm insurance coverage if it is sufficient to cover an

[5] Section 718.103(18), F.S., (emphasis added).
[6] Section 718.103(11), F.S., (emphasis added).
[7] "Real property" is defined as "[l]and and anything growing on, attached to, or erected on it, excluding anything that may be severed without injury to the land." Black's Law Dictionary (7th ed. 1999).

amount equal to the probable maximum loss (PML) for such communities for a 250-year windstorm event. The PML must be determined through the use of a competent model that has been accepted by the Florida Commission on Hurricane Loss Projection Methodology; and

- Clarifying s. 718.111(11)(a), F.S., by providing that if condominium associations form a commercial self-insurance fund under the Insurance Code (ss. 624.460-624.488, F.S.), the insurance requirements are considered "adequate insurance."

Currently, DBPR deems "adequate insurance" to be full insurable value or full replacement coverage,[8] which may not be available or may be cost prohibitive for these entities.

Self Insurance by Cooperative Associations

Florida's Insurance Code provides regulations in ss. 624.460-624.488, F.S., that must be followed in order for commercial entities to be self-insured. The Condominium Act (ch. 718, F.S.) specifically authorizes condominium associations to self-insure if they follow these provisions of the Insurance Code. Currently, the Cooperative Act (ch. 719, F.S.) does not provide similar authority to allow cooperatives to self-insure.

Common Expenses of Condominiums and Cooperatives

Both the Condominium Act (ch. 718, F.S.) and the Cooperative Act (ch. 719, F.S.) provide that "common expenses" include:

- The expenses of the operation, maintenance, repair, or replacement of the cooperative or the condominium property, was well as the protection of the common elements of the condominium property;
- The costs of carrying out the powers and duties of the associations; and
- Any other expenses designated as a common expense either by ch. 718 or 719, F.S., or the governing documents.[9]

Special Assessments for Condominiums and Cooperatives

"Special assessments" are any assessment levied against a unit owner other than the assessment required by a budget adopted annually.[10] Each unit owner must be given written notice explaining the specific purpose of any special assessment that is approved in accordance with the governing documents of the association.[11] Any funds that are collected pursuant to a special assessment must be used only for the specific purpose stated in the notice to the unit owner.[12]

Currently under the Condominium Act, any funds remaining after the completion of the specific purpose(s) may be returned to the unit owners or applied as a credit toward future assessments.[13]

[8] *See* s. 718.111(11)(a), F.S.
[9] Section 718.115, F.S., and s. 719.107, F.S.
[10] Section 718.103(24), F.S., and s. 719.103(22), F.S.
[11] Section 718.116(10), F.S., and s. 719.108(9), F.S.
[12] *Id.*
[13] Section 718.116(10), F.S.

However, the excess funds are simply considered "common surplus" under the Cooperative Act.[14]

Developer Disclosures Prior to Sale of a Condominium or Cooperative Unit

Sections 718.503 and 719.503, F.S., regulate developer disclosures and other information that must be included in any contract for the sale of a condominium or cooperative unit, or a lease thereof for a term of more than five years.

Prospectus or Offering Circular of Condominiums and Cooperatives

"The 'prospectus,' or offering circular, is the introductory synopsis to the entire set of condominium documents governing the community."[15] The prospectus is prepared by the developer of the association and must be filed with the Division as well as furnished to each buyer.[16] The prospectus provides a summary of all the restrictions, financial obligations, and liabilities of an owner of the association.[17]Additionally, the prospectus must include a copy of the annual financial report and a separate summary sheet entitled "Frequently Asked Questions and Answers" informing each owner about key provisions in the condominium and cooperative documents relating to the use restrictions, voting rights, individual financial responsibilities, and other important matters.[18]

Sections 718.504(21) and 719.504(20), F.S., provide that the prospectus must also contain an estimated operating budget for the condominium and cooperative and their associations, and a schedule of the unit's expenses must be attached as an exhibit. To be effective, certain information, as provided in these sections, must be included in the operating budget.

Condominium Conversions

Part VI of the Condominium Act, also known as the "Roth Act," regulates the conversion of an existing property, typically an apartment complex, into the condominium form of ownership.

In summarizing the Roth Act, Peter M. Dunbar provides in his book *The Condominium Concept*:

> Part VI of the Condominium Act is devoted exclusively to condominiums which are created when existing improvements are converted to a residential condominium. This part of the Act provides protections to the existing renters in the building and to prospective purchasers of the converted condominium units. Renters are entitled to written notice of the proposed conversion and an option to extend their current lease. Each tenant has the right of first refusal to purchase the unit and the developer

[14] Section 719.108(9), F.S.
[15] Dunbar, s*upra* note 2, s. 1.13, at 13.
[16] Section 718.504, F.S., and s. 719.504, F.S.
[17] Dunbar, s*upra* note 2, s. 1.13, at 13.
[18] *Id.*

> must provide basic background information to assist each tenant in evaluating the potential purchase.[19]

In the 2006 Regular Legislative Session, Senate Bill 1270 directed the Advisory Council on Condominiums[20] to review part VI of ch. 718, F.S., to evaluate whether such provisions provided adequate post-purchase protection for purchasers of condominium conversion properties, and to recommend any proposed legislation needed to improve the protection.

Although the legislation was not enacted, an interim project on SB 1270 was approved by the Senate President, wherein the staff recommended that legislation addressing changes to part VI of ch. 718, F.S., contain language that ensures appropriate reserve amounts for problems that rise in maintaining the condominium structure and provides for updated inspection reports for components that are renovated or repaired.[21] Additionally, the staff recommended legislation to ensure that the condominium owner would have appropriate recourse through the courts for any failure by the engineer and/or developer to disclose defects.[22]

Section 718.616(1), F.S., provides that each developer of a residential condominium created by conversion must disclose the condition of the improvements, the condition of certain components and their current estimated replacement costs. Specifically, the developer must disclose the following information concerning the improvements:

- Date and type of construction;
- Prior use;
- Existence of any termite damage or infestation, if any, and whether it has been treated. A report from a certified pest control operator must substantiate the inspection.[23]

The developer must also disclose the condition of the roof, structure, fireproofing and fire protection systems, elevators, heating and cooling systems, plumbing, electrical systems, swimming pools, seawalls, pavement and parking areas, and drainage systems.[24] As to each of these components, the developer must disclose the component's age, estimated remaining useful life, estimated current replacement cost, and structural and functional soundness.[25]

Currently, there is no requirement for an updated report or disclosure, which creates the potential for a 24-month gap from the date of the initial filing for conversion and the actual recording of the conversion as provided in rule 61B-17.005, Fla. Admin. Code.

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[19] Dunbar, s*upra* note 2, s. 2.7, at 33-34.
[20] In 2004, the Legislature created the Advisory Council on Condominiums, in part to receive public input regarding issues of concern with respect to condominiums and recommendations for changes in the condominium law. Section 5, ch. 2004-345, L.O.F.; s. 718.50151, F.S.
[21] Florida Senate Committee on Regulated Industries, *Condominium Conversions*, Interim Report No. 2007-136, October 2006.
[22] *Id.*
[23] Section 718.616(2), F.S.
[24] Section 718.616(3)(a), F.S.
[25] Section 718.616(3)(b), F.S.

Third-Party Beneficiaries and the Issue of Privity

The Department of Business and Professional Regulation has noted that the current case law is unclear as to liability of the preparer of the report to the unit owners or to the association. To be liable under a contract, a person must be in "privity" with another person. Privity is defined as the "connection or relationship between two parties, each having a legally recognized interest in the same subject matter (such as a transaction, proceeding, or piece of property); mutuality of interest."[26] Privity of contract is that "relationship between the parties to a contract, allowing them to sue each other but preventing a third party from doing so."[27] The issue of privity between the condominium owners and the engineers and/or architects who inspect a building prior to the conversion has been a controversial issue in Florida law.

In *Bay Garden Manor Condo. Ass'n, Inc. v. James D. Marks Assocs., Inc.*, 576 So. 2d 744, 745 (Fla. 3d DCA 1991), the court was presented with the question of whether an engineering firm that provides false information in its structural report as to the physical condition of the building that was being converted to condominiums may be liable in tort to subsequent purchasers of the condominium units with whom there is no contractual relationship. The court stated that the economic loss rule[28] should not be applicable in this case since engineering is a profession and the engineers were hired to prepare reports of a structural inspection in order to guide others in business decisions.[29] The court based its decision on the authority expressed in *Restatement (Second) of Torts* § 552 (1976),[30] and remanded the case for a decision on three main questions: (1) whether the inspection reports were false; (2) whether the unit owners were persons who relied on the opinions; and (3) whether the unit owners suffered pecuniary loss based on reliance on the information.

This decision was called into doubt in the case of *Florida Bldg. Inspection Servs., Inc. v. Arnold Corp.*, 660 So. 2d 730 (Fla. 3d DCA 1995). At issue in this case was whether a building inspection company, who was hired by a lessee of a warehouse, owes a duty of care to a third party sublessee, not in privity, who has incurred economic loss. The court pointed out that cases allowing exceptions to the economic loss rule did so only when "an existing, specifically identifiable, intended beneficiary of a contract has not been given that status in a contract."[31] The

[26] Black's Law Dictionary (7th ed.1999).
[27] *Id.*
[28] The economic lose rule generally bars a tort action for purely economic loss in order to protect a defendant, in the absence of privity, from unlimited liability for all economic consequences of a negligent act. The rule establishes that, in the absence of privity, there is "no 'duty to exercise reasonable care to avoid intangible economic loss or losses to others that do not arise from tangible physical harm to persons and tangible things.'" *Bay Garden Manor Condo. Ass'n, Inc.*, 576 So. 2d at 745 (quoting Prosser & Keeton, *Law of Torts* § 92, at 657 (5th ed. 1986)).
[29] *Id.* at 746.
[30] The restatement reads: (1) One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance on the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information; (2) Except as stated in Subsection (3), the liability stated in Subsection (1) is limited to loss suffered (a) by the person or one of a limited group of persons for whose benefit and guidance he intends to supply the information or knows that the recipient intends to supply it; and (b) through reliance upon it in a transaction that he intends the information to influence or knows that the recipient so intends or in a substantially similar transaction. *Bay Garden Manor Condo. Ass'n, Inc.*, 576 So. 2d at 745-46.
[31] *Florida Bldg. Inspection Servs., Inc.*, 660 So. 2d at 732 (citing *Sandarac Ass'n, Inc. v. W.R. Frizzell Architects, Inc.*, 609 So. 2d 1349, 1353 (Fla. 2d DCA 1992)).

court declined to erode the economic loss rule further because the third party lessee was not in privity with the building inspection company, nor was he a third party intended to benefit by the inspection company's services.[32]

Finally, in *Ocean Ritz of Daytona Condo. v. GGV Assocs., Ltd.*, 710 So. 2d 702 (Fla. 5th DCA 1998), the court had to consider whether the economic loss rule bars a negligence action in the context of a third-party beneficiary to a contract when the plaintiff is seeking only economic damages. The court found that the economic loss rule barred the condominium association's claim against the architectural consultant based on the consultant's alleged faulty inspection and inaccurate disclosure and report.[33] The court held, "[T]he economic loss rule does not limit the number of potential defendants subject to a contract claim; it merely limits the causes of action that might be brought against them."[34]

Converter Reserve Accounts and Warranties

Section 718.618, F.S., requires that once a conversion has taken place, the developer has to create financial safeguards for the condominiums. The developer can do this in one of three ways: (1) establishing reserve accounts for capital expenditures and deferred maintenance; (2) giving implied warranties of fitness and merchantability for a period of three years beginning with the notice of intended conversion or the recording of the declaration; (3) or posting a surety bond in an amount that would be equal to the total amount of all required reserve accounts payable to the association.[35] The developer may establish and fund additional reserve accounts under s. 718.618(5), F.S., but there are currently no provisions for the calculation of the amount of the reserve accounts.

Currently, a developer has no duty to disclose in a contract for sale which financial safeguard the developer used.

Homeowners' Association Assessments

In order to fund the operations, amenities, and special needs of a homeowners' association, each parcel owner is required to contribute a proportionate share of the costs and expenses.[36] Each owner's proportionate share of the annual budget and the general operations of the association is referred to as an assessment.[37]

Section 720.308, F.S., provides that the governing documents must describe the manner in which expenses are shared and specify the member's proportional share thereof.

[32] *Id.* at 733.
[33] *Ocean Ritz of Daytona Condo. v. GGV Assocs., Ltd.*, 710 So. 2d 702 (Fla. 5th DCA 1998).
[34] *Id.* at 705.
[35] Section 718.618(1), F.S.
[36] Dunbar, *supra* note 2, s. 1.9, at 10.
[37] *Id.*

III. Effect of Proposed Changes:

Meaning of the Word "Land" in the Condominium Act

This bill amends the definition of "land" in s. 718.103(18), F.S., to provide that the word "land" in the Condominium Act may also mean a condominium unit.

Windstorm Insurance Coverage

This bill amends s. 718.111(11), F.S., so that paragraph (a)[38] also applies to all residential condominiums in the state, regardless of the date of its declaration of condominium. This amendment creates uniformity and further facilitates the legislative purpose of s. 718.111(11), F.S.

This bill adds identical language relating to windstorm insurance coverage that was added to the Condominium Act in HB 1-A during the 2007 special session on insurance, to apply to cooperatives and homeowners' associations. The bill creates s. 719.104(3)(a), F.S., and s. 720.303(11), F.S., to provide that windstorm insurance coverage constitutes "adequate insurance" for cooperatives and homeowners' associations, so long as there are at least three communities operating as residential condominiums (ch. 718, F.S.), cooperatives (ch. 719, F.S.), homeowners' associations (ch. 720, F.S.), or timeshare entities (ch. 721, F.S.). These entities may purchase windstorm insurance coverage if the insurance is sufficient to cover an amount equal to the probable maximum loss (PML) for such entities for a 250-year windstorm event. The PML must be determined using a competent model that has been accepted by the Florida Commission on Hurricane Loss Projection Methodology.

Self Insurance by Cooperative Associations

This bill creates s. 719.104(3)(b), F.S., to authorize cooperatives to be able to self-insure by following the commercial self-insurance provisions in the Insurance Code (ss. 624.460-624.488, F.S.). This bill also provides that if cooperative associations form a commercial self-insurance fund under the applicable provisions, the insurance requirements are considered "adequate insurance."

Common Expenses of Condominiums and Cooperatives

This bill amends s. 718.115(1)(f), F.S., of the Condominium Act and creates s. 719.107(1)(e), F.S., of the Cooperative Act, to provide that common expenses include the cost of insurance acquired by the association under the authority of s. 718.111(11), F.S.,[39] as amended by HB 1-A during the 2007 special session on insurance, including costs and contingent expenses required to participate in a self-insurance fund authorized and approved pursuant to s. 624.462, F.S.

[38] Paragraph (a) of s. 718.111(11), F.S., instructs unit-owner controlled associations operating residential condominiums to use best efforts to obtain adequate insurance.
[39] This bill creates consistent language in ch. 719, F.S.

Special Assessments for Condominiums and Cooperatives

This bill amends ss. 718.116(10) and 719.108(9), F.S., to specify that the requirements of these sections pertain to any special assessments levied for the purpose of purchasing an insurance policy, as provided in s. 718.111(11), F.S.,[40] as amended by HB 1-A during the 2007 special session on insurance. The amendment to these sections provides that the special assessment for the purchase of insurance coverage is contingent. This means that the assessment is authorized, but unit owners do not actually pay the assessment unless the applicable requirements to self-insure are met.

Section 719.108(9), F.S., is further amended to provide that any excess funds collected for a special assessment may either be returned to the unit owners or be applied as a credit toward future assessments. This change in the Cooperative Act is simply reflecting an identical change that has previously been made in the Condominium Act.

Developer Disclosures Prior to Sale of a Condominium or Cooperative Unit

This bill amends the disclosure language for condominium and cooperative contracts in ss. 718.503(1)(a) and 719.503(1)(a), F.S., to provide an additional statement that must be included in a contract for the sale of a condominium or cooperative unit or a lease of a unit that is for a term of more than five years. This bill requires that the contract must include the following statement in conspicuous type:

> Figures contained in any budget delivered to the buyer prepared in accordance with the condominium act are estimates only and represent an approximation of future expenses based on facts and circumstances existing at the time of the preparation of the budget by the developer. Actual costs of such items may exceed the estimated costs. Such changes in cost do not constitute material adverse changes in the offering.[41]

This bill also creates ss. 718.503(1)(c) and 719.503(1)(c), F.S., to provide that if the closing on a contract occurs more than 12 months after the filing of the prospectus or offering circular with the Division, the developer must provide a copy of the current estimated operating budget of the condominium or cooperative association to the buyer at closing. The bill also provides that the estimate is not to be considered an amendment that modifies the offering, provided that any changes to the budget are the result of matters beyond the developer's control.

Prospectus or Offering Circular of Condominiums and Cooperatives

This bill creates ss. 718.504(21)(d) and 719.504(20)(d), F.S., to provide that the following statement must be included in the estimated operating budget that must be included in the prospectus or offering circular:

[40] This bill creates consistent language in ch. 719, F.S.

[41] Quoting the proposed language to s. 718.503(1)(a), F.S. The term "cooperative act," rather than "condominium act," is used in the proposed version of s. 719.503(1)(a), F.S. Otherwise, the proposed sections are identical.

> The budget contained in this offering circular has been prepared in accordance with the condominium act and is a good faith estimate only and represents an approximation of future expenses based on facts and circumstances existing at the time of its preparation. Actual costs of such items may exceed the estimated costs. Such changes in cost do not constitute material adverse changes in the offering.[42]

This bill also creates ss. 718.504(21)(e) and 719.504(20)(e), F.S., to provide that each budget prepared as required in these two sections is a good faith estimate made at the time of filing of the offering circular with the Division, and any subsequent increased amounts that are beyond the developer's control are not considered amendments that would give rise to the recession rights provided in ss. 718.503(1)(a) or (b) and 719.503(1)(a) or (b), F.S. Any such increases will not modify, void, or otherwise affect any guarantees of the developer.

Condominium Conversions

The bill amends s. 718.616(1), F.S., relating to condominium conversions, to require a dated disclosure report on the conditions of improvements, certain components, and their current estimated replacement costs.

Section 718.616(3), F.S., is revised by eliminating the word "fireproofing" and includes the following additional components to the required list:

- Pilings and docks;
- Concrete, including roadways and walkways; and
- Irrigation systems.

Additionally, the bill requires that the age, useful life, and estimated current replacement cost of the component be disclosed and substantiated by an architect or engineer *as of the date of the report.*

This bill creates s. 718.616(3)(c) through (e), F.S., to:

- Provide that each unit owner and the association are third-party beneficiaries of the disclosure report;[43]
- Require a supplemental inspection report for any structure or component that is renovated or repaired after completion of the original report and prior to the recording of the declaration of condominium;
- Require the developer to provide annual updates prior to recording the declaration of condominiums if the declaration is not recorded within one year after the date of the original report; and

[42] Quoting the proposed language to s. 718.504(21)(d), F.S. The term "cooperative act," rather than "condominium act," is used in the proposed version of s. 719.504(20)(d), F.S. Otherwise, the proposed sections are identical.
[43] *See* "Third Party Beneficiaries and the Issue of Privity" section of this analysis.

- Prohibit the report from containing representations on behalf of the development regarding future improvements or repairs, and to require that the report be limited to the current condition of the improvements.

Third-Party Beneficiaries and the Issue of Privity

By creating s. 718.616(3)(c), F.S., the bill will enable each unit owner and the association, as third-party beneficiaries, to sue a developer or engineer/architect in certain situations for damages that are a result of inaccurate information provided in the disclosure report.

Converter Reserve Accounts and Warranties

This bill conforms the law by adding the terms "converter" and "as provided in this section" to modify reserve accounts in order to better differentiate between converter reserve accounts and regular reserve accounts.

This bill amends s. 718.618(1)(b), F.S., to provide that, to fund a reserve account, the age of a structure should be determined based on the age of the structure or component as disclosed in the inspection report and the age should be rounded to the nearest whole year. It requires that the architect or engineer determine the age of the component based on the criteria in the statute. Section 718.618(1)(d), F.S., is amended to provide that the vote to waive or reduce the funding of reserves required by s. 718.112(2)(f), F.S., does not affect or negate the reserve obligations arising out of s. 718.618, F.S.

The bill clarifies 718.618(5), F.S., by providing a procedure for calculating the amount of the reserve accounts. Specifically, when the developer establishes and funds an additional converter reserve account, the amount of funding must be the product of the estimated current replacement cost of a component, as disclosed and substantiated pursuant to s. 718.616(3)(b), F.S.,[44] multiplied by a fraction, the numerator of which is the age of the component in years and the denominator of which is the total estimated life of the component in years.

This bill deletes the provision in s. 718.618(6), F.S., that specifies components for which the developer must provide an implied warranty of fitness and merchantability, which is needed when the developer fails to establish reserve accounts or as an alternative to establishing a reserve account. Accordingly, the bill creates an implied warranty of fitness and merchantability, when applicable, for all improvements that are converted.

Section 718.618(10), F.S., is created and requires the developer to disclose in conspicuous type in the contract for sale which purchaser protection option the developer will establish: reserve accounts, a warranty of fitness and merchantability, or a surety bond.

[44] This section provides for the information to be substantiated by an architect or engineer certificate under seal.

Homeowners' Association Assessments

Section 720.308, F.S., is amended to authorize the homeowners' association board of directors to make assessments in conjunction with the self-insurance funds authorized and operating pursuant to s. 624.462, F.S.

This bill also amends s. 720.308(4), F.S., to provide that the section does not apply to an association if the association was created in a community that is included in an effective development-of-regional-impact development order as of October 1, 1995. This section is amended to clarify that the effective date of the act, for the purposes enumerated in s. 720.308, F.S., remains October 1, 1995, and not the date of this new legislation.

Effective Date

This act shall take effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The Department of Business and Professional Regulation states that the bill provides developers with certainty regarding their liability for conversion warranty issues by clarifying existing law and allowing developers to post conversion reserves for any of the common elements.

The department further indicated that the bill increases the protections to unit owners by designating them as beneficiaries to the conversion inspection report.

By expanding the condominium conversion disclosure requirements, this bill will provide additional information to potential unit owners and help them evaluate whether or not

they will purchase a unit. However, the additional disclosure requirements, including the supplemental report requirement, may increase costs to the developer.

This bill could potentially lower insurance rates paid by owners of condominiums, cooperatives, and homeowners' associations. Additionally, to the extent the bill allows for the option of windstorm insurance coverage, it may protect unit owners from additional windstorm damage. However, unit owners may face increased fees and assessments associated with living in a condominium, cooperative, or homeowners' association.

C. Government Sector Impact:

The Department of Business and Professional Regulation states that, if enacted, the bill may generate some additional calls to the department's call center; however, a fiscal impact is not anticipated.

VI. Technical Deficiencies:

None.

VII. Related Issues:

According to the Department of Business and Profession Regulation, the current law allows developers to choose one of three purchaser protection options: conversion reserve accounts, warranties, or surety bonds. The department states that it is not clear whether there are any surety companies that will issue a surety bond for this purpose, and conversion warranties provided by Limited Liability Corporations (LLC) may provide little protection if the LLC has no assets.

VIII. Summary of Amendments:

None.