

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty -- This bill increases the options of homeowners, condominium, and cooperative associations, with regards to insuring association property and participating in self insurance programs.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

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."¹ A condominium is created by recording a declaration of condominium in the public records of the county in which the condominium will be located.² Condominiums are regulated under ch. 718, F.S.

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 document of title or possession is granted by the association as the owner of all the cooperative property."³ Unlike a condominium purchaser, a cooperative apartment unit purchaser does not receive title to the cooperative apartment unit, nor does he or she become entitled to ownership of any portion of the building or the land upon which the cooperative apartment unit is situated. Co-ops are regulated under ch. 719, F.S.

A homeowners' association is a Florida corporation responsible for the operation of a subdivision in which voting membership is made up of parcel ownership and membership is a mandatory condition of parcel ownership. The association is also authorized to impose assessments that, if unpaid, may become a lien on the parcel.⁴ Homeowners' associations are regulated under ch. 720, F.S.

Condominiums and cooperatives are very similar entities that are regulated in a very similar fashion. Many of the provisions found in ch. 718, F.S. and ch. 719, F.S. are the same, and the provisions regulating the insuring of condominium and cooperative association property are no exception. The insurance provisions found in ch. 718 for condominiums is almost identical to the provisions found in ch. 719 for cooperatives. Several of the provisions in this bill make identical changes to both ch. 718 and ch. 719, F.S., in order to have continued conformity between these two areas of the law.

EFFECT OF BILL

Meaning of the Word "Land" in the Condominium Act

Present Situation

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

¹ Section 718.103(11), F.S.

² Section 718.104(2), F.S.

³ Section 719.103(12), F.S.

⁴ Section 720.301(9), F.S.

below such surface."⁵ 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."⁶

Proposed Changes

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 for Cooperatives and Homeowners' Associations

Present Situation

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. HB 1-A amended s. 718.111(11), F.S., to specify what constitutes "adequate insurance" under the Condominium Act for a group of at least three communities operating as residential condominiums, cooperatives, homeowners' associations, or timeshare entities. The bill provided that 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 through the use of a competent model that has been accepted by the Florida Commission on Hurricane Loss Project Methodology. Currently, the Department of Business and Professional Regulation deems adequate insurance as full replacement coverage which may not be available or may be cost prohibitive for these entities. HB 1-A (2007) also clarified that if condominium associations form a commercial self-insurance fund under the Insurance Code, the self insurance fund is considered adequate insurance.

Proposed Changes

This bill adds identical language relating to windstorm insurance coverage that was added to the Condominium Act, in HB 1-A, to apply to cooperatives and homeowners' associations. This bill amends s. 719.104(3) and s. 720.303(11), F.S., to specify what constitutes "adequate insurance" for cooperative associations and homeowners' associations for a group of at least three communities operating as residential condominiums, cooperatives, homeowners' associations, or timeshare entities seeking to pool their resources to purchase windstorm insurance coverage. These entities may purchase windstorm insurance coverage if the insurance is sufficient to cover an amount equal to the 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 Project Methodology. Currently, the Department of Business and Professional Regulation deems adequate insurance as full replacement coverage, which may not be available or may be cost prohibitive for these entities.

Self Insurance by Cooperative Associations

Present Situation

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 specifically authorizes condominium associations to self-insure if they follow these provisions of the Insurance Code.

⁵ Section 718.103(18), F.S.

⁶ Section 718.103(18), F.S.

Proposed Changes

This bill amends s. 719.104(3), F.S., to authorize cooperatives to be able to self-insure by following the commercial self-insurance provisions in the Insurance Code. This bill also provides that if cooperative associations form a commercial self-insurance fund under the Insurance Code, the self insurance fund is considered adequate insurance.

Common Expenses of Condominiums and Cooperatives

Present Situation

Both the Condominium Act and the Cooperative Act provides that "common expenses" include:

- The expenses of the operation, maintenance, repair, or replacement of the condominium or cooperative property;
- The costs of carrying out the powers and duties of the associations; and
- Any other expense designated as a common expense either by ch. 718 or ch. 719, F.S. or the governing documents.⁷

Proposed Changes

This bill amends the ss. 718.115(1), F.S., of the Condominium Act and 719.107(1), F.S., of the Cooperative Act, to provide that common expenses include the costs of windstorm insurance, and costs and expenses required to participate in a self-insurance fund.

Special Assessments for Condominiums and Cooperatives

Present Situation

"Special assessments" are any assessment levied against a unit owner other than the assessment required by a budget adopted annually.⁸ A condominium and cooperative association has the power to place a lien on each parcel for any unpaid assessments, plus interest, against the unit owner of the condominium or cooperative parcel.⁹ The specific purpose of any special assessment approved in accordance with the governing documents of the association must be in a written notice and be sent to each unit owner.¹⁰

Any funds that are collected pursuant to a special assessment must be used only for the specific purpose stated in the notice or be returned to the unit owners. However, upon completion of such specific purpose, any funds left over are considered common surplus.¹¹

Proposed Changes

This bill amends ss. 718.116(10), F.S. and 719.108(9), F.S., to specify that the requirements of these sections pertain to any special assessment levied for the purpose of purchasing a windstorm insurance policy, as provided in section 718.111(11), F.S., as amended by HB 1-A during the January 2007 Special Session on insurance.

This bill also amends s. 719.108(9), F.S., to provide that any excess funds collected for a special assessment may either be returned to the unit owners or be applied as credit toward future

⁷ Section 718.115, F.S. and s. 719.107, F.S.

⁸ Section 718.103(24), F.S. and s. 719.103(22), F.S.

⁹ Section 718.116, F.S. and s. 719.108, F.S.

¹⁰ Section 718.116(10), F.S. and s. 719.108(9), F.S.

¹¹ Section 719.108(9), F.S.

assessments. This change in the Cooperative Act is simply reflecting an identical change that has previously been made in the Condominium Act.

Prospectus or Offering Circular of Condominiums and Cooperatives

Present Situation

The prospectus, or offering circular, is the introductory synopsis to the entire set of condominium and cooperative governing documents. The prospectus is initially prepared by the developer of the condominium or cooperative at the beginning of the project and it must be distributed to each new purchaser of a condominium or cooperative unit. The prospectus provides a summary of all the restrictions, financial obligations and liabilities of an owner in the condominium or cooperative. It also provides the commitments and promises made by the developer, and the responsibilities which must be kept and maintained by the condominium association. 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 use restrictions, voting rights, individual financial responsibilities and other important matters.

Sections 718.504(21) and 719.504(20), F.S., provide that the prospectus or offering circular must also contain an estimated operating budget for the condominium and cooperative and their associations, and a schedule of the unit owner's expenses must be attached as an exhibit. Current law also provides that certain information must be included in the operating budget to meet the requirements of this section.

Proposed Changes

This bill amends ss. 718.504(21) and 719.504(20), 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:

"THE BUDGET CONTAINED IN THIS OFFERING CIRCULAR HAS BEEN PREPARED IN ACCORDANCE WITH THE CONDOMINIUM/COOPERATIVE 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."

This bill also amends ss. 718.504(21) and 719.504(20), 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 sections 718.503(1)(a) and (b) and 719.503(1)(a) and (b). Any such increases will not modify, void, or otherwise affect any guarantees of the developer.

Developer Disclosures Prior to Sale of a Condominium or Cooperative Unit

Present Situation

Sections 718.503, F.S. and 719.503, F.S., regulate what developer disclosures and other information must be included in any contract for the sale of a condominium or cooperative unit or a lease of a unit that is for a term of more than 5 years.

Proposed Changes

This bill amends ss. 718.503 and 719.503, 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 5 years. This bill requires that the contract must include the following statement:

"FIGURES CONTAINED IN ANY BUDGET DELIVERED TO THE BUYER PREPARED IN ACCORDANCE WITH THE CONDOMINIUM/COOPERATIVE 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."

This bill also amends ss. 718.503 and 719.503, F.S., to provide that if the closing on a contract occurs more than 12 months after the filing of the offering circular with the division¹², then 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 this will not 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.

Condominium Conversion Disclosure Requirements

Present Situation

Part VI of the Condominium Act regulates the conversion of an existing property, typically an apartment complex into the condominium form of ownership. This part of the Act provides protections to the existing renters in the building and to prospective purchasers of the converted condominium units.

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

Section 718.616(3), F.S., provides that disclosures be made for certain components that the existing improvements may include, such as the roof, fireproofing, heating and cooling system, plumbing, or swimming pool.

Proposed Changes

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

This bill revises s. 718.616(3), F.S., by removing the word "fireproofing" from the components that must be provided with a disclosure by the developer, and adds the following additional components to the required list:

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

This bill also revises the information that must be disclosed and substantiated by an architect or engineer to include the age and useful life of the component as of the date of the report.

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

¹² "Division" refers to the Division of Florida Land Sales, Condominiums, and Mobile Homes

- Provide that each unit owner and the association are third-party beneficiaries¹³ of the disclosure report;
- 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
- 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.

Condominium Conversion Reserve Accounts and Warranties

Present Situation

Section 718.618, F.S. provides that when existing improvements are converted to ownership as a residential condominium, the developer must establish and fund reserve accounts for capital expenditures and deferred maintenance, give warranties, or post a surety bond.

By statute, the developer is deemed to have granted to the purchaser of each unit an implied warranty of fitness and merchantability for the purposes or uses intended as to each unit. If the condominium is created by the conversion of existing improvements, the developer makes no implied warranties if the required conversion reserve accounts are established. If the reserve accounts are not established, the developer is deemed to have made the implied warranties of fitness and merchantability to the purchasers of the units.

Proposed Changes

The bill amends s. 718.618(1)(b), F.S., to provide that, to fund a converter 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 requires rounding the age 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.

This bill amends s. 718.618(5), F.S., to provide that 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.,¹⁴ 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 which components the developer must provide an implied warranty of fitness and merchantability when the developer fails to establish converter reserve accounts or as an alternative to establishing a converter reserve account.

¹³ This provision 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.

¹⁴ This section provides for the information to be substantiated by an architect or engineer certificate under seal.

This bill creates s. 718.618(10), F.S., to require the developer to disclose in conspicuous type in the contract for sale which purchaser protection option the developer will establish; converter reserve accounts, a warranty of fitness and merchantability, or a surety bond.

Homeowners' Association Assessments

Present Situation

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. Each owner's proportionate share of the annual budget and the general operations and obligations of the association is referred to in ch. 720, F.S., as an assessment.

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.

Proposed Changes

This bill amends s. 720.308, F.S., to authorize a mandatory 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, 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.

C. SECTION DIRECTORY:

Section 1 amends s. 718.103, F.S., relating to definitions for condominium law.

Section 2 amends s. 718.115, F.S., relating to common expenses and common surplus in condominium law.

Section 3 amends s. 718.116, F.S., relating to assessments in condominium law.

Section 4 amends s. 718.503, F.S., relating to developer disclosures prior to sale of condominium.

Section 5 amends s. 718.504, F.S., relating to prospectus and offering circulars of condominiums.

Section 6 amends 718.616, F.S., relating to disclosures for condominium conversions.

Section 7 amends s. 718.618, F.S., relating to condominium converter reserve accounts.

Section 8 amends s. 719.104, F.S., relating to insurance for cooperative associations.

Section 9 amends s. 719.107, F.S., relating to common expenses in cooperatives law.

Section 10 amends s. 719.108, F.S., relating to assessments in cooperatives law.

Section 11 amends s. 719.503, F.S., relating to disclosure prior to sale of a cooperative unit.

Section 12 amends s. 719.504, F.S., relating to the prospectus and offering circular in cooperative law.

Section 13 amends s. 720.303, F.S., relating to windstorm insurance coverage for homeowners associations.

Section 14 amends s. 720.308, F.S., relating to assessments and charges for homeowners associations.

Section 15 provides an effective date upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

It is possible that the insurance provisions of this bill may lower insurance premiums to cooperative associations and homeowners associations. This could lead to a slight reduction in insurance premium taxes collected by the state.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

N/A

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 14, 2007, the Safety & Security Council adopted one amendment to this PCB. The amendment made the following revisions to the PCB:

- Added the word "converter" before several references to "reserve accounts" in order to specify that the section apply only to converter reserve accounts, which are different from regular reserve accounts;
- Limited the authority of homeowners associations to use the pooled insurance option for obtaining insurance coverage to only windstorm insurance coverage; and
- Corrected drafting errors in the PCB, and made certain non-substantive changes to conform to the Senate companion.

This analysis has been revised to reflect the changes contained in the amendment.

The PCB was then reported favorably with an amendment.